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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 989

**[Docket No. FV02–989–1 FIR]**

## Raisins Produced From Grapes Grown in California; Addition of a New Varietal Type and Quality Requirements for Other Seedless-Sulfured Raisins

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that added a new varietal type of raisin under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (RAC). The order provides authority for volume and quality regulations that are imposed by varietal type. This action continues to establish and add to the regulations a new varietal type (Other Seedless-Sulfured raisins), along with quality requirements for this varietal type. This is a new type of raisin being produced by some industry members.

**EFFECTIVE DATE:** Effective October 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; 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. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The 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.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive intent. Under the order provisions now in effect, varietal types and quality requirements may be established for raisins acquired by handlers during the crop year. This rule continues to establish a new varietal type and quality requirements for Other Seedless-Sulfured raisins. 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 USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA'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 continues to add a new varietal type of raisin under the order. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the RAC. The order provides authority for volume and quality regulations that are imposed by varietal type. This action continues to establish and add to the regulations a new varietal type (Other Seedless-Sulfured raisins), along with quality requirements for this varietal type. This is a new type of raisin being produced by some industry members. This action was recommended by the RAC at a meeting in August 2001, and discussed further at RAC meetings in September and November 2001. Changes to the import regulation are being made in a separate rule.

### Varietal Type for Other Seedless-Sulfured Raisins

The order provides authority for volume and quality regulations that are imposed by varietal type. Section 989.10 of the order defines the term varietal type to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. That section includes a list of eight varietal types, and provides authority for the RAC, with the approval of USDA, to change this list. A description of these varietal types, along with additional varietal types, may be found in § 989.110 of the order's administrative rules and regulations. Prior to implementation of the interim final rule, there were nine different varietal types of raisins listed in this section.

Some industry members have found a new market for raisins made by dehydrating sulfured red seedless grapes. These raisins did not fit into any of the varietal types specified in § 989.110. Such raisins are similar to the Other Seedless varietal type, except they have been sulfured. Such raisins are also similar to the Golden Seedless varietal type, but may not meet the color requirements for Golden Seedless raisins. Golden Seedless raisins are made from green seedless grapes and are mostly yellowish green to greenish

amber in color when sulfured. Red seedless grapes typically vary in color when sulfured.

Thus, the RAC recommended establishing, and adding to the regulations, a new varietal type—Other Seedless-Sulfured raisins. This allows the RAC to consider Other Seedless-Sulfured raisins separate from other varietal types for the purpose of volume and quality regulation, thereby recognizing distinct differences in supply and demand conditions, and raisin characteristics. Accordingly, a new paragraph (j) was added to § 989.110 to define Other Seedless-Sulfured as all raisins produced from Ruby Seedless, Kings Ruby Seedless, Flame Seedless and other seedless grapes not included in any of the varietal categories for Seedless raisins which have been artificially dehydrated and sulfured.

**Quality Requirements for Other Seedless-Sulfured Raisins**

This rule continues to add quality requirements for Other Seedless-Sulfured raisins. Specifically, this rule continues to add: incoming quality requirements (which includes adding these raisins to the order's weight dockage system); a factor for converting between natural condition and processed weight; and outgoing quality requirements for Other Seedless-Sulfured raisins. The details of these changes are discussed below.

**Incoming Quality Requirements**

Section 989.58(a) of the order provides authority for quality control regulations whereby natural condition raisins that are delivered from producers to handlers must meet certain incoming quality requirements. Section 989.701 of the order's regulations specifies minimum grade and condition standards for natural condition raisins for each varietal type. Prior to implementation of the interim final rule, paragraph (b) of that section specified requirements for two varietal types of raisins—Dipped Seedless and Oleate and Related Seedless raisins. The RAC determined that natural condition Other Seedless-Sulfured raisins are similar to these two varietal types and, therefore, they should have the same incoming quality requirements. Accordingly, paragraph (b) of § 989.701 was revised to include Other Seedless-Sulfured raisins.

**Weight Dockage System**

Section 989.58(a) also contains authority for handlers to acquire natural condition raisins that fall outside the tolerance established for maturity, which includes substandard raisins, under a weight dockage system. Handler acquisitions of raisins and payments to producers are adjusted according to the percentage of substandard raisins in a lot, or the percentage of raisins that fall below certain levels of maturity. Section 989.210(a) of the order's regulations lists the varietal types of raisins that may be acquired pursuant to a weight dockage system. Sections 989.212 and 989.213 contain tables with dockage factors applicable to lots of raisins that fall outside the tolerances for substandard raisins and maturity, respectively, specified in § 989.701.

Because these raisins are similar to Dipped Seedless and Oleate and Related Seedless raisins, this rule continues to add Other Seedless-Sulfured raisins to the list contained in § 989.210(a), the substandard dockage table specified in § 989.212(b), the list regarding maturity in § 989.213(a), and to the maturity dockage tables in § 989.213(b) and (d). Additionally, this rule continues to remove obsolete language contained in §§ 989.212 and 989.213 that was applicable to only the 1998–99 crop year.

**Raisin Weight Conversion Table**

Section 989.601 of the order's regulations specifies a list of conversion factors for raisin weights. The factors are used to convert the net weight of reconditioned raisins acquired by handlers as packed raisins to a natural condition weight. The net weight of the raisins after the completion of processing is divided by the applicable factor to obtain the natural condition weight. If the adjusted weight exceeds the original weight, the original weight is used. This rule continues to add Other Seedless-Sulfured raisins to that list, specifying a conversion factor of 0.95. These raisins are similar to Golden Seedless and Dipped Seedless for which 0.95 conversion factors are specified.

**Outgoing Quality Requirements**

Section 989.59 of the order provides authority for quality control regulations for raisins subsequent to their acquisition by handlers (outgoing requirements). Section 989.702 of the order's regulations specifies minimum grade standards for packed raisins. Prior to implementation of the interim final rule, paragraph (a) of that section specified requirements for three varietal types—Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins. This rule continues to add Other Seedless-Sulfured raisins to paragraph (a).

Accordingly, Other Seedless-Sulfured raisins must meet the requirements of U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 through 1624). At least 70 percent, by weight, of the raisins in a lot must be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized lots, the raisins must at least meet the U.S. Grade B tolerances for pieces of stem, and underdeveloped and substandard raisins, and small (midget) sized raisins must meet the U.S. Grade C tolerances for those factors.

**Reporting Requirements**

All raisin handlers are currently required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin. These reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC–1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC–3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC–20); (4) Weekly Off-Grade Summary (RAC–30); (5) Inventory of Free Tonnage Standard Quality Raisins on Hand (RAC–50); and (6) Inventory of Off-Grade Raisins on Hand (RAC–51). This rule continues to require that an additional column be added to these six forms so that handlers can report Other Seedless-Sulfured raisins separately. The total annual burden for these six forms is 660 hours. This action does not change this burden on handlers.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, 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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued 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 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are 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 $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

The order provides authority for volume and quality regulations that are imposed by varietal type of raisin. This rule continues to establish and add to the regulations a new varietal type (Other Seedless-Sulfured raisins), along with quality requirements for this varietal type. This is a new type of raisin that is being produced by some industry members. A new paragraph (j) was added to § 989.110 of the order's regulations to define the varietal type Other Seedless-Sulfured raisins. Pursuant to §§ 989.58 and 989.59, quality requirements for Other Seedless-Sulfured raisins were added to the order's regulations as follows: incoming quality requirements were added to §§ 989.210, 989.212, 989.213, and 989.701; a factor for converting between natural condition and processed weight is added to § 989.601; and outgoing quality requirements were added to § 989.702.

Regarding the impact of this action on affected entities, this rule allows the RAC to consider Other Seedless-Sulfured raisins separately from other varietal types of raisins for the purpose of volume and quality regulation, thereby recognizing distinct differences in supply and demand conditions for that product. Producers and handlers may take advantage of a separate and distinct market for Other Seedless-Sulfured raisins. This rule allows appropriate quality requirements to be applied to this new varietal type, which facilitates the production and handling of such raisins. In addition, this rule allows the RAC to examine data on acquisitions and shipments of Other Seedless-Sulfured raisins, as handlers submit various reports to the RAC where the data is segregated by varietal type. The RAC can analyze this data and assess marketing trends and opportunities for this unique varietal type. There are no expected additional costs associated with this regulation on either producers or handlers.

The RAC considered some alternatives to this action. The RAC reviewed the existing varietal types to see whether Other Seedless-Sulfured raisins could fit into an established category. The Golden Seedless and Other Seedless varietal types were examined. However, Other Seedless-Sulfured raisins may not meet the color requirements for Golden Seedless raisins. In addition, Other Seedless-Sulfured raisins do not fit into the Other Seedless category because that varietal type has historically included raisins that have not been sulfured. The industry determined that it was appropriate to establish a separate varietal type for Other Seedless raisins that had been dehydrated and sulfured.

All raisin handlers are currently required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin. These reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC–1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC–3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC–20); (4) Weekly Off-Grade Summary (RAC–30); (5) Inventory of Free Tonnage Standard Quality Raisins on Hand (RAC–50); and (6) Inventory of Off-Grade Raisins on Hand (RAC–51). This rule continues to require that an additional column be added to these six forms so that handlers can report Other Seedless-Sulfured raisins separately. The total annual burden for these six forms is 660 hours. This action does not change this burden on handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements referenced above have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. 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.

Additionally, except for applicable section 8e import regulations, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, Other Seedless-Sulfured raisins must meet U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 through 1624).

Further, the RAC's meetings on August 14, September 20, and November 13, 2001, where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *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.

An interim final rule concerning this action was published in the **Federal Register** on May 28, 2002, (67 FR 36789). Copies of the rule were mailed by Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on July 29, 2002. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 989**

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 36789 on May 28, 2002, is adopted as a final rule without change.

Dated: September 4, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–23036 Filed 9–10–02; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 999

**[Docket No. FV02–999–1 FR]**

## Specialty Crops, Import Regulations; Addition of a New Varietal Type to the Raisin Import Regulation

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

**ACTION:** Final rule.

**SUMMARY:** This rule adds Other-Seedless Sulfured raisins, along with quality requirements, to the raisin import regulation. The import regulation is authorized under section 8e of the Agricultural Marketing Agreement Act of 1937 (Act) and requires imports of raisins to meet the same or comparable grade and size requirements as those in effect under Federal Marketing Order No. 989 (order). The order regulates the handling of raisins produced from grapes grown in California. The regulations authorized under the domestic order were recently changed to add Other-Seedless Sulfured raisins, along with quality requirements for this varietal type. This is a new type of raisin being produced by some California industry members. This rule brings the import regulation into conformity with the regulations for California raisins under the marketing order.

**EFFECTIVE DATE:** October 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' which provides that whenever certain specified commodities, including raisins, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The Department of Agriculture (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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule adds a new varietal type to the raisin import regulation. This action adds Other Seedless-Sulfured raisins, along with quality requirements, to the import regulation. This action is necessary to bring the import regulation in line with the domestic marketing order. The order regulates the handling of raisins produced from grapes grown in California.

The domestic order provides authority for volume and quality regulations that are imposed by varietal type. Section 989.10 of the order defines the term ''varietal type'' to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. That section includes a list of varietal types, and provides authority for the Raisin Administrative Committee (RAC), with the approval of USDA, to change this list. A description of these varietal types, along with additional varietal types, is specified in § 989.110 of the order's administrative rules and regulations.

In August 2001, the RAC, which locally administers the order, recommended changing the domestic regulation to add a new varietal type of raisin. Some California industry members are marketing a new type of raisin that is made by dehydrating sulfured red seedless grapes. These raisins did not fit into any of the existing varietal types specified under the order prior to the issuance of the rulemaking action mentioned below. Such raisins are similar to the Other Seedless varietal type, except they have been sulfured. Such raisins are also similar to the Golden Seedless varietal type, but may not meet the color requirements for Golden Seedless raisins. Golden Seedless raisins are made from green seedless grapes and are mostly yellowish green to green amber in color when sulfured. Red seedless grapes typically vary in color when sulfured. Thus, the RAC recommended establishing a new varietal type, along with quality requirements, for Other Seedless-Sulfured raisins. An interim final rule implementing this recommendation was published in the **Federal Register** on May 28, 2002 (67 FR 36789) and became effective on May 29, 2002. Comments were invited until July 29, 2002. No comments were received. A final rule on this action will be published in a different issue of the **Federal Register**.

This rule brings the raisin import regulation into conformity with the domestic order. This action adds Other Seedless-Sulfured raisins to the list of varietal types specified in § 999.300(a)(2) of the raisin import regulation. This rule also adds Other Seedless-Sulfured raisins to § 999.300(b)(1); thus, imports of such raisins will have to meet the same quality requirements in effect for such raisins domestically produced. USDA is not aware of any imports of this type of raisin at this time.

Accordingly, imported lots of Other Seedless-Sulfured raisins will have to meet the requirements of U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 through 1624). At least 70 percent, by weight, of the raisins in a lot will have to be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized lots, the raisins will have to at least meet the U.S. Grade B tolerances for pieces of stem and undeveloped and substandard raisins, and small (midget) sized raisins will have to meet the U.S. Grade C tolerances for those factors. Raisin importers will continue to be charged $47 per hour by USDA for inspecting the raisins.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, 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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued 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. Import regulations issued under the Act

are based on those established under Federal marketing orders.

There are approximately 75 importers of raisins. During the 2000–01 season (August 2000 through September 2001), the dollar value of U.S. raisin imports totaled $12.2 million. During the 1999–2000 season, the value was $21.7 million. During the 1996–97 through 2000–01 seasons, the value of imports ranged from a low of $11.8 million in 1997–98 to a high of $29.6 million in 1998–99. Small agricultural service firms, which include raisin importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000. A majority of importers may be classified as small entities.

Mexico, Chile, Argentina, and the Republic of South Africa are the major raisin-producing countries exporting raisins to the United States. During the 2000–01 season, 11,631 metric tons of raisins were imported into the United States. Chile accounted for 4,841 metric tons, 3,811 metric tons arrived from Mexico, 1,245 metric tons were imported from Argentina, and 1,245 metric tons arrived from the Republic of South Africa. Most of the remaining balance came from Iran, Turkey, and Pakistan. During the 1999–2000 season, 17,538 metric tons of raisins were imported. Of the tonnage, 6,076 metric tons came from Mexico, 6,134 metric tons came from Chile, 2,436 tons arrived from Argentina, and 1,400 metric tons were from the Republic of South Africa. Most the remaining tonnage was imported from Afghanistan, Turkey, and Pakistan. During the 1996–97 through 2000–01 seasons, raisins imports ranged from a low of 10,390 metric tons in 1997–98 to a high of 25,337 metric tons in 1998–99.

This rule adds Other Seedless-Sulfured raisins to the list of varietal types specified in § 999.300(a)(2) of the raisin import regulation. This rule also adds Other Seedless-Sulfured raisins to § 999.300(b)(1); thus, imports of such raisins will have to meet the same quality requirements in effect for such domestically produced raisins. Authority for these changes is provided in section 8e of the Act.

Regarding the impact of this action on affected entities, this rule brings the import regulation into conformity with the domestic regulation. The domestic regulation was changed on May 29, 2002 (67 FR 36789) to add a varietal type, along with quality requirements, for Other Seedless-Sulfured raisins. This is a new type of raisin being produced by some members of the California raisin industry. Accordingly, under section 8e of the Act, imports of Other Seedless-Sulfured raisins will have to meet the same quality requirements as the domestic product. Raisin importers will continue to be charged $47 per ton by USDA for inspecting the raisins. As previously stated, USDA is not aware at this time of any imports of this type of raisin.

With regard to alternatives, as previously stated, the Act requires that raisin imports meet the same or comparable grade and size requirements as those in effect under Federal Marketing Order No. 989.

This rule will impose no additional reporting or recordkeeping requirements on either small or large raisin importers. Reports and forms required under the raisin import regulation are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. There are currently two forms required under the raisin import regulation. Forms 1 and 2 must be completed only for lots of raisins that do not meet applicable grade and size requirements and are going to be used in the production of other products besides raisins. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements referenced herein have been approved by the Office of Management and Budget (OMB) under OMB. NO. 0581–0178. It is estimated that it takes importers of raisins about 15 minutes to complete Raisin Form No. 1, and processors of failing imported raisins about 15 minutes to complete Raisin Form No. 2. The total annual burden for Raisin Form Nos. 1 and 2, respectively, is 24 hours.

Additionally, except for applicable domestic regulations, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, imports of Other Seedless-Sulfured raisins must meet a modified U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 through 1624). Finally, all interested persons were invited to submit information on the regulatory and information impact of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on June 14, 2002 (67 FR 40879). Copies of the proposed rule were also mailed or sent via facsimile to raisin importers and other interested persons. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending August 13, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented and information available to USDA, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the purposes of the Act.

**List of Subjects in 7 CFR Part 999**

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as followed:

## PART 999—SPECIALITY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 999.300, paragraphs (a)(2) and (b)(1) are revised to read as follows:

### § 999.300 Regulation governing importation of raisins.

(a) * * *

(2) *Varietal type* means the applicable one of the following: Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Currant raisins, Monukka raisins, Other Seedless raisins, Golden Seedless raisins, and Other Seedless-Sulfured raisins.

* * * * *

(b) * * *

(1) With respect to Thompson Seedless and Other Seedless-Sulfured raisins—the requirements of U.S. Grade C as defined in the effective United States Standards of Grades of Processed Raisins (§§ 52.1841 through 52.1858 of this title): *Provided,* That, at least 70 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem and undeveloped and substandard raisins, and small (midget)

sized raisins shall meet the U.S. Grade C tolerances for those factors;

* * * * *

Dated: September 4, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–23035 Filed 9–10–02; 8:45 am]

**BILLING CODE 3410–02–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 16

**RIN 3150–AG96**

### Salary Offset Procedures for Collecting Debts Owed by Federal Employees to the Federal Government

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the procedures used to collect debts that are owed to NRC by Federal employees. These amendments will conform NRC regulations to the legislative changes enacted in the Debt Collection Improvement Act of 1996 (DCIA) and the amended procedures presented in the Federal Claims Collection Standards (FCCS) issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ). The final action will allow the NRC to improve its collection of debts due the United States from Federal employees.

**EFFECTIVE DATE:** October 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Leah Tremper, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852–2738, Telephone 301–415–7347.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Comments on Proposed Rule
III. Section by Section Analysis
IV. Voluntary Consensus Standards
V. Finding of No Significant Environmental Impact
VI. Paperwork Reduction Act
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis

## I. Background

On October 16, 1991 (56 FR 51829), the Nuclear Regulatory Commission (NRC) published a final rule concerning procedures for the collection of debts from Federal employees. Since then, the DCIA of 1996 (Pub. L. 104–134), was enacted on April 26, 1996. A major purpose of the DCIA of 1996 is to increase the collection of delinquent nontax debts owed to the Federal Government. Among other things, the DCIA of 1996 established a centralized process for withholding or reducing eligible Federal payments, including Federal salary payments, to pay the payee's delinquent debt owed to the United States. This process is known as ''centralized administrative offset.'' The DCIA of 1996 requires Federal agencies to annually match their delinquent debtor records with records of Federal employees to identify Federal employees who owe delinquent debt to the Federal Government. The Treasury and other disbursing officials will match payments from the Federal Government, including Federal salary payments, for the purpose of offsetting the payments of those debtors who owe debt to the United States. When a match occurs and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part. To meet this responsibility, Treasury has established the Treasury Offset Program. Under the DCIA of 1996, Federal agencies are required to notify the Financial Management Service (FMS) of all past-due, legally enforceable nontax debts owed to the United States that are over 180 days delinquent. The debts are included in the delinquent debtor database, and include debts owed by Federal employees that the NRC seeks to collect from the employee's pay account at another agency. Compliance with the administrative offset provisions of the DCIA of 1996 will accomplish salary offset. This rule establishes NRC's procedures for notifying Treasury of delinquent debtors for the purpose of matching NRC's debtors against the delinquent debtor database.

The FCCS (31 CFR Chapter IX and Parts 900, 901, 902, 903, and 904) were revised on November 22, 2000 (65 FR 70390). The revised FCCS clarify and simplify Federal debt collection procedures and reflect changes under the DCIA of 1996 and the General Accounting Office Act of 1996. The revised FCCS reflect legislative changes to Federal debt collection procedures enacted under the DCIA of 1996, Pub. L. 104–134, 110 Stat. 1321–358, as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. The revised FCCS provide agencies with greater latitude to adopt agency-specific regulations, tailored to the legal and policy requirements applicable to the various types of Federal debt, to maximize the effectiveness of Federal debt collection procedures. The Secretary of the Treasury has been added as a co-promulgator of the FCCS in accordance with section 31001(g)(1)(C) of the DCIA of 1996. The Comptroller General has been removed as a co-promulgator in accordance with section 115(g) of the General Accounting Office Act of 1996, Pub. L. 104–316, 110 Stat. 3826 (October 19, 1996), (65 FR 70390 (November 22, 2000)). The Department of the Treasury and DOJ have published the revised FCCS as a joint final rule under new Chapter IX, 31 Code of Federal Regulations. The revised FCCS supersede the current FCCS codified at 4 CFR Parts 101–105.

The revised FCCS prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities, or as provided for by Title 11 of the United States Code when the claims involve bankruptcy. The revised FCCS also prescribe standards for referring debts to the Department of Justice for litigation.

## II. Comments on Proposed Rule

On April 24, 2002 (67 FR 20059), the NRC published a proposed rule to amend its salary offset procedures to conform NRC regulations to the legislative changes enacted in the DCIA of 1996 and the revised FCCS. The comment period expired on July 8, 2002. No comments were received on the proposed rule.

## III. Section by Section Analysis

*Section 16.1 Purpose and Scope*

This section is amended to (1) state the NRC is not limited to collection remedies contained in the revised FCCS, (2) delete the statement that these procedures do not apply to the Social Security Act, 42 U.S.C. 301 *et. seq.,* and (3) delete the reference to 4 CFR parts 101–105 and substitute the reference to 31 CFR Chapter IX, Parts 900–904.

*Section 16.3 Definitions*

This section is amended to revise the definitions of ''agency,'' ''creditor agency,'' ''debt and claim,'' ''disposable pay,'' ''employee,'' and ''FCCS'' to conform with the DCIA of 1996. Other definitions such as ''centralized salary offset computer matching,'' ''debt collection center,'' ''delinquent debt record,'' ''disbursing official,'' and ''Treasury'' have been added to conform to the definitions in the DCIA of 1996.

*Section 16.7 Notice Requirements*

This section is amended to state the amount of the intended deduction may be stated as a fixed dollar or a percentage of pay and delete the reference to 4 CFR 102.2(e) and substitute the reference to 31 CFR Chapter IX, 901.2(d).

*Section 16.8 Information Collection Requirements: OMB Approval*

This section is added to state that this part contains no information collection requirements and is not subject to the requirements of the Paperwork Reduction Act.

*Section 16.9 Hearing*

This section is amended to delete the reference to 4 CFR 102.3(c) and substitute the reference to 31 CFR Chapter IX, 901.3(e).

*Section 16.13 Coordinating Offset With Another Federal Agency*

This section is amended to change the section heading from ''Coordinating offset with another Federal agency'' to ''Procedures for centralized administrative offset'' and to include NRC's procedures for offset.

*Section 16.15 Procedures for Salary Offset*

This section is amended to change the section heading from ''Procedures for Salary Offset'' to ''Procedures for Internal Salary Offset.''

*Section 16.23 Interest, Penalties, and Administrative Charges*

This section is amended to delete the reference to 4 CFR 102.13 and substitute the reference to 31 CFR Chapter IX, 901.9.

**IV. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending part 16 to reflect the current requirements of the DCIA of 1996 and the revised FCCS. This action does not constitute the establishment of a standard that contains generally applicable requirements.

**V. Finding of No Significant Environmental Impact**

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule is necessary to conform the NRC regulations to the amended procedures presented in the FCCS. Amending the procedures that the NRC uses to collect debts which are owed to it will not have any radiological environmental impact offsite and no impact on occupational radiation exposure onsite. The rule does not affect nonradiological plant effluents and has no other environmental impact. The environmental assessment and finding of no significant impact, on which this determination is based, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm except on Federal holidays.

**VI. Paperwork Reduction Act**

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**VII. Regulatory Analysis**

The final rule conforms NRC procedures for collecting debts owed to it with the amended procedures presented in the FCCS, the DCIA of 1996, 5 CFR Part 550 Pay Administration, and 31 CFR part 285 Salary Offset and, as such, will not have a significant impact on state and local Governments and geographical regions; health, safety, and the environment; nor will it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this final rule.

**VIII. Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities because this rule applies only to Federal agencies and employees.

**IX. Backfit Analysis**

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are mandated by the DCIA of 1996 (Public Law 104–134, 110 Stat. 1321–358 (April 26, 1996)).

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

**List of Subjects in 10 CFR Part 16**

Administrative practice and procedures, Debt collection, Government employees, Salary offset, Wages.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 16.

## PART 16—SALARY OFFSET PROCEDURES FOR COLLECTING DEBTS OWED BY FEDERAL EMPLOYEES TO THE FEDERAL GOVERNMENT

1. The authority citation for Part 16 is revised to read as follows:

**Authority:** Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1, Pub. L. 97–258, 96 Stat. 972 (31 U.S.C. 3713); sec 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3711, 3717, 3718); Pub. L. 97–365, 96 Stat. 1749; Federal Claims Collection Standards, 31 CFR Chapter IX, Parts 900–904; 31 U.S.C. Secs. 3701, 3716; 31 CFR Sec 285; 26 U.S.C. Sec 6402(d); 31 U.S.C. Sec. 3720A; 26 U.S.C. Sec. 6402(c); 42 U.S.C. Sec. 664; Pub. L. 104–134, as amended (31 U.S.C. 3713); 5 U.S.C. 5514; Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163); 5 CFR 550.

2. In § 16.1 paragraph (b)(2) is removed, paragraphs (b)(3) and (b)(4) are redesignated as (b)(2) and (b)(3), paragraph (d) is revised, and paragraph (f) is added to read as follows:

**§ 16.1 Purpose and scope.**

* * * * *

(d) These procedures do not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the revised Federal Claims Collection Standards (FCCS), 31 U.S.C. 3711 *et seq.*, 31 CFR chapter IX, parts 900 through 904.

* * * * *

(f) The NRC is not limited to collection remedies contained in the revised FCCS. The FCCS is not intended to impair common law remedies.

3. In § 16.3, the definition of *agency, creditor agency, debt, disposable pay,*

*employee,* and *FCCS* are revised, and the definitions of *centralized salary offset computer matching, debt collection center, delinquent debt record, disbursing official,* and *Treasury* are added in alphabetical order to read as follows:

**§ 16.3 Definitions.**

* * * * *

*Agency* means any agency of the executive, legislative, and judicial branches of the Federal Government, including Government corporations.

*Centralized salary offset computer matching* describes the computerized process used to match delinquent debt records with Federal salary payment records when the purpose of the match is to identify Federal employees who owe debt to the Federal Government.

*Creditor agency* means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt.

*Debt* and *claim* are used synonymously to refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms *debt* and *claim* include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

*Debt collection center* means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

*Delinquent debt record* refers to the information about a debt that an agency submits to Treasury when the agency refers the debt for collection by offset in accordance with the provision of 31 U.S.C. 3716.

*Disbursing official* means an official who has authority to disburse Federal salary payments pursuant to 31 U.S.C. 3321 or another law.

*Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of:

(1) Any amount required by law to be withheld;

(2) Amounts properly withheld for Federal, state or local income tax purposes;

(3) Amounts deducted as health insurance premiums;

(4) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and

(5) Amounts deducted as normal life insurance premiums not including amounts deducted for supplementary coverage.

*Employee* is any individual employed by any agency of the executive, legislative, and judicial branches of the Federal Government, including Government corporations.

*FCCS* means the Federal Claims Collection Standards jointly published by the Department of the Treasury and the Department of Justice at 31 CFR Chapter IX, Parts 900 through 904.

* * * * *

*Treasury* as used in 10 CFR part 16 means the Department of the Treasury.

* * * * *

4. In § 16.7, paragraphs (b)(3) and (b)(6) are revised to read as follows:

**§ 16.7 Notice requirements.**

* * * * *

(b) * * *

* * * * *

(3) The amount and frequency of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deduction until the debt is paid in full or otherwise resolved.

* * * * *

(6) If not previously provided, the opportunity (under terms agreeable to the NRC) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset (31 CFR Chapter IX, 901.2). The agreement must be in writing, signed by the employee and the NRC, and documented in the NRC's files.

* * * * *

5. Section 16.8 is added to read as follows:

**§ 16.8 Information collection requirements: OMB approval.**

This part contains no information collection requirements, and, therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

6. In § 16.9, paragraph (b)(2) is revised to read as follows:

**§ 16.9 Hearing.**

* * * * *

(b) * * *

(2) The hearing must conform to procedures contained in the revised FCCS, 31 CFR Chapter IX, 901.3(e). The burden is on the employee to demonstrate either that the existence or the amount of the debt is in error or that the terms of the repayment schedule would result in undue financial hardship or would be against equity and good conscience.

* * * * *

7. Section 16.13 is revised to read as follows:

**§ 16.13 Procedures for centralized administrative offset.**

(a) The NRC must notify Treasury of all debts that are delinquent as defined in the FCCS (over 180 days old) so that recovery may be made by centralized administrative offset. This includes those debts the NRC seeks to recover from the pay account of an employee of another agency via salary offset. The Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against such debts. When a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, the NRC must comply with the requirements of 5 U.S.C. 5514, 5 CFR part 550, and 10 CFR part 15. Procedures for notifying Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and 10 CFR 15.33. Procedures for internal salary offset are contained in § 16.15 of this chapter.

(b) When the NRC determines that an employee of another Federal agency owes a delinquent debt to the NRC, the NRC will, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Provide the Federal employee with a notice and an opportunity to dispute the debt as contained in 5 U.S.C. 5514 and 10 CFR 15.26.

(3) Submit the debt to Treasury for centralized administrative offset and certify in writing that the debtor has been afforded the legally required due process notification.

(4) If collection must be made in installments, the NRC must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment.

(c) Offset amount. (1) The amount offset from a salary payment under this section shall be the lesser of:

(i) The amount of the debt, including any interest, penalties, and administrative costs; or

(ii) An amount up to 15 percent of the debtor's disposable pay.

(2) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the NRC.

(3) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the NRC.

(d) Priorities. (1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.

(2) When a salary payment may be reduced to collect more than one debt, amounts offset under this section will be applied to a debt only after amounts offset have been applied to satisfy past due child support debt assigned to a State pursuant 26 U.S.C. 6402(c) and 31 CFR 285.7(h)(2).

(e) Notice. (1) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing of the date that deductions from salary will commence and of the amount of such deductions.

(2)(i) When an offset occurs under this section, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing that an offset has occurred including:

(A) A description of the payment and the amount of the offset taken;

(B) Identification of NRC as the agency requesting the offset; and,

(C) A contact point within the NRC that will handle concerns regarding the offset.

(ii) The information described in paragraphs (e)(2)(i)(B) and (e)(2)(i)(C) of this section does not need to be provided to the Federal employee when the offset occurs if such information was included in a prior notice from the disbursing official or paying agency.

(3) The disbursing official will advise the NRC of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor. The disbursing official will not advise the NRC of the source of payment from which such amounts were collected.

(f) Fees. Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost of such services. In addition, Treasury or a paying agency acting on behalf of Treasury, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. Treasury may deduct the fees from amounts collected by offset or may bill the NRC. Fees charged for offset shall be based on actual administrative offsets completed.

(g) Disposition of amounts collected. The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under paragraph (f) of this section, to NRC. If an erroneous offset payment is made to the NRC, the disbursing official will notify the NRC that an erroneous offset payment has been made. The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the NRC. Alternatively, upon the disbursing official's request, the NRC shall return promptly to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to the agency have been paid). The disbursing official and the NRC shall adjust the debtor records appropriately.

8. Section 16.15 is amended by revising the section heading to read as follows:

**§ 16.15 Procedures for internal salary offset.**

9. Section 16.23 is revised to read as follows:

**§ 16.23 Interest, penalties, and administrative charges.**

Charges may be assessed for interest, penalties, and administrative charges in accordance with the FCCS, 31 CFR Chapter IX, 901.9.

Dated at Rockville, Maryland, this 29th day of August 2002.

For the Nuclear Regulatory Commission.

**Peter J. Rabideau,**

*Deputy Chief Financial Officer.*

[FR Doc. 02–23091 Filed 9–10–02; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Part 8

**[Docket No. 02–12]**

**RIN 1557–AC00**

## Assessment of Fees

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Final rule; technical correction.

**SUMMARY:** This final rule makes a technical correction to the final rule that the OCC published in the **Federal Register** on November 16, 2001 (66 FR 57645) amending 12 CFR 8.2(a). That provision sets forth the formula for the semiannual assessment the OCC charges each national bank.

**EFFECTIVE DATE:** This final rule is effective on September 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Michele Meyer, Counsel, Legislative and Regulatory Activities Division, 202–874–5090.

**SUPPLEMENTARY INFORMATION:** On November 16, 2001, the OCC published a final rule in the **Federal Register** (66 FR 57645) that amended 12 CFR 8.2(a), which sets forth the formula for the semi-annual assessment that the OCC charges national banks. The objective of the rulemaking, as described in the preambles to the proposed and final rules, was to revise 12 CFR 8.2(a) only. However, in the published final rule, 12 CFR 8.2(a)(1) through (a)(7) were inadvertently deleted. This final rule restores those provisions of the regulation.

The rule takes effect immediately. The OCC has concluded that the notice and comment procedures prescribed by the Administrative Procedure Act are unnecessary because the rule is correcting a technical error without substantive change to the provisions of part 8 that were inadvertently removed from the Code of Federal Regulations. *See* 5 U.S.C. 553(b)(3)(B). *Cf. United States National Bank of Oregon* v. *Independent Insurance Agents of America, Inc.,* 508 U.S. 439, 462 (1993) (error in punctuation construed so as not to defeat the ''true meaning'' of a Federal law that relocated but did not repeal the statutory provision authorizing national banks to sell insurance).

### List of Subjects in 12 CFR Part 8

National Banks, Reporting and recordkeeping requirements.

Accordingly, 12 CFR part 8 is amended by making the following correcting amendments:

## PART 8—ASSESSMENT OF FEES

1. The authority citation for part 8 continues to read as follows:

**Authority:** 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. In § 8.2, paragraphs (a)(1) through (a)(7), respectively, are added to read as follows:

**§ 8.2 Semiannual assessment.**

(a) * * *

(1) Every national bank falls into one of the ten asset-size brackets denoted by Columns A and B. A bank's semiannual assessment is composed of two parts. The first part is the calculation of a base amount of the assessment, which is computed on the assets of the bank up to the lower endpoint (Column A) of the bracket in which it falls. This base amount of the assessment is calculated by the OCC in Column C.

(2) The second part is the calculation by the bank of assessments due on the remaining assets of the bank in excess of Column E. The excess is assessed at the marginal rate shown in Column D.

(3) The total semiannual assessment is the amount in Column C, plus the amount of the bank's assets in excess of Column E times the marginal rate in Column D: Assessments = $C+[(Assets-E)\times D]$.

(4) Each year, the OCC may index the marginal rates in Column D to adjust for the percent change in the level of prices, as measured by changes in the Gross Domestic Product Implicit Price Deflator (GDPIPD) for each June-to-June period. The OCC may at its discretion adjust marginal rates by amounts less than the percentage change in the GDPIPD. The OCC will also adjust the amounts in Column C to reflect any change made to the marginal rate.

(5) The specific marginal rates and complete assessment schedule will be published in the ''Notice of Comptroller of the Currency Fees'', provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the bank's most recent ''Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries)'' (Call Report) preceding the payment date. The assessment shall be computed in the manner and on the form provided by the Comptroller of the Currency. Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report required by the Office under 12 U.S.C. 161 is subject to the full assessment for the next six-month period.

(6)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead bank by a percentage that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

(ii) For purposes of this paragraph (a)(6):

(A) *Lead bank* means the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead bank* means a national bank that is not the lead bank controlled by a company that controls two or more national banks.

(C) *Control* and *company* have the same meanings as these terms have in sections 2(a)(2) and 2(b), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(2) and (b)).

(7) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (a)(1) through (a)(6) of this section by multiplying that figure by 1.25 for each bank that receives a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System at its most recent examination.

* * * * *

Dated: September 3, 2002.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

[FR Doc. 02–22934 Filed 9–10–02; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–34–AD; Amendment 39–12878; AD 2002–18–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR series airplanes, that requires one-time inspections for cracking in certain upper deck floor beams and follow-on actions. The actions specified by this AD are intended to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective October 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes was published in the **Federal Register** on January 2, 2002 (67 FR 38). That action proposed to require one-time inspections for cracking in certain upper deck floor beams and follow-on actions.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Supportive Comment

One commenter agrees with the proposed rule.

### Request To Withdraw Proposed Rule

One commenter is concerned with the continuing trend to issue Airworthiness Directives (ADs) that overlap or are in close proximity to other ADs, based on isolated reports of minor structural cracks. The commenter provided the AD numbers for ADs that require inspections and repair of the same structure specified in this proposed rule. The commenter notes that the Boeing 747 Maintenance Program requires visual inspections of the upper deck floor beam of the fuselage frame interface, in addition to those inspections required by the previously issued ADs. The commenter adds that the few reports of upper chord cracking of the floor beam can be adequately detected by the maintenance program inspections before an unsafe condition could develop.

Although the commenter does not make any specific request, the FAA infers that the commenter wants to withdraw the proposed rule. We acknowledge that Boeing Model 747 series airplanes have an extensive service life and that numerous inspections have been performed as part of the FAA-approved 747 maintenance program. (All operators are required to maintain their airplanes in accordance with an FAA-approved maintenance program as required for continued airworthiness.) However, we find that the subject inspections in the maintenance program do not adequately address certain in-service difficulties and thus do not adequately address the identified unsafe condition. Additionally, we do not agree that the cited ADs already require inspections and repair of the same structure specified in this final rule. Therefore, the FAA has determined that the proposed rule is appropriate and warranted.

**Exclude Certain Flight Cycles**

One commenter states that the service bulletin referenced in the proposed rule specifies the exclusion of flight cycles with a cabin pressure differential of 2.0 pounds per square inch (psi) or less. The commenter asks that this exclusion be added to the final rule.

We agree with the commenter in that this exclusion is specified in the referenced service bulletin. Paragraph (a) of this final rule has been changed to exclude flight cycles with a cabin pressure differential of 2.0 psi or less, as stated above.

**Reduce Applicability**

One commenter asks that all references to Boeing Model 747–200F series airplanes be deleted from the proposed rule. The commenter states that the service bulletin referenced in the proposed rule adds the same inspection of the upper deck floor beams required by AD 98–09–17 for Model 747–200F series airplanes.

We agree with the commenter. AD 98–09–17, amendment 39–10498 (63 FR 20311, April 24, 1998), is applicable to Boeing Model 747–200F and –200C series airplanes. That AD requires repetitive inspections or a one-time inspection to detect cracking of certain areas of the upper deck floor beams; and corrective actions, if necessary. Therefore, we have deleted all references to Model 747–200F from this final rule.

**Allow Permanent Repairs Specified in Service Information**

One commenter states that paragraph (c) of the proposed rule would require repair of any crack found during the proposed inspections either by a temporary repair, per the referenced service bulletin, or by accomplishing an approved permanent repair. The commenter adds that Note 3 of the proposed rule states that the referenced service bulletin does not contain instructions for permanent repairs; however, page 29 of the service bulletin does contain permanent repair instructions. The commenter notes that paragraph (c)(2) of the proposed rule should be changed to allow permanent repairs to be done per the service bulletin.

We agree with the commenter that the referenced service bulletin does contain permanent repair instructions for floor beam web, strap, and frame cracks, but not upper chord cracks. Therefore, paragraph (c)(2) of this final rule has been changed to specify repair according to the service bulletin, unless the service bulletin specifies contacting the manufacturer. Also, Note 3 has been removed from this final rule and subsequent notes have been renumbered accordingly.

**Change Certain Wording**

One commenter asks that the wording specified in paragraphs (c)(1)(i), (c)(1)(ii), and (d) of the proposed rule be changed. The commenter states that the words ''temporary repair'' should be changed to ''time-limited repair.'' The commenter notes that, since a time-limited repair must be replaced with a permanent repair within 18 months or 1,500 flight cycles, this change would ensure that a permanent repair would be installed before the modification is done. The commenter adds that the word ''repair'' specified in paragraph (d) of the proposed rule should be changed to ''permanent repair.''

We agree with the commenter. The term ''time-limited'' repair should be used instead of ''temporary'' repair, for clarity. We also agree that the post-modification inspection threshold should begin after installation of a permanent repair. Paragraphs (c)(1)(i), (c)(1)(ii), and (d) of this final rule have been changed accordingly.

**Change Cost Impact**

One commenter asks that the Cost Impact section of the proposed rule be changed. The commenter states that it will take 8 work hours to accomplish the initial inspections, but an additional 22 work hours to gain access and close up in order to accomplish the inspections. The commenter adds that the 24 work hours necessary to accomplish the modification are in addition to the hours for the inspections, and for gaining access and close up.

We do not agree to change the work hours for the initial inspections. The number of work hours necessary to accomplish the inspections, specified as 8 in the cost impact information, is consistent with the service bulletin. This number represents the time necessary to perform only the inspections actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

We agree that adding the words ''in addition to the inspection'' to the 24 work hours for the modification will provide clarification. The cost impact section has been changed accordingly.

**Change Paragraph (d) of the Proposed Rule**

One commenter asks that paragraph (d) of the proposed rule be changed. The commenter reiterates the requirements in paragraph (d) of the proposed rule and suggests alternatives to that paragraph as follows: 1. Issue the proposed rule only after the referenced service bulletin is revised to include post-modification/repair instructions; 2. Specifically define the inspection requirements and include them in paragraph (d); or 3. Omit paragraph (d) from the proposed rule, and, if necessary, issue a revised or new AD after the service bulletin has been revised.

We do not agree with the commenter. Alternative 1. would delay issuance of the proposed rule, which would not address the unsafe condition in a timely manner. At this time, we do not have the necessary data to incorporate alternative 2. When the manufacturer revises its service bulletin to include post-modification inspections, we can consider approving it as an alternative method of compliance (AMOC) to the final rule. Regarding alternative 3., we have determined that post-modification inspections should be addressed in this final rule; therefore, paragraph (d) of this final rule will not be omitted.

**Reference Revised Service Information**

One commenter asks that the FAA reference the revised service bulletin that will be issued later, rather than the current issue referenced in the proposed rule. The commenter states that there are inconsistencies and minor errors in the referenced service bulletin.

While we acknowledge the commenter's statements about the accuracy of certain wording in the accomplishment instructions of the service bulletin, we do not concur with the request to reference a service bulletin that has not yet been issued or reviewed and approved by us. The airplane manufacturer is aware of the discrepancies in the service bulletin instructions and may issue a revision of the service bulletin in the future. However, considering the criticality of the unsafe condition noted previously, we find it would be inappropriate to delay the issuance of this AD until a revised service bulletin is available. No change to the final rule is necessary in this regard.

**Change Certain Sections in the Preamble**

One commenter asks that the sentence in the Summary section of the proposed rule be changed from ''This action is intended to address the identified unsafe condition,'' to ''This action is intended to address the identified potential unsafe condition.'' The commenter also asks that the sentence be changed in the Explanation of Requirements of Proposed Rule section. The commenter states that while a severed upper chord of the upper floor beam would pose an unsafe condition, a chord that has not cracked, but at some time may crack, poses a ''potential'' unsafe condition.

We acknowledge but do not agree with the commenter's request. The sentence in the Summary section specifies that the action is intended to address the identified unsafe condition. The final rule is necessary to find and fix cracking in certain upper deck floor beams, which is not a ''potential'' unsafe condition. Additionally, the Explanation of Requirements of Proposed Rule section is not restated in this final rule. No change to the final rule is necessary in this regard.

**Reduce Compliance Time**

One commenter asks that the compliance time specified in paragraph (a)(1) of the proposed rule be reduced. The commenter states that paragraph (a)(1) of the proposed rule specifies the inspection of airplanes with 22,000 flight cycles or less be accomplished within 1,500 flight cycles after the effective date of the AD. The commenter notes that the inspection could occur as late as 23,500 flight cycles and adds that paragraph (a)(2) of the proposed rule requires that the inspections be accomplished on airplanes with more than 22,000 flight cycles within 500 flight cycles. The commenter suggests that paragraph (a)(1) of the proposed rule be changed to require the inspection of airplanes within 22,000 flight cycles or less to be accomplished within 1,500 flight cycles after the effective date of the AD, but no later than 22,500 flight cycles.

We do not agree with the commenter. The commenter provides no data to justify its statement that the proposed compliance time should be changed in the manner suggested. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections. We find that the compliance time required by paragraph (a)(1) of the final rule is an appropriate interval for affected airplanes to continue to operate without compromising safety. No change to the final rule is necessary in this regard.

**Allow Operators To Change Method of Inspection**

One commenter (the airplane manufacturer) asks that, to avoid confusion, the instructions specified in paragraph (d) of the proposed rule should be changed to allow for operators to change the method of inspection. The commenter suggests that, instead of ''Repeat the inspection within * * *'' as specified in paragraphs (d)(1) and (d)(2) of the proposed rule, the wording be changed to ''Conduct the next inspection within * * *'' The commenter states that this wording seems to imply that the operator must continue with the same inspection method.

We do not agree with the commenter that the wording specified in paragraph (d) of the final rule obligates the operator to continue using the same inspection method. However, if the commenter needs further clarification, the clarification can be made in a future revision to the service bulletin. The FAA may then consider approving the bulletin as an AMOC to the final rule. No change to the final rule is necessary in this regard.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 539 airplanes of the affected design in the worldwide fleet. The FAA estimates that 168 airplanes of U.S. registry will be affected by this AD.

It will take approximately 8 work hours per airplane to accomplish the initial inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of these required inspections on U.S. operators is estimated to be $80,640, or $480 per airplane.

It will take approximately 24 work hours per airplane to accomplish the modification or permanent repair, in addition to the inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the required modification or repair on U.S. operators is estimated to be $241,920 or $1,440 per airplane.

It will take approximately 8 work hours per airplane to accomplish the post-modification/repair inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the required post-modification/repair inspections on U.S. operators is estimated to be $80,640 or $480 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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 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 adding the following new airworthiness directive:

**2002–18–04 Boeing:** Amendment 39–12878. Docket 2001–NM–34–AD.

*Applicability:* Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR series airplanes; line numbers 1 through 810 inclusive; certificated in any category; and NOT equipped with a nose cargo door.

**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 (e) 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 find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane, accomplish the following:

**Inspections**

(a) At the compliance time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, perform one-time detailed and open-hole high frequency eddy current (HFEC) inspections for cracking in the upper deck floor beams at station (STA) 340 and STA 360, according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001. For the purposes of this AD, flight cycles with a cabin differential pressure of 2.0 psi or less are not calculated into the compliance thresholds specified in this AD. However, all cabin pressure records must be maintained for each airplane, and no fleet averaging of cabin pressure is allowed.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For airplanes with 22,000 or fewer total flight cycles as of the effective date of this AD: Do the inspections prior to the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with more than 22,000 total flight cycles as of the effective date of this AD: Do the inspections within 500 flight cycles after the effective date of this AD.

**Modification**

(b) If no crack is found during the inspections per paragraph (a) of this AD: Within 5,000 flight cycles after the initial inspections, modify the upper deck floor beams at STA 340 and STA 360, according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001. If this modification is not accomplished before further flight after the inspections required by paragraph (a) of this AD, those inspections must be repeated one time, immediately before accomplishing the modification in this paragraph. If any crack is found during these repeat inspections, before further flight, accomplish paragraph (c)(2) of this AD.

**Repair**

(c) If any crack is found during the inspections per paragraph (a) of this AD: Before further flight, repair according to either paragraph (c)(1) or (c)(2) of this AD.

(1) Accomplish repairs according to paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Accomplish a time-limited repair (including removing certain fasteners and the existing strap, performing open-hole HFEC inspections of the chord and web, stop-drilling web cracks, replacing the outboard section of the web, if applicable, and installing new straps) according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; except where the service bulletin specifies to contact Boeing for appropriate action, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically reference this AD. AND

(ii) Within 18 months or 1,500 flight cycles after installation of the time-limited repair according to paragraph (c)(1)(i) of this AD, whichever is first, do paragraph (c)(2) of this AD.

(2) Accomplish a permanent repair according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; except where the service bulletin specifies to contact Boeing for appropriate action, repair according to a method approved by the Manager, Seattle ACO; or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically reference this AD.

**Repetitive Inspections: Post-Modification/ Repair**

(d) Within 15,000 flight cycles after modification of the upper deck floor beams per paragraph (b) of this AD, or permanent repair of the upper deck floor beams per paragraph (c) of this AD, as applicable: Perform either open-hole HFEC inspections for cracking of fastener holes common to the upper chord, reinforcement straps, and the body frame; or surface HFEC inspections for cracking along the lower edge of the upper chord of the floor beam at the intersection with the body frame; and repeat these inspections at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Perform these inspections and repair any cracking found during these inspections according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For an inspection or repair method to be approved as required by this paragraph, the approval must specifically reference this AD.

(1) If the most recent inspection used the surface HFEC method: Repeat the inspection within 1,000 flight cycles.

(2) If the most recent inspection used the open-hole HFEC method: Repeat the inspection every 3,000 flight cycles.

**Note 3:** There is no terminating action at this time for the repetitive post-modification/ repair inspections according to paragraph (d) of this AD, and instructions for these inspections are not provided in Boeing Alert

Service Bulletin 747–53A2459, dated January 11, 2001.

**Alternative Methods of Compliance**

(e) 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 4:** 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**

(f) 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.

**Incorporation by Reference**

(g) Except as provided by paragraphs (c)(1)(i), (c)(2), and (d) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**Effective Date**

(h) This amendment becomes effective on October 16, 2002.

Issued in Renton, Washington, on August 30, 2002.

**Ali Bahrami,**

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

[FR Doc. 02–22855 Filed 9–10–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NE–14–AD; Amendment 39–12877; AD 2002–18–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc Models Spey 506–14A, 555–15, 555–15H, 555–15N, and 555–15P Turbojet Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), that is applicable to Rolls-Royce plc (RR) Spey 506–14A, 555–15, 555–15H, 555–15N, and 555–15P turbojet engines. This amendment requires replacing certain stage 2 low pressure turbine (LPT) blades with new redesigned stage 2 LPT blades. This amendment is prompted by several reports of failures of stage 2 LPT blades. The actions specified by this AD are intended to prevent failure of the stage 2 LPT blades, which could result in an engine shutdown.

**DATES:** Effective October 16, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby DE24 6BJ, UK; Telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936. This information may be examined, by appointment, at the Federal Aviation Administration (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:** Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to RR Spey 506–14A, 555–15, 555–15H, 555–15N, and 555–15P turbojet engines was published in the **Federal Register** on April 18, 2002 (67 FR 19134). That action proposed to require replacing certain stage 2 low pressure turbine (LPT) blades with new redesigned stage 2 LPT blades in accordance with service bulletin (SB) No. Sp72–1064, Revision 1, dated February 1, 2001.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 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.

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it 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, 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 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 adding a new airworthiness directive to read as follows:

**2002–18–03 Rolls-Royce plc:** Amendment 39–12877. Docket No. 2001–NE–14–AD.

**Applicability**

This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) Spey 506–14A, 555–15, 555–15H, 555–15N, and 555–15P turbojet engines with stage 2 low pressure turbine (LPT) blades, part numbers (P/N's) JR34024 or JR34069 installed. These engines are installed on, but not limited to British Aerospace Airbus Ltd. BAC 1–11 and Fokker F.28 Mark 1000, Mark 2000, Mark 3000, and Mark 4000 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, unless already done.

To prevent failure of the stage 2 LPT blades, which could result in an engine shutdown, do the following:

(a) Replace existing stage 2 LPT blades P/N's JR34024 and JR34069 with complete sets of serviceable blades in accordance with the Accomplishment Instructions of RR service bulletin Sp72–1064, Revision 1, dated February 2001, and the following compliance times:

(1) For RR Spey 506–14A engines, replace blades at the next piece-part opportunity, but no later than June 30, 2010.

(2) For Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines, replace blades at the next piece-part opportunity, but no later than December 31, 2005.

**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 request 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.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 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 done.

**Documents That Have Been Incorporated By Reference**

(d) The stage 2 LPT blades replacement must be done in accordance with Rolls-Royce plc SB No. Sp72–1064, Revision 1, dated February 2001. 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 plc, P.O. Box 31, Derby DE24 6BJ, UK; Telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936. Copies may be inspected, by appointment, 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 005–07–2000, dated July 21, 2000.

**Effective Date**

(e) This amendment becomes effective on October 16, 2002.

Issued in Burlington, Massachusetts, on August 29, 2002.

**Francis A. Favara,**

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

[FR Doc. 02–22758 Filed 9–10–02; 8:45 am]

BILLING CODE 4910–13–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[IN141–1a; FRL–7273–5]**

## Approval and Promulgation of Implementation Plans; Indiana; Volatile Organic Compound Regulations

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

**ACTION:** Direct final rule.

**SUMMARY:** In this action, EPA is approving a revision to the Indiana State Implementation Plan (SIP) to add Volatile Organic Compound (VOC) capture efficiency testing procedures to the existing VOC emission control regulations. Control system capture efficiency requirements are components of several State VOC rules, particularly the rules covering the control of VOC emissions from surface coating and graphic arts sources. The existing State VOC rules specify minimum capture efficiencies for some source categories, and some sources may seek VOC emission reduction credits through increases in capture efficiency above State-specified minimums. Reducing VOC emissions is critical for attaining the 1-hour ozone standard in certain ozone nonattainment areas.

**DATES:** This direct final rule is effective on November 12, 2002, without further notice, unless EPA receives adverse comments in writing by October 11, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing this direct final rule are available for inspection at the Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6057. E-mail address: *doty.edward@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used we mean EPA. The Supplemental Information section is organized as follows:

I. Background and EPA Policy
  What Is the Basis for the State's Requested SIP Revision?
  What Are the Codified Capture Efficiency Test Methods?
  What Are the Alternative Capture Efficiency Test Protocols?
II. Summary of the State's Submittal and Requested SIP Revision
III. Adequacy of the Requested SIP Revision
IV. Final Rulemaking Action
V. Administrative Requirements

### I. Background and EPA Policy

*What Is the Basis for the State's Requested SIP Revision?*

Capture efficiency (the fraction of emissions generated by a source that are delivered to an emissions control device, generally expressed as a percentage) is a critical consideration for emission control systems, particularly for those systems used to control the emissions of VOC and Hazardous Air Pollutants (HAPs) from surface coating and printing (graphic arts) operations. Testing of capture efficiencies is critical for sources subject to rules with capture efficiency requirements and for sources seeking emission reduction credits through capture efficiency improvements (capture efficiency increases).

On February 7, 1995, the EPA issued revised guidelines for the determination of VOC capture efficiencies under a memorandum titled ''Revised Capture Efficiency Guidance for Control of Volatile Organic Compound Emissions,'' from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Air Division Directors, Regions I through X. Included in the guidance are

discussions of recommended capture efficiency testing protocols and test methods and requirements for alternative capture efficiency test protocols.[1] The guidance identified seven test methods which would be proposed in a subsequent **Federal Register** for addition to volume 40 of the Code of Federal Regulations (CFR) part 51, appendix M. The guidance issued on February 7, 1995 also provided specifics on the requirements for two alternative capture efficiency test protocols.

On May 30, 1996, the EPA published a rule covering final standards for Hazardous Air Pollutants (HAP) emissions from the printing and publishing industry (61 FR 27132). Included in this final rule are the seven capture efficiency test methods and two protocols for the use of alternative capture efficiency test methods contained in the February 7, 1995 guidance. This rule contains VOC capture efficiency test methods and protocols for the purposes of measuring HAP capture efficiencies.

Indiana's requested SIP revision seeks to incorporate the capture efficiency test methods and alternative protocols into the SIP. As noted below in more detail, the State has adopted VOC rule revisions to incorporate these VOC testing requirements.

*What Are the Codified Capture Efficiency Test Methods?*

The capture efficiency test methods specified in 40 CFR part 51, appendix M, are as follows:

(A) Method 204—Criteria for and Verification of a Permanent or Temporary Total Enclosure;

(B) Method 204A—Volatile Organic Compounds Content in Liquid Input Stream;

(C) Method 204B—Volatile Organic Compounds Emissions in Captured Stream;

(D) Method 204C—Volatile Organic Compounds Emissions in Captured Stream (Dilution Technique);

(E) Method 204D—Volatile Organic Compounds Emissions in Uncaptured Stream from Temporary Total Enclosure;

(F) Method 204E—Volatile Organic Compounds Emissions in Uncaptured Stream from Building Enclosure; and

(G) Method 204F—Volatile Organic Compounds Content in Liquid Input Stream (Distillation Approach).

[1] Protocols specify minimum statistical requirements and data processing requirements for analysis of test results. The protocols are coupled with test methods to provide a complete specification of the capture efficiency test procedures and data requirements.

Note that these recommended capture efficiency test methods involve the use of a Permanent Total Enclosure (PTE), a Temporary Total Enclosure (TTE), or a Building Enclosure (BE). All of the total enclosure methods are capable of determining quantitative values of capture efficiencies, and may be used to demonstrate capture efficiency improvements.

*What Are the Alternative Capture Efficiency Test Protocols?*

The two alternative test protocols identified in the February 7, 1995 guidance are the Data Quality Objective (DQO) and the Lower Confidence Limit (LCL) protocols. Either of these protocols allows the use of alternative test procedures to determine qualitative estimates of capture efficiencies. They may be applied without the use of total enclosures and are intended to reduce the costs of capture efficiency testing, as compared to the costs associated with the use of PTEs, TTEs, or BEs. Based on the February 7, 1995 capture efficiency testing guidance, the DQO or LCL coupled with capture efficiency test methods may be used to demonstrate compliance with VOC capture efficiency requirements.[2]

## II. Summary of the State's Submittal and Requested SIP Revision

The State of Indiana has incorporated the Methods 204 through 204F test methods and DQO and LCL test protocols by reference into the State's VOC emission control regulations at rule 326 Indiana Administrative Code 8–1–4 (326 IAC 8–1–4), published in the *Indiana Register* on August 1, 2001 as a final State rule. On August 8, 2001, the Indiana Department of Environmental Management (IDEM) submitted the new testing procedures rule and associated other rule revisions (primarily minor rule formatting revisions needed to properly reference the new capture efficiency test requirements) to the EPA as a requested SIP revision.

Indiana has added a subsection (c)(1) to 326 IAC 8–1–4 to incorporate by reference the capture efficiency test methods (Methods 204 through 204F) specified in 40 CFR part 51, appendix M. Indiana has also added subsection (c)(2) to 326 IAC 8–1–4 to provide for the use of the two alternative test protocols (DQO and LCL), as specified in 40 CFR part 63, subpart KK, appendix A. These alternative protocols are identical to those described in the VOC capture efficiency guidance released on February 7, 1995.

All other rule revisions documented in Indiana's August 8, 2001 SIP revision request are, as noted above, primarily minor rule formatting and reference changes needed to accommodate the new VOC capture efficiency regulations. Indiana has also made several minor rule revisions to correct addresses for the location of review copies of the referenced documents and for the American Society for Testing and Materials.

## III. Adequacy of the Requested SIP Revision

The proposed SIP revision incorporates EPA's capture efficiency testing requirements by reference and otherwise meets EPA's guidelines for capture efficiency testing. The SIP revision will lead to monitored VOC capture efficiencies that will be adequately recorded and reported and that can be tested against specified limits within Indiana's VOC rules. The capture efficiency test procedures and results can be adequately enforced. Therefore, EPA finds this rule to be acceptable.

## IV. Final Rulemaking Action

EPA approves Indiana's revisions to rule 326 IAC 8–1–4 as a revision to the SIP. This action will be effective on November 12, 2002.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by October 11, 2002. Should the EPA receive such comments, it will publish a withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on November 12, 2002.

## V. 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. For this reason, this action is also not subject to Executive Order 13211,

[2] The guidance notes that either the DQO or the LCL may be used to demonstrate compliance with capture efficiency requirements. The LCL, however, which is designed to be very conservative, is not appropriate to demonstrate non-compliance with capture efficiency requirements. Where use of the LCL protocol shows possible non-compliance, additional capture efficiency tests must be applied to demonstrate actual non-compliance.

''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal Government and Indian tribes, or on the distribution of power and responsibilities between the federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS. 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).

This rule will be effective October 11, 2002.

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 November 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: August 23, 2002.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, 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 P—Indiana**

2. Section 52.770 is amended by adding paragraph (c) (148) to read as follows:

**§ 52.770 Identification of plan.**

* * * * *

(c) * * *

(148) On August 8, 2001, the State submitted rules to incorporate by reference Federal capture efficiency test methods. The submittal amends 326 IAC 8–1–4.

(i) Incorporation by reference.

Title 326: Air Pollution Control Board; Article 8: Volatile Organic Compound Rules; Rule 1: General Provisions; Section 4: Testing procedures. Filed with the Secretary of State on June 15, 2001 and effective on July 15, 2001. Published in 24 *Indiana Register* 3619 on August 1, 2001.

* * * * *

[FR Doc. 02–22979 Filed 9–10–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[MN69–7294a; FRL–7264–9]**

## Approval and Promulgation of State Implementation Plans; Minnesota

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Metropolitan Council Environmental Service's (MCES) Metropolitan Wastewater Treatment Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. By its submittal dated June 1, 2001, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve MCES's federally enforceable state operating permit (FESOP) into the Minnesota PM SIP and remove the MCES Administrative Order from the state PM SIP. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this rulemaking action.

**DATES:** This ''direct final'' rule is effective November 12, 2002, unless

EPA receives written adverse comment by October 11, 2002. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

**SUPPLEMENTARY INFORMATION:** This supplemental information section is organized as follows:

I. General Information
1. What Action Is EPA Taking Today?
2. Why Is EPA Taking This Action?
II. Background on Minnesota Submittal
1. What Is the Background for This Action?
2. What Information Did Minnesota Submit, and What Were its Requests?
3. What Is a ''Title I Condition?'
III. Final Rulemaking Action
IV. Administrative Requirements

## I. General Information

### *1. What Action Is EPA Taking Today?*

In this action, EPA is approving into the Minnesota PM SIP certain portions of the FESOP for MCES's Metropolitan Wastewater Treatment Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the permit cited as ''Title I Condition: State Implementation Plan for $PM_{10}$.'' In this same action, EPA is removing the MCES Administrative Order from the state PM SIP.

### *2. Why Is EPA Taking This Action?*

EPA is taking this action because the state's request does not change any of the emission limitations currently in the SIP or their accompanying supportive documents, such as the PM air dispersion modeling. The revision to the SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the PM National Ambient Air Quality Standards (NAAQS) and satisfying the applicable PM requirements of the Act. The only change to the PM SIP is the enforceable document for MCES, from the Administrative Order to the FESOP.

## II. Background on Minnesota Submittal

### *1. What Is the Background for This Action?*

MCES's Metropolitan Wastewater Treatment Plant is located on Childs Road in St. Paul, Ramsey County, Minnesota. A portion of the St. Paul area was designated nonattainment for PM upon enactment of the Clean Air Act Amendments of 1990, thus requiring the State to submit SIP revisions by November 15, 1991, satisfying the PM attainment demonstration requirements of the Act. The State submitted SIP revisions intended to meet these requirements in 1991, 1992, and 1993. An Administrative Order for MCES was included in these submittals. The EPA took final action on February 15, 1994 at 59 FR 7218, to approve Minnesota's submittals as satisfying the applicable requirements for the St. Paul PM nonattainment area.

### *2. What Information Did Minnesota Submit, and What Were Its Requests?*

The SIP revision submitted by MPCA on February 6, 2000, consists of a FESOP issued to MCES. The state has requested that EPA approve the following:

(1) The inclusion into the Minnesota PM SIP only the portions of the MCES Wastewater Treatment Plant FESOP cited as ''Title I Condition: State Implementation Plan for $PM_{10}$.''; and, (2) The removal from the Minnesota PM SIP of the Administrative Order for MCES previously approved into the SIP.

### *3. What Is a ''Title I Condition?''*

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's operating permitting program, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term ''Title I condition'' which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent and requires all state permits, not only Title V permits, to contain all applicable requirements. A ''Title I condition'' is defined as ''any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *.'' The rule also states that ''Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit.'' Further, ''any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.''

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permit submitted by MPCA are cited as ''Title I Condition: State Implementation Plan for $PM_{10}$,'' therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from EPA to MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to MCES and included in the SIP submittal need to be revised in the future.

## III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for MCES's Metropolitan Wastewater Treatment Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. Specifically, EPA is approving into the SIP only those portions of MCES's FESOP cited as ''Title I Condition: State Implementation Plan for $PM_{10}$.'' In this same action, EPA is also removing from the state PM SIP the MCES Wastewater Treatment Plant Administrative Order which had previously been approved into the SIP on February 15, 1994.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment

and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective November 12, 2002 without further notice unless we receive relevant adverse written comments by October 11, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 12, 2002.

## IV. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA 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, and has determined that the rule's requirements do not constitute a taking. 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 November 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 13, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(61) to read as follows:

### § 52.1220 Identification of plan.

* * * * *

(c) * * *

(61) On June 1, 2001, the State of Minnesota submitted a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Metropolitan Council Environmental Service's (MCES) Metropolitan Wastewater Treatment

Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the MCES federally enforceable state operating permit cited as ''Title I Condition: State Implementation Plan for PM10.'' In this same action, EPA is removing from the state PM SIP the MCES Administrative Order previously approved in paragraph (c)(29) of this section.

(i) Incorporation by reference.

(A) Air Emission Permit No. 12300053–001, issued by the Minnesota Pollution Control Agency to MCES's Metropolitan Wastewater Treatment Plant at 2400 Childs Road on March 13, 2001, Title I conditions only.

[FR Doc. 02–22977 Filed 9–10–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 60

**[SIP NO. SD–001–0015; FRL–7374–3]**

### Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; New Source Performance Standards

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

**ACTION:** Final rule.

**SUMMARY:** On June 30, 2000, the State of South Dakota submitted a request for delegation of the New Source Performance Standards (NSPS) and requested that the NSPS be removed from the State Implementation Plan (SIP). On April 2, 2002, EPA delegated to the State of South Dakota the authority to implement and enforce the NSPS program. Since the State has been delegated the authority to implement and enforce the NSPS program, the intended effect of this action is to remove the NSPS sections from the SIP and also update the NSPS ''Delegation Status of New Source Performance Standards'' table. These actions are being taken under sections 110 and 111 of the Clean Air Act. Other parts of the June 30, 2000 submittal will be acted on in a separate notice.

**DATES:** This final rule is effective October 11, 2002.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA, Region 8, (303) 312–6144.

**SUPPLEMENTARY INFORMATION:** On July 10, 2002, EPA published a notice of proposed rulemaking (NPR) for the State of South Dakota. In letters dated January 25, 2002 and April 2, 2002, EPA delegated to the State of South Dakota the authority to implement and enforce the NSPS program. Since the State had been delegated the authority to implement and enforce the NSPS program, the NPR proposed approval of removing the NSPS sections from the SIP and updating the NSPS ''Delegation Status of New Source Performance Standards'' table. The January 25, 2002 and April 2, 2002 letters of delegation were printed in their entirety in the July 10, 2002 (67 FR 45684) document.

### I. Final Action

Since the EPA received no comments on the July 10, 2002 notice of proposed rulemaking, EPA is approving the update of the table in 40 CFR 60.4(c), entitled ''Delegation Status of New Source Performance Standards [(NSPS for Region VIII]'', to indicate the 40 CFR part 60 NSPS that are now delegated to the State of South Dakota.

In addition, EPA is approving the removal of the NSPS from the SIP. In its January 30, 2000 submittal, the State requested that the NSPS be removed from the SIP. Since the State has been delegated the authority for the implementation and enforcement of the NSPS in 40 CFR part 60, we are proposing to remove the following sections from the South Dakota SIP: 74:36:07:01, 74:36:07:02, 74:36:07:03, 74:36:07:04, 74:36:07:05, 74:36:07:06, 74:36:07:07, 74:36:07:07.01, 74:36:07:09, 74:36:07:10, 74:36:07:12, 74:36:07:13, 74:36:07:14, 74:36:07:15, 74:36:07:16, 74:36:07:17, 74:36:07:18, 74:36:07:19, 74:36:07:20, 74:36:07:21, 74:36:07:22, 74:36:07:23, 74:36:07:24, 74:36:07:25, 74:36:07:26, 74:36:07:27, 74:36:07:28, 74:36:07:31, 74:36:07:32, 74:36:07:33, and 74:36:07:43. The following sections of Chapter 74:36:07 remain in the SIP: 74:36:07:08, 74:36:07:11[1] and 74:36:07:29–30.

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of

[1] This rule, however, has been repealed.

the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 60*

Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Zinc.

Dated: August 27, 2002.

**Jack W. McGraw,**

*Acting Regional Administrator, Region 8.*

40 CFR part 52, of chapter I, title 40 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 QQ—South Dakota

2. A new § 52.2185 is added to read as follows:

**§ 52.2185 Change to approved plan.**

South Dakota Air Pollution Control Program Chapter 74:36:07, New Source Performance Standards, is removed from the approved plan, except for sections 74:36:07:08, 74:36:07:11 and 74:36:07:29–30. On April 2, 2002, we issued a letter delegating responsibility for all sources located, or to be located, in the State of South Dakota subject to the specified NSPS in 40 CFR part 60. See the table in 40 CFR 60.4 for the delegation status of NSPS to the State of South Dakota.

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

### Subpart A—General Provisions

2. Section 60.4 is amended by revising the column heading for ''SD'' in the table entitled ''Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]'' in paragraph (c) to read as follows:

**§ 60.4 Address.**

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

| Subpart | CO | MT | ND | SD | UT [1] | WY |
|---|---|---|---|---|---|---|
| * * | * | * | * | * | * | * |

* Indicates approval of State regulation.

[1] Indicates approval of State Regulation as part of the State Implementation Plan (SIP).

[FR Doc. 02–22976 Filed 9–10–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2002–0141 FRL–7187–2]**

## Iodosulfuron-Methyl-Sodium; Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerances for residues of iodosulfuron-methyl-sodium, methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5 triazin-2-yl)ureidosulfonyl]benzoate, sodium salt, in or on corn, field, grain; corn, field, forage; and corn, field, stover. Aventis CropScience USA LP requested this tolerance under the Federal Food, Drug,

and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective September 11, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0141 must be received on or before November 12, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0141 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: *Miller.Joanne@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>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,'' ''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/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0141. 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.

## II. Background and Statutory Findings

In the **Federal Register** of January 24, 2001 (66 FR 7644) (FRL–6758–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP F6160) by Aventis CropScience USA LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by Aventis CropScience, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.580 be amended by establishing tolerances for residues of the herbicide iodosulfuron-methyl-sodium, methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5 triazin-2-yl)ureidosulfonyl]benzoate, sodium salt, in or on corn, field, grain at 0.03 part per million (ppm); corn, field, forage at 0.05 ppm; and corn, field, stover at 0.05 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of iodosulfuron-methyl-sodium on corn, field, grain at 0.03 ppm; corn, field, stover at 0.05 ppm; and corn, field, forage at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by iodosulfuron-methyl-sodium are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

| Guideline No. | Study type | Results |
|---|---|---|
| 870.3100 | 90-Day oral toxicity rodents-rat | NOAEL = 67 mg/kg/day in males, 74 mg/kg/day in females.<br>LOAEL = 347 mg/kg/day in males, 388 mg/kg/day in females based on reduced body weight and overall body weight gains in both sexes |
| 870.3100 | 90-Day oral toxicity rodents-mouse | NOAEL = 119 mg/kg/day in males, Not observed in females<br>LOAEL = 332 mg/kg/day in males, 139 mg/kg/day in females based on hepatotoxicity |
| 870.3150 | 90-Day oral toxicity nonrodents-dog | NOAEL = 8.1 mg/kg/day in males, 8.4 mg/kg/day infemales.<br>LOAEL = 49 mg/kg/day in males, 51 mg/kg/day in females based on changes in hematology, microscopic pathology of the bone marrow and spleen (females), clinical chemistry (males) |
| 870.3700 | Prenatal developmental in rodents-rat | Maternal: NOAEL = 315 mg/kg/day<br>LOAEL = 1,000 mg/kg/day based on increased salivation<br>Developmental: NOAEL = 315 mg/kg/day<br>LOAEL =1,000 mg/kg/day based on delayed ossification |
| 870.3700 | Prenatal developmental in nonrodents-rabbit | Maternal: NOAEL = 400 mg/kg/day (HDT)<br>LOAEL = Not observed<br>Developmental: NOAEL = 400 mg/kg/day (HDT)<br>LOAEL = Not observed |
| 870.3800 | Reproduction and fertility effects-rat | Parental/Systemic NOAEL = 346 mg/kg/day in males, 390 mg/kg/day in females (HDT).<br>LOAEL = not established.<br>Reproductive NOAEL = 346 mg/kg/day in males, 390 mg/kg/day in females (HDT).<br>LOAEL = not established.<br>Offspring NOAEL = 34.2 mg/kg/day in males, 39.7 mg/kg/day in females.<br>LOAEL = 346 mg/kg/day in males, 390 mg/kg/day in females (HDT) based on pup mortality. |
| 870.4100 | Chronic toxicity-dogs | NOAEL = 41.8 mg/kg/day in males, 7.25 mg/kg/day in females<br>LOAEL = Not Established in males, 43.7 mg/kg/day in females based on gross and histopathologic changes observed in the hematopoietic system. |
| 870.4300 | Chronic/carcinogenicity-rats | NOAEL = 29.7 mg/kg/day in males, 39.1 mg/kg/day in females.<br>LOAEL = 331 mg/kg/day in males and 452 mg/kg/day in females based on reduced body weight and body weight gains in males and on reduced body weight, body weight gains and food efficiency in females.<br>No evidence of carcinogenicity. |
| 870.4300 | Carcinogenicity-mice | NOAEL = 54.2 mg/kg/day in males, 57.6 mg/kg/day in females.<br>LOAEL = 279 mg/kg/day in males, 277 mg/kg/day in females based on increased liver weights and histopathological changes in the liver.<br>No evidence of carcinogenicity at doses tested. |
| 870.5100 | Gene mutation | Non-mutagenic when tested up to 5000 ug/plate, in presence and absence of metabolic activation, in S. typhimurium strains TA98, TA100, TA1535 and TA1537 and E.coli strain WP2uvra. |
| 870.5300 | Gene mutation | Negative for induction of forward mutation at the HPRT locus in Chinese hamster V79 lung fibroblasts, in the presence or absence of S9-activation at doses up to limit of solubility (2649 Fg/mL). |
| 870.5375 | Chromosome aberration | Did not induce structural chromosome aberration in Chinese hamster lung (V79) cell cultures in the presence and absence of activation up to cytotoxic concentrations. |
| 870.5385 | Chromosomal aberration | Non-mutagenic in NMRI mouse bone marrow micronucleus chromosomal aberrations assay up to the limit dose (2,000 mg/kg). |

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

| Guideline No. | Study type | Results |
|---|---|---|
| 870.5550 | Other genotoxicity | No evidence that unscheduled DNA synthesis was induced by iodosulfuron-methyl, as determined by radioactive tracer procedures nuclear silver grain counts. Iodosulfuron-methyl was tested up to cytotoxic concentrations ($3,000 μg/mL). UDS activity was assessed at 0.01 to 1,000 μg/mL. |
| 870.7485 | Metabolism and pharmacokinetics-rat | Total recovery of the administered dose was 95.9-102.4% for all treatment groups. No radioactivity was detected in exhaled air or organic volatiles. Elimination of radioactivity occurred primarily in the urine, mostly within 24 hours of dosing, and was essentially complete within 3 days of dosing. Overall urinary excretion accounted for 78.5% and 85.8% of the dose for males and females, respectively, and fecal elimination accounted for 19.2% and 10.1% of the dose, respectively. By 3 days post-dose, ≤0.5% of the dose remained in the blood and tissues of both sexes of rats from the low- and high-dose groups.<br>Rats excreted the majority of the dose as unchanged parent via the urine (48.7-86.3% dose) or feces (1.1-11.1% dose). Minor routes of metabolism for iodosulfuron-methyl included hydrolysis of the methylester to form 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)ureidosulfonyl] benzoic acid (AE F145740; 0.9-4.5% dose); *O*-demethylation of the triazine ring to form methyl 2-[3-(4-hydroxy-6-methyl-1,3,5-triazin-2-yl)ureidosulfonyl]-4-iodobenzoate (AE F148741; 1.5-8.2% dose); or hydroxylation of the methyl group on the triazine ring to form methyl 2-[3-(4-hydroxymethyl-6-methoxy-1,3,5-triazin-2-yl)ureidosulfonyl]-4-iodobenzoate (AE F168532; 0.3-6.6% dose). Each of these minor metabolites was present in both the urine and feces. The remaining metabolites each accounted for <3% of the dose. |
| 870.7485 | Metabolism and pharmacokinetics-dog | Within 72 hours of oral dosing, 90-94% of the dosed radioactivity was recovered in the excrement and cage wash of both dose groups. Renal excretion accounted for 64-74% of the dose and elimination in the feces accounted for 14-17% of the radioactive dose. Most of the dose was excreted within 24 hours. Quantitative RP-HPLC analyses isolated up to 6 distinct radioactive components in urine and feces. The major isolated fraction was the parent: urine (54-61% dose) and feces (8-11%).<br>In the rat, the major isolated fraction was also the parent, while the major metabolite was AE F145741. The metabolites identified in the dog were consistent with those identified in the rats. |
| 870.7600 | Dermal penetration-rat | For both the low- and high-dose groups, dermal penetration of radioactivity was low (< 2% dose) at exposure intervals up to 8 hours. Absorption increased slightly with duration of exposure in the low-dose group, increasing from 0.019% of the dose (0.043 Fg/cm$^2$) at 3 hours to 0.69% of the dose (0.159 Fg/cm$^2$) at 8 hours. However, a similar trend was not observed in the high-dose group, as the maximum absorption was observed at the 5-hour exposure (1.60% dose, 6.02 Fg/cm$^2$). |

*B. Toxicological Endpoints*

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (*e.g.,* risk is expressed as 1 x 10$^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer}$ = point of departure/exposures) is calculated. A summary of the toxicological endpoints for iodosulfuron-methyl-sodium used

for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IODOSULFURON-METHYL-SODIUM FOR USE IN HUMAN RISK ASSESSMENT

| Exposure scenario | Dose used in risk assessment, UF | FQPA SF and level of concern for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary for general population | NOAEL= 315 mg/kg/day<br>UF = 100<br>aRfD = 3.15 mg/kg/day | FQPA SF = 10x<br>aPAD = 0.31 mg/kg/day | Developmental Toxicity in Rats<br>Based on increased salivation seen in dams on day one and throughout the dosing period at the high dose of 1,000 mg/kg/day<br>(LOAEL, Maternal) |
| Chronic dietary all populations | NOAEL = 7.3 mg/kg/day<br>UF = 100<br>cRfD = 0.073 mg/kg/day | FQPA SF= 10<br>cPAD = 0.007 mg/kg/day | Chronic Oral Toxicity diet - dog<br>Based on gross and histopathologic changes observed in the hematopoietic system seen at 1,200 ppm (LOAEL 43.7 mg/kg/day) |
| Incidental oral short-term (1-30 days) | Oral NOAEL = 49 mg/kg/day | FQPA SF= 10<br>LOC for MOE = 1,000 (residential) | Subchronic Oral Toxicity diet - dog<br>Based on alterations in hematological parameters and changes in clinical chemistry seen at 4 week observation period at a dose level of 301 mg/kg/day (HDT) |
| Incidental oral, intermediate-term (30 days-6 months) | Oral NOAEL= 8.1 mg/kg/day | FQPA SF= 10<br>LOC for MOE = 1,000 (residential) | Subchronic Oral Toxicity diet - dog<br>Based on changes in hematology (males and females), microscopic pathology of the bone marrow (males and females) and spleen (females), and clinical chemistry (males) seen at termination at a dose level of 49 mg/kg/day (LOAEL) |
| Dermal short-term (1-30 days) | Oral NOAEL= 49 mg/kg/day<br>dermal absorption factor 2% | LOC for MOE = 1,000 (residential)<br>LOC for MOE = 100 (occupational) | Subchronic Oral Toxicity diet - dog.<br>Based on alterations in hematological parameters and changes in clinical chemistry seen at 4 week observation period at a dose level of 301 mg/kg/day (HDT) |
| Dermal, intermediate-term (30 days-6 months) | Oral NOAEL= 8.1 mg/kg/day<br>dermal absorption factor 2% | LOC for MOE = 1,000 (residential)<br>LOC for MOE = 100 (occupational) | Subchronic Oral Toxicity diet - dog<br>Based on changes in hematology (males and females), microscopic pathology of the bone marrow (males and females) and spleen (females), and clinical chemistry (males) seen at termination at a dose level of 49 mg/kg/day (LOAEL) |
| Dermal, long-term (6 months-life time) | Oral NOAEL= 7.3 mg/kg/day<br>dermal absorption factor 2% | LOC for MOE = 1,000 (residential)<br>LOC for MOE = 100 (occupational) | Chronic Oral Toxicity diet - dog<br>Based on gross and histopathologic changes observed in the hematopoietic system seen at 1,200 ppm (LOAEL 43.7 mg/kg/day) |
| Inhalation, short-term (1-30 days) | Oral NOAEL= 49 mg/kg/day<br>inhalation absorption factor 100% | LOC for MOE = 1,000 (residential)<br>LOC for MOE = 100 (occupational) | Subchronic Oral Toxicity diet - dog<br>Based on alterations in hematological parameters and changes in clinical chemistry seen at 4 week observation period at a dose level of 301 mg/kg/day (HDT) |
| Inhalation, intermediate-term (30 days-6 months) | Oral NOAEL= 8.1 mg/kg/day<br>inhalation absorption factor 100% | LOC for MOE = 1,000 (residential)<br>LOC for MOE = 100 (occupational) | Subchronic Oral Toxicity diet - dog<br>Based on changes in hematology (males and females), microscopic pathology of the bone marrow (males and females) and spleen (females), and clinical chemistry (males) seen at termination at a dose level of 49 mg/kg/day (LOAEL) |
| Inhalation, Long-term (6 months-life time) | Oral NOAEL= 7.3 mg/kg/day<br>inhalation absorption factor 100% | LOC for MOE = 1,000 (residential)<br>LOC for MOE = 100 (occupational) | Chronic Oral Toxicity diet - dog<br>Based on gross and histopathologic changes ST observed in the hematopoietic system seen at 1,200 ppm (LOAEL 43.7 mg/kg/day) |

The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* This is the first request for an iodosulfuron-methyl-sodium registration to establish tolerances for the residues of iodosulfuron-methyl-sodium, in or on a variety of raw agricultural commodities. Metsulfuron-methyl (registered active ingredient; PC code 122010) has been identified as a residue of concern in drinking water as a result of iodosulfuron-methyl-sodium application (metsulfuron-methyl was not identified as a residue of concern in cereal grains or livestock). Since metsulfuron-methyl had not undergone a full review by the EPA at the time the iodosulfuron-methyl-sodium risk assessment was completed, it was assumed that the doses and endpoints identified for iodosulfuron-methyl-sodium were applicable to metsulfuron-methyl. This assumption was considered appropriate based on structural activity relationship (both are sulfonylureas), and the fact that metsulfuron-methyl is a predominant metabolite of iodosulfuron-methyl-sodium in soil in drinking water. Recently, metsulfuron-methyl has undergone a full review by EPA. In all instances, excluding short-term inhalation and incidental oral, the metsulfuron-methyl endpoints were greater than those identified for iodosulfuron-methyl-sodium. No acute dietary endpoint was selected for metsulfuron-methyl. Since metsulfuron-methyl was considered toxicologically equivalent to iodosulfuron-methyl-sodium for risk assessment purposes, the dietary and residential analyses included all registered and proposed uses for iodosulfuron-methyl-sodium and metsulfuron-methyl. Additionally, the iodosulfuron-methyl-sodium risk assessment incorporated a 10X FQPA safety factor (metsulfuron-methyl has a 1X FQPA safety factor). Therefore, this assessment is considered highly conservative. The nature of metsulfuron-methyl residues in/on cereal grains (residues of concern - metsulfuron-methyl and its 4 hydroxy metabolite) and ruminants (residues of concern - metsulfuron-methyl) have been determined and tolerances have been established in/on barley, grass, sugarcane, wheat, sorghum, milk and in the fat, meat, meat byproducts, and kidney of cattle, goats, hogs, horses, and sheep ranging from 0.05 - 20 ppm (40 CFR 180.428). Based on data from the ruminant and poultry metabolism studies, in which a cow and hens were dosed at 179x and 333x the MTDB, respectively, there is no reasonable expectation that finite residues of iodosulfuron-methyl-sodium will occur in livestock commodities (40 CFR 180.6(a)(3)). Therefore, livestock feeding studies and tolerances for livestock commodities were not performed. If the use of iodosulfuron-methyl-sodium is expanded in the future to include other livestock feed items, the need for feeding studies will be reevaluated. Risk assessments were conducted by EPA to assess dietary exposures from iodosulfuron-methyl-sodium in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute analysis was performed for the general U.S. population and all population subgroups using existing and recommended tolerance level residues, 100% crop treated information, and DEEM™ default processing factors for all iodosulfuron-methyl-sodium and metsulfuron-methyl registered and proposed commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analysis was performed for the general U.S. population and all population subgroups using existing and recommended tolerance level residues, 100% crop treated information, and DEEM™ default processing factors for all iodosulfuron-methyl-sodium and metsulfuron-methyl registered and proposed commodities.

iii. *Cancer.* The mouse carcinogenicity study was negative as was the carcinogenicity study conducted in rats. Iodosulfuron-methyl-sodium was negative for mutagenicity in various assays. Furthermore, registered sulfonyl urea compounds (structurally similar compounds) have been found to be non-carcinogenic. The maximum dose, however, was not achieved for the mouse cancer study for iodosulfuron-methyl-sodium; thus, EPA has requested a new carcinogenicity study in mice as confirmatory data.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for iodosulfuron-methyl-sodium and metsulfuron-methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of iodosulfuron-methyl-sodium and metsulfuron-methyl.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from

residential uses. Since DWLOCs address total aggregate exposure to iodosulfuron-methyl-sodium and metsulfuron-methyl, they are further discussed in the aggregate risk sections see section E.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of iodosulfuron-methyl-sodium and metsulfuron-methyl for acute exposures are estimated to be 1.43 parts per billion (ppb) for surface water and 0.105 ppb for ground water. The EECs for chronic exposures are estimated to be 0.338 ppb for surface water and 0.105 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Iodosulfuron-methyl-sodium is not registered for use on any sites that would result in residential exposure. However, metsulfuron-methyl is currently registered for use on the following residential non-dietary site(s): Golf courses and residential turfgrass. Based on the use pattern, potential residential exposure scenarios include:

- Golfer post-application exposure (adult and adolescent)
- Non-dietary ingestion (toddler hand-to-mouth, object-to-mouth, soil ingestion)
- Dermal post-application exposure to turfgrass (adult and toddler)

All MOEs calculated for residential post-application exposures do not exceed the HED's levels of concern for the respective exposure scenarios (MOEs<1,000).

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether iodosulfuron-methyl-sodium and metsulfuron-methyl have a common mechanism of toxicity with other substances or how to include these pesticides in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, iodosulfuron-methyl-sodium and metsulfuron-methyl do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that iodosulfuron-methyl-sodium and metsulfuron-methyl have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

### *D. Safety Factor for Infants and Children*

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is evidence for both quantitative and qualitative increased susceptibility in the multi-generation rat reproduction study. While no parental toxicity was seen at the HDT (346 mg/kg/day), off-spring toxicity was manifested as reduced pup viability (death on Day 0 in $F_2$, LOAEL 346 mg/kg/day; NOAEL 34 mg/kg/day). Similarly, there is evidence for qualitative increase in susceptibility in the rat developmental toxicity study where delayed ossification was observed in the fetuses of dams that exhibited minimal maternal toxicity (salivation; maternal and developmental LOAEL 1,000 mg/kg/day and NOAEL 315 mg/kg/day). Maternal and developmental LOAELs were not established in the non-rodent (rabbit) developmental toxicity study (HDT 400 mg/kg/day; study is classified as unacceptable/not upgradable due to inadequate dosing). Therefore, susceptibility of the offspring could not be addressed in this species.

3. *Conclusion*. There is a complete toxicity data base for iodosulfuron-methyl-sodium. EPA concluded that the FQPA safety factor be retained at 10x for iodosulfuron-methyl-sodium for the following weight-of-evidence considerations: There is qualitative evidence of increased susceptibility following *in utero* exposure to iodosulfuron-methyl-sodium in the rat developmental toxicity study; there is quantitative and qualitative evidence of increased susceptibility following prenatal/postnatal exposure to iodosulfuron-methyl-sodium in the 2–generation reproduction study in rats; susceptibility could not be assessed in the non-rodent (rabbit) developmental study since the doses tested in this study were considered to be inadequate (this study is classified as unacceptable); there is a data gap for an acute neurotoxicity study conducted in adult rats required to confirm and characterize the signs of neurotoxicity observed in the 90-day dog study and the rat developmental toxicity study; and the requirement for a developmental neurotoxicity study (DNT) with iodosulfuron-methyl-sodium is ''reserved'' pending the results of the acute neurotoxicity study.

### *E. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (*i.e.,* the PAD) is available for exposure through drinking water [*e.g.,* allowable chronic water exposure (mg/kg/day) = cPAD − (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when

considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to iodosulfuron-methyl-sodium and metsulfuron-methyl will occupy 1% of the aPAD for the U.S. population, <1% of the aPAD for females 13 years and older, 1% of the aPAD for all infants and 1% of the aPAD for children (1-6 years old). In addition, there is potential for acute dietary exposure to iodosulfuron-methyl-sodium and metsulfuron-methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO IODOSULFURON-METHYL-SODIUM AND METSULFURON-METHYL

| Population subgroup | aPAD (mg/kg) | % aPAD (Food) | Surface water EEC (ppb) | Ground water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population—all seasons | 0.315 | 1 | 1.42 | 0.105 | 11,000 |
| All Infants (<1 year old) | 0.315 | 1 | 1.42 | 0.105 | 3,100 |
| Children (1-6 years old) | 0.315 | 1 | 1.42 | 0.105 | 3,100 |
| Children (7-12 years old) | 0.315 | 1 | 1.42 | 0.105 | 3,100 |
| Females (13-50 years old) | 0.315 | <1 | 1.42 | 0.105 | 9,400 |
| Males (13-19 years old) | 0.315 | 1 | 1.42 | 0.105 | 11,000 |
| Males (20+ years old) | 0.315 | <1 | 1.42 | 0.105 | 11,000 |
| Seniors (55+ years old) | 0.315 | <1 | 1.42 | 0.105 | 11,000 |

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to iodosulfuron-methyl-sodium and metsulfuron-methyl from food will utilize 10% of the cPAD for the U.S. population, 12% of the cPAD for all infants and 29% of the cPAD for children (1-6 years old). There are no residential uses for iodosulfuron-methyl-sodium and metsulfuron-methyl that result in chronic residential exposure. Based on the use pattern, chronic residential exposure to residues of iodosulfuron-methyl-sodium and metsulfuron are not expected. In addition, there is potential for chronic dietary exposure to iodosulfuron-methyl-sodium and metsulfuron-methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IODOSULFURON-METHYL-SODIUM AND METSULFURON-METHYL

| Population subgroup | cPAD mg/kg/day | % cPAD (Food) | Surface water EEC (ppb) | Ground water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population | 0.0073 | 10 | 0.338 | 0.105 | 230 |
| All Infants (<1 year old) | 0.0073 | 12 | 0.338 | 0.105 | 65 |
| Children (1-6 years old) | 0.0073 | 29 | 0.338 | 0.105 | 52 |
| Children (7-12 years old) | 0.0073 | 17 | 0.338 | 0.105 | 61 |
| Females (13-50 years old) | 0.0073 | 7 | 0.338 | 0.105 | 200 |
| Males (13-19 years old) | 0.0073 | 11 | 0.338 | 0.105 | 240 |
| Males (20+ years old) | 0.0073 | 7 | 0.338 | 0.105 | 240 |
| Seniors (55+ years old) | 0.0073 | 6 | 0.338 | 0.105 | 240 |

3. *Short-term risk.* Iodosulfuron-methyl-sodium is not registered for use on any sites that would result in residential exposure. However, for the purposes of this assessment, iodosulfuron-methyl-sodium and metsulfuron-methyl are being considered toxicologically equivalent. Metsulfuron-methyl is currently

registered for use that could result in short-term residential exposure. Since a common toxicological effect was identified when assessing short-term oral and dermal exposures (alterations in hematology and clinical chemistry parameters), the aggregate short-term assessment considered exposure from food (chronic dietary), water, and residential uses (oral and dermal). The short-term oral and dermal endpoints were based on the same study, and therefore can be aggregated.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 5.6e+05 for all U.S. populations, 2.5e+05 for all infants (<1 year old), 1.5e+05 for children (1-6 years old), 2.1e+05 for children (7-12 years old), 7.7e+05 for females (13-50 years old), 5.1e+05 for males (13-19 years old), 7.4e+05 for males (20+ years old), and 8.4e+05 for seniors (55+ years old). These aggregate MOEs do not exceed the Agency's level of concern. In addition, short-term DWLOCs were calculated and compared to the EECs for average exposure of iodosulfuron-methyl-sodium and metsulfuron-methyl in ground and surface water. DWLOCs were then calculated using the following default body weights and drinking water consumption figures: 70 kg/2L (adult male), 60 kg/2L (adult female) and 10 kg/1L (infant/child). After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO IODOSULFURON-METHYL-SODIUM AND METSULFURON-METHYL

| Population subgroup | Aggregate MOE (Food + residential) | Aggregate level of concern (LOC) | Surface water EEC (ppb) | Ground water EEC (ppb) | Short-term DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population—all | 5.6e+05 | 1,000 | 0.338 | 0.105 | 1.7e+03 |
| All infants (<1 year old) | 2.5e+05 | 1,000 | 0.338 | 0.105 | 4.7e+02 |
| Children (1-6 years old) | 1.5e+05 | 1,000 | 0.338 | 0.105 | 4.6e+02 |
| Children (7-12 years old) | 2.1e+05 | 1,000 | 0.338 | 0.105 | 4.7e+02 |
| Females (13-50 years old) | 7.7e+05 | 1,000 | 0.338 | 0.105 | 1.5e+03 |
| Males (13-19 years old) | 5.1e+05 | 1,000 | 0.338 | 0.105 | 1.7e+03 |
| Males (20+ years old) | 7.4e+05 | 1,000 | 0.338 | 0.105 | 1.7e+03 |
| Seniors (55+ years old) | 8.4e+05 | 1,000 | 0.338 | 0.105 | 1.7e+03 |

4. *Intermediate-term risk.* Iodosulfuron-methyl-sodium is not registered for use on any sites that would result in residential exposure. However, for the purposes of this assessment, iodosulfuron-methyl-sodium and metsulfuron-methyl are being considered toxicologically equivalent. Metsulfuron-methyl is currently registered for use that could result in intermediate-term residential exposure. Therefore, the aggregate intermediate-term assessment considered exposure from food (chronic dietary), water, and residential uses.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1.1e+04 for all U.S. populations, 9.6e+03 and all infants (<1 year old), 3.9e+03 for children (1-6 years old), 6.6e+03 for children (7-12 years old), 1.7e+04 for females (13-50 years old), 1.0e+04 for males (13-19 years old), 1.7e+04 for males (20+ years old), and 2.0e+04 for seniors (55+ years old). These aggregate MOEs do not exceed the Agency's level of concern for food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of iodosulfuron-methyl-sodium and metsulfuron-methyl in ground and surface water. DWLOCs were then calculated using the following default body weights and drinking water consumption figures: 70kg/2L (adult male), 60kg/2L (adult female) and 10kg/1L (infant/child). After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 6:

TABLE 6.—AGGREGATE AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO IODOSULFURON-METHYL-SODIUM AND METSULFURON-METHYL

| Population subgroup | Aggregate MOE (Food + residential) | Aggregate level of concern (LOC) | Surface water EEC (ppb) | Ground water EEC (ppb) | Intermediate-term DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population—all | 1.1e+04 | 1,000 | 0.338 | 0.105 | 2.6e+02 |
| All infants (<1 year old) | 9.6e+03 | 1,000 | 0.338 | 0.105 | 7.3e+01 |

TABLE 6.—AGGREGATE AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO IODOSULFURON-METHYL-SODIUM AND METSULFURON-METHYL—Continued

| Population subgroup | Aggregate MOE (Food + residential) | Aggregate level of concern (LOC) | Surface water EEC (ppb) | Ground water EEC (ppb) | Intermediate-term DWLOC (ppb) |
|---|---|---|---|---|---|
| Children (1-6 years old) | 3.9e+03 | 1,000 | 0.338 | 0.105 | 6.0e+01 |
| Children (7-12 years old) | 6.6e+03 | 1,000 | 0.338 | 0.105 | 6.9e+01 |
| Females (13-50 years old) | 1.7e+04 | 1,000 | 0.338 | 0.105 | 2.3e+02 |
| Males (13-19 years old) | 1.0e+04 | 1000 | 0.338 | 0.105 | 2.6e+02 |
| Males (20+ years old) | 1.7e+04 | 1,000 | 0.338 | 0.105 | 2.7e+02 |
| Seniors (55+ years old) | 2.0e+04 | 1,000 | 0.338 | 0.105 | 2.7e+02 |

5. *Aggregate cancer risk for U.S. population*. Given the available data, it is likely that iodosulfuron-methyl-sodium does not pose a cancer risk to humans. To date, cancer studies have proven negative and metsulfuron-methyl is classified as Group E (not likely human carcinogen) by Agency. Other registered sulfonyl urea compounds have also been found to be non-carcinogenic. There is some uncertainty here, however, due to the failure to test at a high enough dose in the mouse study. Nonetheless, given the following considerations, even assuming that the requested cancer study showed that iodosulfuron-methyl-sodium has some carcinogenic potential, EPA concludes that the cancer risk from exposure to iodosulfuron-methyl-sodium is negligible. First, cancer testing at relatively high doses has already had negative results, so the new study, at worst, could show iodosulfuron-methyl-sodium to be a relatively weak carcinogen. Second, human exposure to iodosulfuron-methyl-sodium is expected to be basically non-existent. Field corn will be the only registered use, and field corn is only consumed by animals not humans. Studies have shown that there is no reasonable expectation that finite residues of iodosulfuron-methyl-sodium will occur in livestock commodities as a result of livestock consuming iodosulfuron-methyl-sodium -treated corn. Finally, there are no residential uses for iodosulfuron-methyl-sodium.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to iodosulfuron-methyl-sodium and metsulfuron-methyl residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

The analytical methods used to analyze the storage stability, field trial, and processing samples were adequately validated and are appropriate for data gathering purposes. The proposed tolerance enforcement method has been adequately validated by an independent laboratory and was forwarded to the Analytical Chemistry Laboratory (ACL) for petition method validation (PMV). The ACL concludes that this method using HPLC/MS, in general, meets the requirements for a residue analytical method for tolerance enforcement as defined in the Residue Chemistry Test Guidelines, 860.1340. The petitioner submitted data which indicated that iodosulfuron-methyl-sodium and metsulfuron-methyl are not adequately recovered when using FDA multiresidue method protocols. This information has been forwarded to the FDA.

### *B. International Residue Limits*

There is neither a Codex proposal, nor Canadian or Mexican limits, for residues of iodosulfuron-methyl-sodium in/on field corn. Harmonization is not an issue for this petition.

### *C. Conditions*

EPA is able to successfully validate the proposed field corn enforcement method and concludes that the toxicological, residue chemistry, and occupational/residential databases are sufficient for a conditional field corn registration. The following data are being required to confirm the results of the studies already reviewed by the Agency and/or to complete the database requirements prior to approval of an unconditional registration of iodosulfuron-methyl-sodium:

i. Acute Neurotoxicity Study—to confirm the clinical signs of neurotoxicity.

ii. 28-Day Inhalation Toxicity Study - for further characterization of inhalation hazard for risk assessment; the protocol for the existing 90-day inhalation toxicity study (OPPTS 870.3465) should be followed with the exposure (treatment) ending after 28 days, instead of 90 days.

iii. 21-Day Dermal Toxicity Study

iv. Developmental Toxicity Study in Rabbits

v. Carcinogenicity Study in Mice

## V. Conclusion

Therefore, the tolerance is established for residues of iodosulfuron-methyl-sodium, methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5 triazin-2-yl)ureidosulfonyl]benzoate, sodium salt, in or on corn, field, grain at 0.03 ppm; corn, field, forage at 0.05 ppm; and corn, field, stover at 0.05 ppm.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409.

However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need To Do To File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0141 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 12, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0141 to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final 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 under Executive Order 12898, 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). [1]This rule, however, has been repealed. 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. 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 final 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 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 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 rule.

### VIII. Submission to Congress and the Comptroller General

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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 3, 2002.

**James Jones,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is 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), 346(a) and 374.

2. Section 180.580 is added to read as follows:

### § 180.580 Iodosulfuron-Methyl-Sodium; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide *Iodosulfuron-Methyl-Sodium (methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5 triazin-2-yl)ureidosulfonyl]benzoate, sodium salt*) in or on the following commodities:

| Commodity | Parts per million |
|---|---|
| Corn, field, forage ..... | 0.05 |
| Corn, field, grain ..... | 0.03 |
| Corn, field, stover ..... | 0.05 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–23086 Filed 9–10–02; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR Parts 1200, 1201, 1241, 1242, 1243, and 1244

**[STB Ex Parte No. 636]**

## Accounts, Records, and Reports—Technical Amendments

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Final rules.

**SUMMARY:** The Surface Transportation Board (Board) amends regulations concerning accounts, records, and reports (Subchapter C) to reflect current agency organizational components, account titles and accounting references. In addition, General Instruction 1–18, Distribution of expenses for material, tools, fuel, lubricants, purchased services and general, which was inadvertently omitted in recent publications of the accounting regulations, is added.

**EFFECTIVE DATE:** These rules are effective September 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Paul Aguiar, (202) 565–1527. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Because these changes merely update obsolete references in the regulations or otherwise make revisions that are not substantive, we find good cause to dispense with notice and comment. 5 U.S.C. 553(b)(3) (A) and (B). These changes will be incorporated into the next edition of the Code of Federal Regulations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

### List of Subjects

*49 CFR Part 1200*

Common carriers, Uniform System of Accounts.

*49 CFR 1201*

Railroads, Uniform System of Accounts.

*49 CFR 1241*

Railroads, Reporting and recordkeeping requirements.

*49 CFR 1242*

Railroads, Taxes.

*49 CFR 1243*

Railroads, Reporting and recordkeeping requirements.

*49 CFR 1244*

Freight, Railroads, Reporting and recordkeeping requirements.

Decided: August 28, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, parts 1200, 1201, 1241, 1242, 1243, and 1244 of the

Code of Federal Regulations are amended as follows:

## PART 1200—GENERAL ACCOUNTING REGULATIONS UNDER THE INTERSTATE COMMERCE ACT

1. The authority citation for part 1200 continues to read as follows:

**Authority:** 49 U.S.C. 721, 11142, 11143, 11144, 11145.

### § 1200.2 [Amended]

2. In § 1200.2 remove ''Bureau of Accounts'' and add in its place ''Office of Economics, Environmental Analysis, and Administration'' and remove ''Bureau'' and add in its place ''Office'' each place it appears.

## PART 1201—RAILROAD COMPANIES

1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 553 and 49 U.S.C. 11142 and 11164.

### Subpart A—Uniform System of Accounts

2. Remove ''Commission'' and add in its place ''Board'' in paragraph (b)(2) of General Instruction 1–1 *Classification of carriers.*

3. Remove ''(*see* definition 20(e))'' and add in its place ''(*see* definition 17(e))'' in paragraph (a) of General Instruction 1–10 *Accounting for income taxes.*

4. Remove ''(*see* definition 20)'' and add in its place ''(*see* definition 17)'' in paragraph (b) of General Instruction 1–10 *Accounting for income taxes.*

5. Add General Instruction 1–18 to read as follows:

*1–18 Distribution of expenses for material, tools, fuel, lubricants, purchased services and general.* (a) These expenses shall be assigned directly to activities based on usage whenever possible.

(b) When it is necessary to apportion these expenses to two or more activities they shall be equitably apportioned only to the activities in which they are actually used or to the activities they support.

6. In part 1201, remove ''Instruction 3–2'' and add in its place ''Instruction 1–18'' wherever it appears.

7. Remove ''Extraordinary Items,'' and add in its place ''Extraordinary Items (net),'' in paragraph (b) of income account 551 Miscellaneous income charges.

8. Remove ''[*See* definition 20(e)]'' and add in its place ''[*See* definition 17(e)]'' in paragraph (a) of income account 557 Provision for deferred taxes.

9. Remove ''(*see* definition 23(a))'' and add in its place ''(*see* definition 32(a))'' in income account 560 Income or loss from operations of discontinued segments.

10. In Form of Income Statement following income account 592 Cumulative effect of changes in accounting principles make the following revisions:

i. Remove ''502 Railway operating revenues (amortization of deferred transfers from government authorities'' and add in its place ''503 Railway operating revenues (amortization of deferred transfers from government authorities).''

ii. Remove ''518 Contributions from other companies'' and add in its place ''518 Reimbursements received under contracts and agreements.''

iii. Remove ''550 Income transferred to other companies'' and add in its place ''550 Income transferred under contracts and agreements.''

iv. Remove ''557 Provision for deferred income taxes'' and add in its place ''557 Provision for deferred taxes.''

11. Remove ''(*see* definition 24)'' and add in its place ''(*see* definition 10)'' in account explanation 703 Special Deposits.

12. Remove ''account 636000'' and add in its place ''account 63–60–00'' in paragraph (a) of account explanation 709.5 Allowance for uncollectible accounts.

13. In account explanation 712 Material and supplies:

(i) Remove ''account 656000'' and add in its place ''account 65–60–00'' in paragraph (a).

(ii) Remove ''(*See* definition 17, *Salvage value.*)'' and add in its place ''(*See* definition 31, *Salvage value.*)'' in paragraph (b).

14. Remove ''(*see* definition 24)'' and add in its place ''(*see* definition 10)'' in Note D to account explanation 717 Other funds.

15. Remove the two references to ''(*also see* definition 4)'' and add in their place ''(*also see* definition 5(a))'' in account explanation 721 Investments and advances.

16. Remove ''(*See* definition 9.)'' and add in its place ''(*See* account 14.)'' in paragraph (b) of account explanation 743 Other deferred debits.

17. Note B to account explanation 765 Funded debt unmatured is revised to read as follows:

### § 765 Funded debt unmatured.

* * * * *

**Note B:** *See* definitions 3, actually issued; 4, actually outstanding; 25, nominally issued; and 26, nominally outstanding.

18. Remove ''Definition 20'' and add in its place ''Definition 17'' in Note A to account explanation 786 Accumulated deferred income tax credits.

19. Note D to account explanation 791 Capital stock is revised to read as follows:

### § 791 Capital stock.

* * * * *

**Note D:** *See* definitions 3, actually issued; 4, actually outstanding; 25, nominally issued; and 26, nominally outstanding.

### Subpart B—Branch Line Accounting System

20. Remove ''ICC's'' and add in its place ''STB's'' in the definition of ''Account'' in instruction 900 Definitions.

21. Remove the definition of ''RSPO'' in instruction 900 Definitions.

22. Remove ''(49 CFR Part 1155)'' from paragraph (a) of instruction 910 Purpose and scope.

23. Remove paragraph (b) and remove paragraph designation (a) of instruction 910 Purpose and scope.

24. Remove the last sentence of paragraph (a)(2) from instruction 920 Collection of data.

25. Remove the last sentence of paragraph (a)(4) from instruction 920 Collection of data.

26. The first sentence of paragraph (b) of instruction 920 Collection of data is revised to read as follows:

### § 920 Collection of data.

* * * * *

(b) * * * The data collected shall include the items of revenue, expense, and service units which are specified in 49 CFR 1152, as described in the account texts listed in section 950.

* * *

27. Paragraph (d) of instruction 930 Publication of data is revised to read as follows:

### § 930 Publication of data.

* * * * *

(d) *Waivers and modifications.* The STB's Office of Economics, Environmental Analysis, and Administration may, with respect to individual requests, upon good cause shown, waive or modify any requirement of this section not required by law.

28. Remove ''Commission'' and add in its place ''Board'' in the text of account

12–34–00, Fringe benefits not included in compensation—transportation—specialized services: Freight.

29. Remove ''Commission'' and add in its place ''Board'' in the text of account 61–34–XX, Other expenses—transportation—specialized services: Freight.

## PART 1241—ANNUAL, SPECIAL, OR PERIODIC REPORTS—CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

1. The authority citation for part 1241 continues to read as follows:

**Authority:** 49 U.S.C. 11145.

### § 1241.11 [Amended]

2. Remove ''Bureau of Accounts'' and add in its place ''Office of Economics, Environmental Analysis, and Administration'' in § 1241.11(a).

## PART 1242—SEPARATION OF COMMON OPERATING EXPENSES BETWEEN FREIGHT SERVICE AND PASSENGER SERVICE FOR RAILROADS [1]

1. The authority citation for part 1242 continues to read as follows:

**Authority:** 49 U.S.C. 721, 11142.

### § 1242.00 [Amended]

2. Remove ''(§ 1240.1 of this chapter)'' in § 1242.00.

## PART 1243—QUARTERLY OPERATING REPORTS—RAILROADS

1. The authority citation for part 1243 continues to read as follows:

**Authority:** 49 U.S.C. 721, 11145.

### § 1243.1 [Amended]

2. In § 1243.1:

i. Remove, ''as defined in § 1240.1 of this chapter,'' and

ii. Remove ''Bureau of Accounts'' and add in its place ''Office of Economics, Environmental Analysis, and Administration''.

### § 1243.2 [Amended]

3. In § 1243.2 remove ''as defined in § 1240.1 of this chapter,'' and remove ''Bureau of Accounts'' and add in its place ''Office of Economics, Environmental Analysis, and Administration''.

## PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

1. The authority citation for part 1244 continues to read as follows:

**Authority:** 49 U.S.C. 721, 10707, 11144, 11145.

### § 1244.9 [Amended]

2. In § 1244.9:

i. Remove ''The Director of the Office of Transportation Analysis'' and add in its place ''The Director of the Office of Economics, Environmental Analysis, and Administration'' wherever it appears.

ii. Remove ''Office of Transportation Analysis'' and add in its place ''Office of Economics, Environmental Analysis, and Administration'' in (d)(2), and

iii. Remove ''Director, Office of Transportation Analysis'' and add in its place ''Director, Office of Economics, Environmental Analysis, and Administration'' wherever it appears.

[FR Doc. 02–22724 Filed 9–10–02; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 020430101–2101–01; I.D. 082802B]**

## Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action No. 9—Closure and Reopening of the Recreational Fishery From Cape Falcon to Humbug Mountain, OR

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

**ACTION:** Closure; request for comments.

**SUMMARY:** NMFS announces that the recreational selective fishery for marked hatchery coho salmon in the area from Cape Falcon, OR to Humbug Mountain, OR was closed at midnight on August 1, 2002. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that the quota of 22,500 marked hatchery coho had been reached. The recreational fishery for all salmon except coho then reopened on August 2, 2002, for the area from Cape Falcon, OR to Humbug Mountain, OR as scheduled in the 2002 annual management measures. This action was necessary to conform to the 2002 management goals.

**DATES:** Closure of the selective fishery for marked hatchery coho in the area from Cape Falcon, OR to Humbug Mountain, OR effective 2359 hours local time (l.t.), August 1, 2002; Reopening the recreational fishery for all salmon except coho in the area from Cape Falcon, OR to Humbug Mountain, OR effective 0001 hours l.t., August 2, 2002. Comments will be accepted through September 26, 2002.

**ADDRESSES:** Comments on these actions must be mailed or faxed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070, facsimile 206–526–6376; or

Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132, facsimile 562–980–4018.

Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** The Regional Administrator closed the recreational selective fishery for marked hatchery coho in the area from Cape Falcon, OR to Humbug Mountain, OR effective at midnight on Thursday, August 1, 2002. Information provided on July 29, 2002, estimated that the quota of 22,500–marked coho salmon would be reached by August 1, 2002. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1). The recreational fishery for all salmon except coho reopened on August 2, 2002, as scheduled in the 2002 annual management measures.

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the recreational selective fishery for marked hatchery coho in the area from Cape Falcon, OR to Humbug Mountain, OR would open on July 7, 2002, through the earlier of August 4, 2002, or the attainment of a 22,500–marked coho quota, and the all salmon except coho season would then reopen the earlier of August 5, 2002, or the attainment of the marked coho quota.

On July 29, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the coho catch rate, and effort data indicated that it was likely that the quota would be reached by August 1, 2002. As a result, the State

of Oregon recommended, and the Regional Administrator concurred, that the recreational selective fishery for marked hatchery coho in the area from Cape Falcon, OR to Humbug Mountain, OR close effective at midnight on Thursday, August 1, 2002, with the all salmon except coho fishery reopening on August 2, 2002. All other regulations that apply to this fishery remain in effect as announced in the 2002 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the ODFW. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

## Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the state agencies have insufficient time to allow for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because not closing the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and reduced yield of the stocks. The 30–day delay in effectiveness required under U.S.C. 553(d)(3) is also hereby waived due to the immediate need to stop a fishery upon attainment of a quota.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2002.

**Virginia M. Fay,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–23096 Filed 9–10–02; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 176
Wednesday, September 11, 2002

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 531

**RIN 3206–AJ62**

### Locality Pay Areas

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management is issuing proposed regulations to tie the metropolitan area portion of locality pay area boundaries to the geographic scope of Metropolitan Statistical Area and Consolidated Metropolitan Statistical Area definitions that are contained in the attachments to Office of Management and Budget Bulletin 99–04.

**DATES:** We must receive comments on or before November 12, 2002.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; FAX: (202) 606–4264; or e-mail: *payleave@opm.gov*.

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

**SUPPLEMENTARY INFORMATION:** Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine appropriate pay localities. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, who submit annual recommendations to the President's Pay Agent about the locality pay program for General Schedule employees. The establishment or modification of pay area boundaries must conform with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

Based on the Council's recommendations in 1993, the Pay Agent approved using Metropolitan Statistical Area (MSA) and Consolidated Metropolitan Statistical Area (CMSA) definitions as the basis for defining locality pay areas. OMB defines MSAs and CMSAs based on population size, population density, and commuting patterns. The Council also recommended and the Pay Agent approved criteria for adding adjoining areas to locality pay areas that are not already part of the MSA and CMSA as defined by OMB. Under our current regulations, the metropolitan area portion of locality pay areas changes automatically when OMB revises its metropolitan area definitions.

In October 2000, the Federal Salary Council recommended that the Pay Agent revise the regulations to hold the current MSA or CMSA portion of locality pay areas constant until the Pay Agent and the Federal Salary Council have an opportunity to review new metropolitan area definitions and new commuting patterns and other data from the 2000 census. OMB plans to substantially revise its metropolitan area definitions in 2003 based on new census data and new criteria. The Council also recommended that the Pay Agent continue to monitor counties adjacent to locality pay areas during this period and make minor adjustments in pay area boundaries if a particularly egregious situation justifies such action.

Under the proposed rule, locality pay areas would no longer change automatically if OMB changes metropolitan area definitions. The new reference to the geographic scope of an MSA or CMSA is to make certain that locality pay area boundaries are not affected by county name changes or revisions to counties within the original geographic scope of the MSA. Dade County, FL, changed its name to Miami-Dade County, and the County of Broomfield, CO, was recently created out of portions of Adams, Boulder, Jefferson, and Weld Counties. All of these areas were already within the geographic scope of the Miami or Denver CMSA, as listed in attachments to OMB Bulletin 99–04, and remain covered by the existing locality pay areas.

A full listing of locality pay areas is at *http://opm.gov/oca/02tables/locdef.htm*. The proposed change to hold constant the metropolitan area portion of locality pay areas would have no effect on current locality pay area boundaries or locality rates.

**E.O. 12866, Regulatory Review**

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

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Part 531**

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

Accordingly, OPM is proposing to amend 5 CFR part 531 as follows:

## PART 531—PAY UNDER THE GENERAL SCHEDULE

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

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of FEPCA, Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

### Subpart F—Locality-Based Comparability Payments

* * * * *

2. In § 531.602, the definitions of *CMSA* and *MSA* are revised to read as follows:

**§ 531.603 Definitions**

* * * * *

*CMSA* means the geographic scope of a Consolidated Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in List II of the attachments to OMB Bulletin 99–04.

* * * * *

*MSA* means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in List I of the attachments to OMB Bulletin 99–04.

* * * * *

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

**§ 531.606 Administration of locality rates of pay.**

* * * * *

(g) In the event of a change in the geographic coverage of a locality pay area, the effective date of the change in an employee's entitlement to a locality rate of pay under this subpart is the first day of the first applicable pay period beginning on or after the date on which the change in geographic coverage becomes effective.

* * * * *

[FR Doc. 02–23061 Filed 9–10–02; 8:45 am]

BILLING CODE 6325–39–M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 948

**[Docket No. FV02–948–2 PR]**

## Irish Potatoes Grown in Colorado; Reduction of Membership on the Area No. 3 Colorado Potato Administrative Committee

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on reducing the number of members on the Area No. 3 Colorado Potato Administrative Committee (Committee) established under the Colorado potato marketing order (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Committee. This rule would decrease the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. The number of producers and handlers in Area No. 3 has decreased significantly in recent years and the industry has been unable to fill several positions on the Committee. Reducing Committee membership would allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

**DATES:** Comments must be received by September 26, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@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, or can be viewed at *http://www.ams.usda.gov/fv/moab.html*.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 USDA 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 USDA 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 USDA'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 would decrease the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. Each position would continue to have an alternate. The Committee has been unable to fill several positions on the Committee and has been unable to conduct business at some meetings because of the lack of a quorum. Reducing Committee membership would allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

Section 948.50 of the order establishes three areas within the State of Colorado and provides authority for the establishment of a committee to be the administrative agency for each area. This section further provides that each area committee shall be comprised of members and alternates as set forth in that section or as reestablished by § 948.53. Section 948.53 provides authority for the reestablishment of each area committee.

Section 948.150 of the order's administrative rules and regulations prescribes the current membership on each area committee. For Area No. 3, the Committee currently consists of five producers and four handlers. Three producers and two handlers are from

Weld County, and two producers and two handlers are from all other counties in Area No. 3.

At its meeting on June 13, 2002, the Committee did not have enough members in attendance to constitute a quorum. Those members present recommended that a mail vote be held by the Committee to reduce the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. In addition, they recommended the removal of all requirements that positions be filled from nominees from certain counties. A subsequent mail vote to all Committee members and alternates was conducted. Seven Committee members voted in favor of this change and one member voted against it. The member who voted against the motion supported suspension of regulations because of the decline in the size of the industry. One handler member and alternate position was not voted as both positions are vacant.

The number of Area No. 3 potato producers and handlers has decreased significantly in recent years. Reasons for this decline include low potato prices, water shortages, and increasing production costs. With a total of only 13 producers and handlers (several producers are also handlers), the Committee has been unable to fill the 18 positions (nine members and nine alternates) on the Committee. One member and six alternate positions are currently vacant. This has resulted in the Committee being unable to conduct business at certain meetings because of the lack of a quorum. The Committee does not believe that the current requirement that only producers and handlers from specific counties may be nominated to certain positions serves any useful purpose. They believe that these requirements may, in some instances, have contributed to the difficulty the Committee has had in filling positions. Reducing Committee membership would allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

**Initial Regulatory Flexibility Analysis**

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

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 issued 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.

Based on Committee data, there are 12 producers, (9 of whom are also handlers) and 10 handlers (9 of whom are also producers) in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural firms are defined as those whose annual receipts are less than $5,000,000.

Based on Committee data, the production of Area No. 3 Colorado potatoes for the 2001–2002 marketing year was 773,053 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for the 2001–2002 marketing year was $7.63 per hundredweight. The average annual producer revenue for the 12 Colorado Area No. 3 potato producers is therefore calculated to be approximately $491,533. Using Committee data regarding each individual handler's total shipments during the 2001–2002 marketing year and a Committee estimated average F.O.B. average price during the 2001–2002 marketing year of $9.83 per hundredweight ($7.63 per hundredweight plus estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule would decrease the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. Each position would continue to have an alternate.

The number of Area No. 3 potato producers and handlers has decreased significantly in recent years. Reasons for this decline include low potato prices, water shortages, and increasing production costs. With a total of only 13 producers and handlers, the Committee has been unable to fill the 18 positions (nine members and nine alternates) on the Committee. One member and six alternate positions are currently vacant. This has resulted in the Committee being unable to conduct business at certain meetings because of the lack of a quorum. Reducing Committee membership would allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

This rule is expected to slightly decrease the costs of administering the order. With a smaller Committee, meeting costs should decline slightly and the ability of the Committee to obtain a quorum and conduct business should increase. The benefits for this rule are not expected to be disproportionately greater or less for small producers or handlers than for larger entities.

The Committee discussed alternatives to this change, including not reducing the Committee membership. The Committee considered suspension of all regulations and activities under Area No. 3. However, the Committee believes that the regulations issued under the order are beneficial to the Colorado Area No. 3 potato industry and the benefits of the program outweigh the costs.

This proposed rule would decrease the number of positions on the Committee. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large Area No. 3 Colorado potato handlers. 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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Area No. 3 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 13, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *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.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would

need to be in place as soon as possible so that the Committee can nominate members and alternates to the new Committee as soon as possible. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects in 7 CFR Part 948**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

## PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 948.150 is amended by revising paragraph (b) to read as follows:

**§ 948.150 Reestablishment of committee membership.**

* * * * *

(b) *Area No. 3:* Three producers and two handlers selected as follows: Three (3) producers and two (2) handlers from any county in Area No. 3.

Dated: September 4, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–23034 Filed 9–10–02; 8:45 am]

**BILLING CODE 3410–02–P**

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 102

**RIN 3245–AE94**

### Disclosure of Information Regulations

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) proposes to amend its regulations implementing the Freedom of Information Act (FOIA). This amendment is necessary to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA) and to update SBA's FOIA regulations to conform to current law and procedure. SBA's amended regulations will make more information available electronically, allow requesters to obtain rapid disclosure decisions, give SBA more time to respond to some requests, and increase processing fees to more accurately reflect the full cost of search and document review. SBA presents the changes in a simple user-friendly format.

**DATES:** Comments must be received on or before November 12, 2002.

**ADDRESSES:** Written comments should be addressed to Lisa J. Babcock, Chief, Freedom of Information/Privacy Acts Office, Small Business Administration, 409 3rd Street, SW., Suite 5900, Washington, DC 20416 or via the Internet at: *foia@sba.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kitty Higgins, Paralegal Specialist, Freedom of Information/Privacy Acts Office, 202–401–8203.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The Electronic Freedom of Information Act Amendments of 1996 (EFOIA), 5 U.S.C. 552(a)(2), includes provisions authorizing or requiring agencies to promulgate regulations implementing certain of its requirements, including the tracking of Freedom of Information Act (FOIA) requests, the aggregation of FOIA requests, and the expedited processing of FOIA requests. In addition, EFOIA changes the time limit for responding to a FOIA request from ten to twenty working days, the requirements for reporting FOIA activities to the Department of Justice, and the cases in which an agency may extend the time within which it will respond to a FOIA request. EFOIA also includes provisions regarding the availability of documents in electronic form, the treatment of electronic records, and the establishment of ''electronic reading rooms.'' SBA proposes to amend its regulation implementing the FOIA, 13 CFR Part 102, Subpart A. The proposed amendments will revise SBA's FOIA regulations to comply with EFOIA and to reflect current SBA FOIA procedures and practices.

**Section-by-Section Analysis**

Proposed § 102.1, General provisions, provides that Subpart A of Part 102 describes the procedures SBA follows for responding to FOIA requests.

Proposed § 102.2, Public reading rooms, provides that SBA maintain physical and electronic reading rooms. SBA's electronic reading room is at *http://www.sba.gov/library/.*

Proposed § 102.3, Requirements for making requests, provides the procedures for the public to make a FOIA request to the SBA. The request must be in writing and be received by mail, fax or e-mail. The request will be considered ''perfected'' or accepted for processing when the records sought are described in sufficient detail to be found by an SBA employee with a reasonable amount of effort, the requester states how much he or she is willing to pay, and an advance payment is made if the estimated fees will exceed $250 or the requester owes SBA for past FOIA search fees. Past due charges and interest and the advance payment must be paid before the request is perfected. Records on an individual will only be released to a third party upon the written authorization of the individual whose records are sought. Privacy Act requests will be processed under Subpart B of Part 102 and not Subpart A.

Proposed § 102.4, Timing of responses to requests, provides for the timing of general, multitrack, and expedited processing for FOIA requests.

Section 102.4(a), provides that once a ''perfected'' request is received by the correct SBA office, that SBA will respond within 20 working days. However, this period can be extended for an additional 10 working days by an SBA office if: (1) The need arises to search for and collect the requested records from a field facility or other establishment separate from the processing office; (2) the need arises to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or (3) the need arises for consultation with another Federal agency having a substantial interest in the determination of the request. When one of these reasons arises and requires an extension for more than 10 working days, SBA will notify the requester in writing that unusual circumstances exist and allow the requester an opportunity to modify the request so it can be processed within usual time limits.

Multitrack processing is covered in § 102.4(b), which provides for three-track processing. With multitrack processing, EFOIA recognizes that some requests do not lend themselves to a 20 working-day deadline. Therefore, EFOIA authorizes agencies to establish separate systems within the agency for handling simple and complex requests. Requests on each track will be processed in the order received. Under multitrack processing, requests are categorized based on the amount of agency effort involved with processing the request. The first track, ''fast track,'' is for simple requests clearly identified that have been previously released or placed in an SBA Reading Room, that can be processed within 10 working

days after receipt by the correct SBA office. The second track, ''regular track,'' is for requests of moderate complexity that are clearly identified, will be 50 pages or less, and will require less than two hours to review and process, that can be processed within 20 working days after receipt by the correct SBA office. The third track, ''slow track,'' is for requests involving unusual circumstances or high complexity, such as where the information is not clearly identified, will be more than 50 pages, will require more than two hours to review and process, or includes information originated by another Federal agency or a private concern whose consent must be obtained before release. Slow track requests should be processed within 30 working days after receipt by the correct SBA office.

Expedited processing is covered in § 102.4(c). SBA will provide expedited processing to requests and appeals if either the requester demonstrates that someone's life or physical safety is in imminent danger if SBA does not expedite its response to the request, or if a news media representative demonstrates an urgent need to inform the public about an actual or alleged Federal government activity. After the requester provides a written statement explaining, in detail, the circumstances of the compelling need for the expedited processing, SBA will notify the requester within 10 working days of its decision whether or not to grant expedited processing. If granted, the request will take priority and be processed as soon as practicable. If denied, an appeal may be submitted and would be acted on expeditiously.

Multiple requests are covered in § 102.4(d). When an SBA office believes that multiple requests submitted by a requester or group of collaborating requesters constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, such requests will be aggregated for processing.

Proposed § 102.5, Responses to requests, provides that SBA will notify the requester in writing how SBA will respond to each request. SBA will release the requested documents, or explain why SBA will not release some or all of the requested documents citing applicable FOIA exemptions and describing the amount of material redacted or deleted and explain how to appeal the decision. In addition, SBA will bill for the actual fee, less any advance payments made. SBA will also refer a request for records generated by another Federal agency to that agency for proper processing.

Proposed § 102.6, Fees, provides that SBA will charge fees of $.10 per page for photocopy duplication and the actual cost for other duplication methods. SBA will also charge a search and review fee of $30/employee hour. This section also defines relevant terms, such as ''direct costs,'' ''search,'' ''duplication,'' ''review,'' ''commercial use request,'' ''educational institution,'' ''noncommercial scientific institution,'' ''representative of the news media,'' and ''member of the general public.'' SBA will also charge interest on unpaid bills starting on the 31st day following the date of billing at the maximum rate allowed under 31 U.S.C. 3717. Fee waivers and reductions, discussed in § 102.6(c), may be allowed when a requester can show that disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

Proposed § 102.7, Business information, defines ''business information'' and ''submitter'' and provides that such information will only be disclosed under the procedures in this section. These procedures are similar to those in current SBA FOIA rules at 13 CFR § 102.6, How will SBA respond to requests for business information?

Proposed § 102.8, Appeals, provides for the procedures to appeal an SBA adverse determination denying a requester's FOIA request. These procedures are similar to those in current SBA FOIA rules at 13 CFR § 102.9, How may I appeal a denial of my request for information or a fee determination?

Proposed § 102.9, Public index, provides information about SBA's officially issued documents. This information is similar to that in current SBA FOIA rules at 13 CFR § 102.10, How can I get the Public Index of SBA materials?

**Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

The Office of Management and Budget has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review. These amendments are not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy. Instead, these changes will make SBA's FOIA program more streamlined and easier for the public to understand and use.

SBA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by SBA are nominal.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

**List of Subjects in 13 CFR Part 102**

Freedom of information, Privacy.

For the reasons stated in the preamble, SBA proposes to amend title 13 of the Code of Federal Regulations (CFR) as follows:

## PART 102—RECORD DISCLOSURE AND PRIVACY

1. The authority citation for part 102 continues to read as follows:

**Authority:** 5 U.S.C. 552 and 552a; 31 U.S.C. 1 *et seq.* and 67 *et seq.*; 44 U.S.C. 3501 *et seq.* E.O. 12600, 3 CFR, 1987 Comp., p. 235.

2. Subpart A of part 102 is revised to read as follows:

### Subpart A—Disclosure of Information

Sec.

102.1 General provisions.
102.2 Public reading rooms.
102.3 Requirements for making requests.
102.4 Timing of responses to requests.
102.5 Responses to requests.
102.6 Fees.
102.7 Business information.
102.8 Appeals.
102.9 Public Index.

### Subpart A—Disclosure of Information

#### § 102.1 General provisions.

This subpart describes the procedures that the SBA follows for responding to requests made under the Freedom of Information Act (FOIA) (5 U.S.C. 552).

**§ 102.2 Public reading rooms.**

(a) SBA maintains a public reading room in the Headquarters Reference Library at 409 3rd St., SW., Suite 5000, Washington, DC 20416 where you may read and copy the following: (1) Final SBA opinions and orders issued in adjudicating a case,

(2) Official non-privileged policy statements, opinions, or interpretations,

(3) Standard operating procedures affecting a member of the public,

(4) Records SBA has released in response to previous FOIA requests if SBA has determined those records will be or have been requested again, and

(5) A list of previously released records.

(b) The records described in paragraph (a) of this section are available in the SBA Online Reading Room at *http://www.sba.gov/library/.*

(c) Reading room records created on or after November 1, 1996 are available electronically.

**§ 102.3 Requirements for making requests.**

(a) You may make a request for SBA records by writing directly to the program or field office that maintains the records or to the FOI/PA Office by mail to 409 3rd St., SW., Washington, DC 20416 or fax to 202–205–7059 or e-mail to *foia@sba.gov.* The office receiving your request will forward it to the correct office. The correct office will consider your request ''perfected'' only when you provide the following:

(1) You must describe the records sought in enough detail for an Agency employee to locate the records with a reasonable amount of effort;

(2) State how much you are willing to pay; and

(3) Make an advance payment if either the correct office estimates the fees will exceed $250 or you owe for past FOIA fees. If you owe past FOIA fees, you must pay the estimated amount, plus any past due charges and interest.

(b) If you make a request on behalf of another person, your request must include an authorization signed by that person, allowing SBA to release proprietary information pertaining to that person.

(c) To make a Privacy Act request for records about yourself, you must follow the procedures detailed in § 102.34(b) of subpart B.

**§ 102.4 Timing of responses to requests.**

(a) *In general.* Once the correct office receives your ''perfected'' request, that office must respond within 20 working days unless that office notifies you in writing that the time is extended by an additional 10 working days for one or more of the following reasons:

(1) The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(b) When an extension is for more than ten working days, the office shall provide the requester written notice that ''unusual circumstances'' exist and allow the requester an opportunity to modify the request so it may be processed within the usual time limits.

(c) *Multitrack processing.* (1) If an office receives so many requests that it cannot respond to all within 30 working days, it may use two or more processing tracks by distinguishing between simple and complex requests based on the amount of work and/or time needed to process the request, including limits based on the number of pages involved. The office shall advise requesters in its slower track of the limits of its faster track. Requests on each track should be processed in the order received.

(2) An office using multitrack processing may provide requesters in its slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the office's faster track.

(i) Fast track: if the information is clearly identified and has been previously released or placed in a Reading Room, the request could be processed within 10 working days after it is received by the correct office.

(ii) Regular track: if the information is clearly identified, is 50 pages or less, and requires less than two hours to review and process, the request could be processed within 20 working days after it is received by the correct office.

(iii) Slow track: if the information is not clearly identified, is more than 50 pages, requires more than two hours to review and process, is maintained in more than one SBA office, or includes information which originated at another agency or a private concern whose consent must be obtained before release, the request should be processed within 30 working days after it is received by the correct office.

(d) *Expedited processing.* (1) SBA will give expedited processing to requests and appeals upon written request, if one of the following conditions is met:

(i) You demonstrate someone's life or physical safety will be in imminent danger if SBA does not expedite its response to your request; or

(ii) You are a news media representative (as defined in 13 CFR § 102.6(b)(8)) who demonstrates an urgent need to inform the public about an actual or alleged Federal government activity.

(2) You must provide a written statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail one of these circumstances of ''compelling need'' and submit it to the correct office. The correct SBA office will notify you within 10 working days of their decision whether or not to grant expedited processing. When expedited processing is granted, the request shall be given priority and processed as soon as practicable. When an expedited processing request is denied, an appeal may be submitted and would be acted on expeditiously.

(e) *Multiple requests.* Where an office believes that multiple requests submitted by a requester, or by a group of collaborating requesters, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they will be aggregated for processing.

**§ 102.5 Responses to requests.**

Within the time limits described in § 102.4 of this subpart, SBA will notify you in writing how SBA will comply with your request. SBA's response will state one or more of the following:

(a) SBA is releasing the requested documents.

(b) Explain why SBA has decided not to give you all or some of the records requested, citing specific FOIA exemptions where applicable and describing the amount of material deleted (except where describing the amount deleted would harm an interest protected by the exemption), and explain how to appeal that decision.

(c) Bill you for the actual fee, less any advance payment you have made. If part of the fee remains unpaid, SBA will bill you for the remainder and advise you that SBA will not provide any records until you either: (1) Pay the bill, if it is more than $250; or

(2) Promise in writing to pay the bill, if it is $250 or less.

(d) SBA will refer your request for records generated by another federal agency to that agency for proper processing.

**§ 102.6 Fees.**

(a) *In general.* SBA will charge fees for processing requests as outlined in this section. An office shall collect all applicable fees before sending copies of releasable records. Fees must be paid by check or money order made payable to SBA.

(b) *Definitions and applicable fees.* For purposes of this section:

(1) *Direct costs* means those expenses that SBA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents in response to a FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplication machinery.

(2) *Search* means the process of looking for and retrieving records responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Search fees are $30 per hour.

(3) *Duplication* means the making of a copy of a record. Copies can take the form of paper, microfilm, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. SBA will charge $.10 per page for photocopy duplication and the actual cost for other methods. SBA will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

(4) *Review* refers to the examination of documents responsive to a request in order to determine whether any portion of it is exempt from disclosure. It includes processing any record for disclosure, *e.g.*, all necessary redaction and preparation for disclosure. It also includes time spent considering any formal objection to disclosure made by a business submitter under § 102.7, but does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if a record is ultimately not disclosed. Only commercial use requesters are assessed review costs. Review costs are $30 per hour.

(5) A *commercial use request* refers to a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering those interests through litigation. When it appears the requester will put the requested records to a commercial use, either because of the nature of the request itself or where SBA has reasonable cause to doubt a requester's stated use, SBA will seek additional clarification. SBA will charge commercial use requesters the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(6) *Educational institution* means a state-certified preschool, elementary or secondary school; an accredited college or university; an accredited institution of professional education; or any accredited or state-certified institution of vocational education, that operates a program of scholarly research. An educational institution requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research. SBA will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages.

(7) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis as defined in paragraph (b)(5) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. SBA will charge noncommercial scientific institution requesters for the cost of reproduction alone after the first 100 pages.

(8) A *representative of the news media* is a requester actively gathering information for one or more news media who: (i) Is employed by a news medium or

(ii) Has a reasonable expectation of selling the information obtained to one or more news media. A news medium is an entity organized and operated to distribute information to the general public. A news medium may provide information by subscription and may target its dissemination to a narrow section of the general public so long as any member of the general public may purchase information from it. A request for records supporting the news dissemination function of the requester shall not be considered to be for commercial use. SBA will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(9) A *member of the general public* is a requester who does not fit into any of the categories above. SBA will charge requesters in this category search time after the first two hours and duplication after the first 100 pages.

(10) *Other charges.* SBA will recover the full costs of providing special services, such as certifying that records are true copies or sending copies by other than ordinary mail, to the extent that SBA elects to provide them.

(11) *Charging interest.* SBA will charge interest on any unpaid bill starting on the 31st day following the date of billing. Interest charges will accrue at the maximum rate allowed under 31 U.S.C. 3717. If still unpaid by the 91st day after the billing date, SBA may notify consumer credit reporting agencies of the delinquency.

(c) *Fee waivers or reductions.* SBA will furnish responsive records without charge or at a reduced charge when a requester can show that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) You must submit a request for a fee waiver or reduction to the initial processing office.

(2) On the basis of the information that you provide, the initial processing office will determine whether you meet the fee waiver requirements in § 102.6(c).

**§ 102.7 Business information.**

(a) *In general.* Business information provided to SBA from a submitter will only be disclosed in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* is commercial or financial information obtained by SBA from a submitter that may arguably be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* is any person or entity who provides business information, directly or indirectly to SBA.

(c) *Designation of business information.* Submitters of business information will use reasonable, good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions that they consider to be protected from disclosure under Exemption 4. Designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Disclosure.* SBA will disclose, upon request, business information that has previously been released to the general public.

(e) *Notice to submitters.* SBA will provide a submitter with written notice of a FOIA request or administrative appeal that seeks its business information whenever SBA intends to release that information. The notice will either describe the business information or include copies of the records in the form SBA proposes to release them. SBA will also advise the requester that the submitter is being given the opportunity to object to any proposed disclosure. When notification of a voluminous number of submitters is required, SBA may post or publish the notice in a place reasonably likely to accomplish it.

(f) *Opportunity to object to disclosure.* SBA will give the submitter five working days to submit a detailed written statement specifying all grounds upon which disclosure is opposed. The statement must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the five working days, SBA will presume that the submitter has no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* SBA will consider a submitter's objections and specific grounds for nondisclosure. If SBA decides to disclose business information over the objection of a submitter, SBA will give the submitter written notice, telling the submitter when and what it intends to disclose.

**§ 102.8 Appeals.**

(a) If you are dissatisfied with SBA's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chief, FOI/PA Office, 409 Third St., SW., Washington, DC 20416.

(b) The Chief must receive your signed, written appeal within 45 calendar days of the date of the SBA determination from which you are appealing.

(c) You should include as much information as possible; i.e., identifying the records denied, the reason(s) a fee should be waived, or the reason(s) a request should be expedited. You must identify the denying official and his/her office location.

(d) The Chief will decide your appeal unless the Chief originally made the determination you are appealing. In that case, the Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) SBA will decide your appeal in writing within 20 working days from the date of its receipt. SBA may take an additional 10 working days if unusual circumstances require.

(f) If SBA upholds the initial adverse determination, SBA will tell you why the decision has been upheld and tell you how to obtain judicial review of the decision.

**§ 102.9 Public Index.**

(a) The Public Index is a document that provides identifying information about official documents that SBA has issued.

(b) SBA has administratively determined, as permitted by FOIA, that periodic publication and distribution is unnecessary and impracticable.

(c) The Public Index is an appendix to SBA Standard Operating Procedure 40 03. You can obtain the latest edition of SOP 40 03 from SBA's Online Reading Room at *http://www.sba.gov/library* or by requesting it from any SBA office.

Dated: August 20, 2002.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 02–22932 Filed 9–10–02; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–165868–01]**

**RIN 1545–BA47**

### 10 or More Employer Plans; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Change of date and location of public hearing.

**SUMMARY:** This document changes the date and location of a public hearing on proposed regulations relating to 10 or more employer plans under section 419 of the Internal Revenue Code.

**DATES:** The public hearing originally scheduled for Tuesday, November 5, 2002, at 10 a.m., in room 4718, is rescheduled for Thursday, November 14, 2002, at 10 a.m., in room 2140.

**ADDRESSES:** The public hearing originally scheduled to be in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. will be held in room 2140 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION:** Guy R. Traynor of the Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting), (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Thursday, July 11, 2002 (67 FR 45933), announced that a public hearing on proposed regulations relating to 10 or more employer plans under section 419 of the Internal Revenue Code would be held on Tuesday, November 5, 2002, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The date and location of the public hearing has changed. The hearing is scheduled for Thursday, November 14, 2002, beginning at 10 a.m. in room 2140, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. We must receive requests to speak and outlines of oral comments by October 24, 2002. Because of the controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 9:30 a.m. The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).*

[FR Doc. 02–23100 Filed 9–10–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AL22**

### Accelerated Payments Under the Montgomery GI Bill—Active Duty Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the regulations governing various aspects of the educational assistance programs the Department of Veterans Affairs (VA) administers in order to implement some of the provisions of the Veterans Education and Benefits Expansion Act of 2001. These provisions include accelerated payments to individuals under the Montgomery GI Bill—Active Duty program who are enrolled in approved training programs that lead to

employment in high tech industries and whose charged tuition and fees exceed an amount equal to 200 percent of the monthly rate of basic educational assistance allowance otherwise payable. This document also proposes to amend the regulation defining educational institution to include certain private technology entities.

**DATES:** Comments must be received on or before November 12, 2002.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, 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–AL22''. All written comments received will be available for public inspection at the above address in the Office of Regulations Management, room 1158 between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Lynn M. Cossette, Education Advisor, Education Service, Veterans Benefits Administration, 202–273–7294.

**SUPPLEMENTARY INFORMATION:** The Veterans Education and Benefits Expansion Act of 2001 (Pub. L. 107–103) (the ''Act'') contains provisions that allow the Department of Veterans Affairs (VA) to make accelerated payments under the Montgomery GI Bill—Active Duty program. Individuals can elect to receive an accelerated payment only when they are enrolled in an approved program of education that leads to employment in a high technology industry (as determined by the Secretary) and are charged tuition and fees for enrollment that exceed 200 percent of the monthly rate of basic educational assistance allowance otherwise payable.

Public Law 107–103 directs VA to prescribe regulations to carry out the provisions allowing accelerated payments. Since the term ''high technology industry'' is not defined in the statute, VA must define by regulation what industries qualify as high technology industries. This definition is included in this proposed rule. To arrive at its proposed definition of ''high technology industry,'' VA considered how other federal agencies determine what industries are considered high technology industries. For instance, in a June 1999 Monthly Labor Review Report, ''High-technology employment; a broader view,'' Dr. Daniel Hecker, an economist in the Office of Employment Projections, Bureau of Labor Statistics (BLS), considered an industry to be ''high tech'' if employment in both research and development and in all technology-oriented occupations accounted for a proportion of employment that was at least twice the average for all industries in the Occupational Employment Statistics survey. This resulted in 29 industries being identified as high technology industries. Ten of the 29 are considered to be high technology intensive industries because the ratios of employment in both research and development and in all technology oriented occupations is at least 5 times the average for all industries. We spoke to Dr. Hecker. He indicated that a report by the National Science Foundation (NSF), ''Science and Engineering Indicators 2000,'' includes a good list of 10 advanced technology industries that are high tech. He stated the NSF list is similar to the 10 high technology intensive industries identified in his report.

The NSF list of advanced technologies is based on the U.S. Bureau of the Census classification system for exports and imports of products that embody new or leading-edge technologies.

VA also considered the pertinent legislative history of Pub. L. 107–103 regarding accelerated MGIB payments. For instance, Chairman Rockefeller (D–WV), Senate Veterans Affairs Committee, original sponsor of the bill (S. 1088) enacted as Pub. L. 107–103, explained that the accelerated payment provision ''would allow veterans to use their Montgomery GI Bill educational benefits to pay for short-term, high technology courses that would allow veterans to earn the credentials they need to gain entry to today's civilian-sector careers.'' 147 Cong. Rec. S12,395 (daily ed. Dec. 5, 2001) (statement of Chairman Rockefeller). He further stated, ''many veterans are pursuing forms of nontraditional training, such as short-term courses that lead to certification in a technical field. These courses often last just a few weeks or months, and can cost many of thousands of dollars.'' Id.

The Committee report (S. Rep. No. 107–86) (2001) accompanying S. 1088 does not define which technology fields would be covered by the bill, but indicates that the bill authorizes the Secretary of Veterans Affairs to determine which courses are applicable. The report makes reference to Microsoft, Cisco, and other technical training. Additionally, it reflects that the Congressional Budget Office estimated the bill's costs based on short-term, high-cost, information technology courses.

Nevertheless, the Act itself does not contain language limiting accelerated payment to short-term high-cost information technology courses. Nor does it limit accelerated payment to nontraditional training, or to programs or courses that lead to certification in a technical field.

After considering all the above information, including especially Dr. Hecker's recommendation, we propose to use the listing in the Science and Engineering Indicators 2000 report to define the industries that will be considered ''high-tech'' for accelerated payment purposes. We believe this listing is the most accurate on leading-edge technologies. The list includes the following industries:

- Biotechnology;
- Life Science Technologies;
- Opto-Electronics;
- Computers and Telecommunications;
- Electronics, Computer-Integrated Manufacturing;
- Material Design;
- Aerospace;
- Weapons; and
- Nuclear Technology.

We further propose the list of industries that we define as high technology industries include any advanced technologies listed in future Science and Engineering Indicators reports published by the NSF. The National Science Board (the governing board of the National Science Foundation) is responsible, by law, to publish the Science and Engineering Indicators Report on a biennial basis. By using the list in this biennial report, VA will stay current in our definition of high technology industries.

Moreover, our proposed regulations define ''employment in a high technology industry''. We are doing so because the Act states that, in order to be eligible for accelerated payment, the individual's program of education must lead to employment in a high technology industry. Of the numerous employment positions that may be found in a high technology industry, many are common to all industries, not just high technology industries. We believe, however, that the Act, by its terms in their context, reasonably should be read as limiting accelerated payments to pursuit of programs that lead to high-technology-specific occupations. Thus, to give meaning to the term ''employment in a high technology industry'' as used in the Act, we propose to define that term to mean employment in a high technology

occupation specific to a high technology industry.

The Act further provides that VA will prescribe regulations to include the requirements, conditions, and methods for the request, issuance, delivery, certification of receipt and use, and recovery of overpayment of an accelerated payment.

In our proposed rule, we propose to make accelerated payments similar to the way we currently make advance payments under section 3680(d)(4) of title 38, United States Code. Using this method, payment is drawn in the student's name and VA mails the payment directly to the educational institution for delivery to the student. We propose that upon delivery of payment, the educational institution shall submit certification of delivery to the Secretary. VA will provide a form for this certification. We further propose that the educational institution shall return the accelerated payment to VA within 30 days if the payment is not delivered to the student.

If the educational institution does not agree to accept accelerated payments, we propose that the educational institution must wait until the student begins classes before it submits enrollment information to VA. In this instance, VA proposes to make payment directly to the student via electronic funds transfer (EFT) to the eligible individual's bank account. By using EFT, recipients will receive the accelerated payment sooner than by regular mail, with minimal risk of it being lost or stolen. If the student does not have a bank account or objects to payment by EFT, VA will issue a check to the student's mailing address.

In our proposed rule, we propose requiring that the individual requesting the accelerated payment must verify that payment was received and used, and that the course was (or courses were) completed. We propose collecting this information by a certification form to be submitted by the individual at the end of the term, quarter, semester, or the end of the enrollment period for those courses not on a term, quarter, or semester basis. The proposed rule requires that VA must receive the information within 60 days of the end of the enrollment period or VA will establish and collect an overpayment equal to the accelerated payment amount. We propose that no further education benefits will be paid until VA receives the required certification.

If an individual fails to complete the course(s) for which an accelerated payment has been made and received, and the individual does not have mitigating circumstances for such failure, the proposed rule provides that VA will establish an overpayment equal to the accelerated payment. If mitigating circumstances are shown, VA will determine the amount of education benefits to which the individual is entitled for the enrollment period by prorating the accelerated payment amount in proportion to the number of days from the beginning of the enrollment period through the date of last attendance. VA will establish an overpayment against the individual for the difference between the amount so determined and the accelerated payment amount. Mitigating circumstances, for this purpose, are circumstances beyond the individual's control that prevent him or her from continuously pursuing a program of education.

The Act also contains a provision that includes certain private technology entities in the definition of educational institution. This provision allows a private entity that offers, either directly or under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation. The proposed rule defines ''high technology'' occupation for VA purposes.

To identify those occupations that VA defines as high technology occupations, we used the following reports:

- Bureau of Labor Statistics, Monthly Labor Review, June 1999, ''High-technology employment; a broader view'' by Dr. Daniel Hecker; and
- The Digital Work Force, June 1999, by the Office of Technology, U.S. Department of Commerce.

The Digital Work Force report identifies only information technology occupations while the BLS Monthly Labor Review report identifies all high technology occupations including those in information technology. Consequently, we propose to use the occupations BLS identified as high technology occupations. BLS defines high technology occupations as scientific, technical, and engineering occupations that include the following occupational groups and detailed occupations:

- Life and physical scientists;
- Engineers;
- Mathematical specialists;
- Engineering and science technicians;
- Computer specialists; and
- Engineering, scientific, and computer managers.

We further propose to define the term ''computer specialists''. To do this we looked at various information technology programs approved for veterans' training, and courses currently offered by computer training centers. We also considered the core information technology occupations as listed in the Digital Workforce 2000 report by Office of Technology Policy. After reviewing this material, we propose to include the following occupations as computer specialists in our proposed definition:

- Database, system, and network administrators;
- Database, system, and network developers;
- Computer and network engineers;
- Systems analysts;
- Programmers;
- Computer, database, and network support specialists;
- Computer scientists;
- Web site designers;
- Computer and network service technicians;
- Computer and network electronics specialists; and
- Certified professionals, certified associates, and certified technicians in the information technology field.

**Paperwork Reduction Act of 1995**

Comments on the proposed collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AL22.'' Comments must be received on or before November 12, 2002.

The Office of Management and Budget (OMB) has determined that the proposed new paragraphs 38 CFR 21.7151(c)(1)(i), (c)(2)(ii), and 21.7154(d)(1) would constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for review.

*Title:* Request for Accelerated Payment.

*Summary of Collection of Information:* The collection of information in § 21.7151(c)(1)(i) of this rulemaking proceeding is necessary to apply provisions of section 104 of Pub. L. 107–103. The Act provides that certain individuals may elect to receive

an accelerated payment of the basic educational assistance allowance otherwise payable.

*Description of need for information and proposed use of information:* The information collection required in § 21.7151(c)(1)(i) is needed because the law requires an individual to elect an accelerated payment.

*Description of likely respondents:* Respondents are veterans and service members who wish to receive an accelerated payment of educational assistance under the MGIB for courses leading to employment in a high technology industry.

*Estimated number of respondents:* 34,633.

*Estimated frequency of responses:* When a claimant wishes to receive an accelerated payment of educational assistance, the claimant must file a statement with VA or the educational institution requesting an accelerated payment. Some claimants will file just one request for an accelerated payment while others will file several a year if they are enrolled in more than one term. Thus, we estimate 1½ responses per respondent.

*Estimated total annual reporting and record keeping burden:* 2,597 hours of reporting burden. VA estimates there will be no record keeping burden.

*Estimated average burden per respondent:* .05 hour.

*Title:* Agreement with Educational Institution.

*Summary of Collection of Information:* The collection of information in § 21.7151(c)(2)(ii) of this rulemaking proceeding is necessary to apply provisions of section 104 of Pub. L. 107–103. The Act requires VA to prescribe regulations to carry out provisions of section 104 regarding the requirements, conditions, and methods for the request, issuance, deliver, certification of receipt and use of an accelerated payment.

*Description of need for information and proposed use of information:* Section 21.7151(c)(2)(ii) requires an educational institution to enter into an agreement with VA to receive accelerated payments on behalf of veterans and servicemembers. Generally educational assistance allowance is paid directly to a claimant. VA will release an accelerated payment in advance of the start date of the course if the payment goes directly to the educational institution. By signing the agreement required in § 21.7151(c)(2)(ii), the educational institution is agreeing to accept an accelerated payment on behalf of a veteran or servicemember and to deliver the payment to him or her. VA requires the agreement before we release an accelerated payment to an educational institution to ensure proper handling of payments.

*Description of likely respondents:* Respondents are educational institutions that request to receive an accelerated payment on behalf of a veteran or servicemember.

*Estimated number of respondents:* 3,454.

*Estimated frequency of responses:* Educational institutions would apply just once.

*Estimated total annual reporting and record keeping burden:* 172 hours of reporting burden. VA estimates that there will be no record keeping burden for respondents.

*Estimated average burden per respondent:* .05 hour.

*Title:* Certifications Required from Individuals Electing Accelerated Payments.

*Summary of Collection of Information:* The collection of information required in § 21.7154(d)(1) of this rulemaking is necessary to apply provisions of section 104 of Pub. L. 107–103. The law requires VA to prescribe regulations to carry out provisions of section 104 regarding the delivery, certification of receipt and use of accelerated payments.

*Description of need for information and proposed use of information:* The information collection required in § 21.7154(d)(1) is needed to collect information required by law. The information collected verifies that the proper individual received the accelerated payment, that the course was completed, and shows how the recipient used the payment. We are responsible for determining proper payment. Generally individuals are not eligible for payment if they do not complete a course. In addition to the above information, we need to know if and when a person withdraws from a course. We also need to know the reason they withdrew. This information is necessary to determine if an individual has been overpaid benefits. Most accelerated payments are paid before the completion of the course and represent payment for the entire course.

*Description of likely respondents:* Respondents are veterans and servicemembers who receive an accelerated payment under the MGIB program.

*Estimated number of respondents:* 34,633.

*Estimated frequency of responses:* Some individuals will file just one request for an accelerated payment. Those who enrolled in more than one term may request an accelerated payment for each term. We estimate 1½ responses per respondent.

*Estimated total annual reporting and record keeping burden:* 4,329 hours.

*Estimated average burden per respondent:* .083 hour.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private section, of $100 million or more in any given year. This proposed rule would have no consequential effect on State, local, or tribal governments.

**Executive Order 12866**

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

The Secretary of Veterans Affairs hereby certifies that this proposed 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 proposed rule will directly affect only individuals and will not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance Program Numbers**

The Catalog of Federal Domestic Assistance numbers for the programs

affected by this proposed rule are 64.117, 64.120, and 64.124.

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 6, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 21 (subparts D and K) is proposed to be amended as set forth below.

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

**Authority:** 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. Section 21.4138 is amended by:

a. In paragraph (f)(1)(v), removing ''basis. or'' and adding, in its place, ''basis;''.

b. In paragraph (f)(1)(vi), removing ''basis.'' and adding, in it place, ''basis; or''.

c. Adding paragraph (f)(1)(vii).

The addition reads as follows:

**§ 21.4138 Certifications and release of payments.**

* * * * *

(f) * * *

(1) * * *

(vii) The veteran receives an accelerated payment for the term, quarter, semester, or summer session preceding the interval.

* * * * *

3. Section 21.4200 is amended by:

a. In paragraph (a)(4), removing ''section; or'', and adding, in its place, ''section;';

b. In paragraph (a)(5), removing ''program.'', and adding, in its place, ''program; or'; and

c. Adding paragraph (a)(6); and paragraphs (aa) through (dd) immediately after the authority citation at the end of paragraph (z).

d. Revising the authority citation at the end of paragraph (a).

The revisions and additions read as follows:

**§ 21.4200 Definitions.**

(a) * * *

(6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation.

(Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

* * * * *

(aa) *High technology industry:* The term *high technology industry* includes the following industries:

(1) Biotechnology;

(2) Life science technologies;

(3) Opto-electronics;

(4) Computers and telecommunications;

(5) Electronics;

(6) Computer-integrated manufacturing;

(7) Material design;

(8) Aerospace;

(9) Weapons;

(10) Nuclear technology; and

(11) Any other identified advanced technologies in the biennial Science and Engineering Indicators report published by the National Science Foundation.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(bb) *Employment in a high technology industry. Employment in a high technology industry* means employment in a high technology occupation specific to a high technology industry.

(Authority: 38 U.S.C. 3014A)

(cc) *High technology occupation.* The term *high technology occupation* means an occupation that leads to employment in a high technology industry. These occupations consist of:

(1) Life and physical scientists;

(2) Engineers;

(3) Mathematical specialists;

(4) Engineering and science technicians;

(5) Computer specialists; and

(6) Engineering, scientific, and computer managers.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(dd) *Computer specialists.* The term *computer specialists* includes the following occupations:

(1) Database, system, and network administrators;

(2) Database, system, and network developers;

(3) Computer and network engineers;

(4) Systems analysts;

(5) Programmers;

(6) Computer, database, and network support specialists;

(7) All computer scientists;

(8) Web site designers;

(9) Computer and network service technicians;

(10) Computer and network electronics specialists; and

(11) All certified professionals, certified associates and certified technicians in the information technology field.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

* * * * *

### Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

4. The authority citation for part 21, subpart K, continues to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

5. Section 21.7020 is amended by adding paragraphs (b)(47) through (b)(51) at the end of the section.

The additions read as follows:

**§ 21.7020 Definitions.**

* * * * *

(b) * * *

(47) *High technology industry.* The term *high technology industry* has the same meaning as provided in § 21.4200(aa).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(48) *Employment in a high technology industry. Employment in a high technology industry* has the same meaning as provided in § 21.4200(bb).

(Authority: 38 U.S.C. 3014A)

(49) *High technology occupation.* The term *high technology occupation* has the same meaning as provided in § 21.4200(cc).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(50) *Computer specialist.* The term *computer specialist* has the same meaning as provided in § 21.4200(dd).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(51) *Accelerated payment.* An *accelerated payment* is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for an individual's enrollment for a term, quarter, or semester in an approved program of education leading to

employment in a high technology industry. In the case of a program of education not offered on a term, quarter, or semester basis, the accelerated payment is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for the entire such program.

(Authority: 38 U.S.C. 3014A)

6. Section 21.7076 is amended by revising paragraphs (a), (b)(1) introductory text, and (b)(7) to read as follows:

**§ 21.7076 Entitlement charges.**

(a) *Overview.* VA will make charges against entitlement as stated in this section.

(1) Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. chapter 30 as the assistance is paid.

(2) There will be a charge (for record purposes only) against the remaining entitlement, under 38 U.S.C. chapter 34, of an individual who is receiving the educational assistance under § 21.7137 of this part. The record-purpose charges against entitlement under 38 U.S.C. chapter 34 will not count against the 48 months of total entitlement under both 38 U.S.C. chapters 30 and 34 to which the veteran or service member may be entitled. (See § 21.4020(a) of this part).

(3) Generally, VA will base those entitlement charges on the principle that a veteran or service member who trains full time for one day should be charged one day of entitlement. However, this general principle does not apply to a veteran or servicemember who:

(i) Is pursuing correspondence training;

(ii) Is pursuing flight training;

(iii) Is pursuing an apprenticeship or other on-job training; or

(iv) Is paid an accelerated payment.

(4) The provisions of this section apply to:

(i) Veterans and service members training under 38 U.S.C. chapter 30; and

(ii) Veterans training under 38 U.S.C. chapter 31 who make a valid election under § 21.21 of this part to receive educational assistance equivalent to that paid to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3013, 3014(A), 3014(b))

(b) * * *

(1) Except for those pursuing correspondence training, flight training, apprenticeship or other on-the-job training, those who are receiving tutorial assistance, and those who receive an accelerated payment, VA will make a charge against entitlement:

* * * * *

(7) When a veteran or servicemember is paid an accelerated payment, VA will make a charge against entitlement for each accelerated payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month; and

(ii) Will be determined by dividing the amount of the accelerated payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training. If the rate of basic educational assistance increases during the enrollment period, VA will charge entitlement for the periods covered by the initial rate and the increased rate, respectively.

(Authority: 38 U.S.C. 3014A)

* * * * *

7. Section 21.7140 is amended by:

a. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g), respectively.

b. Adding a new paragraph (b).

c. Revising newly redesignated paragraph (c)(1) introductory text.

The addition and revision read as follows:

**§ 21.7140 Certifications and release of payments.**

* * * * *

(b) *Accelerated payments.* VA will apply the provisions of §§ 21.7151(a), (c), (d), and 21.7154(c) in making accelerated payments.

(c) * * *

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship or other on-job training, a correspondence course, one who qualifies for advance payment, one who qualifies for an accelerated payment, or one who qualifies for a lump sum payment) only after—

* * * * *

**§ 21.7142 [Redesignated as § 21.7143]**

8. Section 21.7142 is redesignated as § 21.7143.

9. A new § 21.7142 is added to read as follows:

**§ 21.7142 Accelerated payments.**

The accelerated payment will be the lesser of—

(a) The amount equal to 60 percent of the charged tuition and fees for the term, quarter or semester (or the entire program of education for those programs not offered on a term, quarter, or semester basis), or

(b) The aggregate amount of basic education assistance to which the individual remains entitled under this chapter at the time of the payment.

(Authority: 38 U.S.C. 3014A)

10. Section 21.7151 is amended by:

a. Revising the section heading.

b. Adding paragraph (c) immediately following the authority citation at the end of the section.

The revision and additions read as follows:

**§ 21.7151 Advance payment and accelerated payment certifications.**

* * * * *

(c) *Accelerated payments.* (1) A veteran or servicemember is eligible for an accelerated payment only if—

(i) The veteran or servicemember submits a signed statement to the school or to VA that states ''I request accelerated payment'';

(ii) The veteran or servicemember is enrolled in a course or program of education or training beginning on or after October 1, 2002;

(iii) The veteran is enrolled in an approved program as defined in § 21.4200 (aa);

(iv) The charged tuition and fees for the term, quarter, or semester (or entire program for those programs not offered on a term, quarter or semester basis) divided by the number of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200 percent of the monthly rate of basic educational assistance allowance otherwise payable under §§ 21.7136 or 21.7137, as applicable; and

(v) The veteran or servicemember requesting the accelerated payment has not received an advance payment under § 21.7140(a) for the same enrollment period.

(2) Except as provided in paragraph (c)(5) of this section, VA will make the accelerated payment directly to the educational institution, in the veteran's or servicemember's name, for delivery to the veteran or servicemember if:

(i) The educational institution submits the enrollment certification required under § 21.7152 before the actual start of the term, quarter or semester (or the start of the program for a program not offered on a term, quarter or semester basis); and

(ii) The educational institution at which the veteran or servicemember is accepted or enrolled agrees to—

(A) Provide for the safekeeping of the accelerated payment check before delivery to the veteran or servicemember;

(B) Deliver the payment to the veteran or servicemember no earlier than the start of the term, quarter or semester (or the start of the program if the program

is not offered on a term, quarter or semester basis);

(C) Certify the enrollment of the veteran or servicemember and the amount of tuition and fees therefor; and

(D) Certify the delivery of the accelerated payment to the veteran or servicemember.

(3) VA will make accelerated payments directly to the veteran or servicemember if the enrollment certification required under § 21.7152 is submitted on or after the first day of the enrollment period. VA will electronically deposit the accelerated payment in the veteran's or servicemember's bank account unless—

(i) The veteran or servicemember does not have a bank account; or

(ii) The veteran or servicemember objects to payment by electronic funds transfer.

(4) VA must make the accelerated payment no later than the last day of the month immediately following the month in which VA receives a certification from the educational institution regarding—

(i) The veteran's or servicemember's enrollment in the program of education; and

(ii) The amount of the charged tuition and fees for the term, quarter or semester (or for a program that is not offered on a term, quarter, or semester basis, the entire program).

(5) The Director of the VA field station of jurisdiction may direct that accelerated payments not be made in advance of the first day of the enrollment period in the case of veterans or servicemembers attending an educational institution that demonstrates its inability to discharge its responsibilities for accelerated payments. In such a case, the accelerated payment will be made directly to the veteran or servicemember as provided in paragraph (c)(3) of this section.

(Authority: 38 U.S.C. 3014A)

11. Section 21.7154 is amended by:

a. Revising the authority citation at the end of paragraph (a).

b. Adding paragraph (a)(4) immediately following the authority citation at the end of paragraph (a)(3); and by adding paragraph (d) immediately following the authority citation at the end of the section.

The revision and additions read as follows:

**§ 21.7154 Pursuit and absences.**

* * * * *

(a) * * *

(4) Has received an accelerated payment for the enrollment period.

(Authority: 38 U.S.C. 3014A, 3034, 3684)

* * * * *

(d) *Additional requirements for individuals receiving an accelerated payment.*

(1) When an individual receives an accelerated payment as provided in § 21.7151(c) and (d), he or she must certify the following information within 60 days of the end of the term, quarter or semester (or entire program when the program is not offered on a term, quarter, or semester basis) for which the accelerated payment was made:

(i) The course or program was successfully completed, or if the course was not completed—

(A) The date the veteran or servicemember last attended; and

(B) An explanation why the course was not completed;

(ii) If the veteran or servicemember increased or decreased his or her training time—

(A) The date the veteran or servicemember increased or decreased training time; and

(B) The number of credit/clock hours pursued before and after each such change in training time; and

(iii) The accelerated payment was received and used.

(2) VA will establish an overpayment equal to the amount of the accelerated payment if the required certifications in paragraph (c)(1) of this section are not timely received.

(3) VA will determine the amount of the overpayment of benefits for courses not completed in the following manner—

(i) For a veteran or servicemember who does not complete the full course, courses, or program for which the accelerated payment was made, and who does not substantiate mitigating circumstances for not completing, VA will establish an overpayment equal to the amount of the accelerated payment.

(ii) For a veteran or servicemember who does not complete the full course, courses, or program for which the accelerated payment was made, but who substantiates mitigating circumstances for not completing, VA will prorate the amount of the accelerated payment to which he or she is entitled based on the number of days from the beginning date of the enrollment period through the date of last attendance. VA will determine the prorated amount by dividing the accelerated payment amount by the number of days in the enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the date of last attendance. The result of this calculation will equal the amount the individual is due. The difference between the accelerated payment and the amount the individual is due will be established as an overpayment.

(Authority: 38 U.S.C. 3014A(g))

* * * * *

[FR Doc. 02–22439 Filed 9–10–02; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IN141–1b; FRL–7273–6]**

### Approval and Promulgation of Implementation Plans; Indiana; Volatile Organic Compound Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve, through a direct final procedure, a revision to the Indiana State Implementation Plan (SIP) to add Volatile Organic Compound (VOC) capture efficiency testing procedures to the existing VOC emission control regulations. The Indiana Department of Environmental Management (IDEM) submitted the adopted rule revision as a requested SIP revision on August 8, 2001. Control system capture efficiency requirements are components of several State VOC control rules, particularly the rules covering the control of VOC emissions from coating and graphic arts sources. The existing State VOC rules specify minimum capture efficiencies for some source categories, and some sources may seek VOC emission reduction credits through increases in capture efficiency.

In a separate action in the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's capture efficiency testing rule revision to the SIP through a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the preamble to the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives meaningful written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a

second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** Comments on this action must be received by October 11, 2002.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6057. E-mail address: *doty.edward@epa.gov*.

**Authority:** 42 U.S.C. 4201–7601q.

Dated: August 23, 2002.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02–22980 Filed 9–10–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MN69–7294b; FRL–7265–1]**

### Approval and Promulgation of Implementation Plans; Minnesota

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Metropolitan Council Environmental Service's (MCES) Metropolitan Wastewater Treatment Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. The Minnesota Pollution Control Agency requested in its June 1, 2001 submittal that EPA approve into the Minnesota PM SIP certain portions of the federally enforceable state operating permit for the MCES Metropolitan Wastewater Treatment Plant and remove the MCES Administrative Order from the state PM SIP. The request is approvable because it satisfies the requirements of the Clean Air Act. Specifically, EPA is proposing to approve into the SIP only those portions of the permit cited as ''Title I Condition: State Implementation Plan for $PM_{10}$.'' In addition, EPA is proposing to remove the MCES Metropolitan Wastewater Treatment Plant Administrative Order from the state PM SIP. In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If adverse comments are received, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before October 11, 2002.

**ADDRESSES:** Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: August 13, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02–22978 Filed 9–10–02; 8:45 am]

**BILLING CODE 6560–50–P**

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1604

### Outside Practice of Law

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Legal Services Corporation proposes to amend its regulation relating to the outside practice of law by full-time legal services attorneys. The rule would be substantively restructured and revised to clarify the scope of the restrictions on outside practice so that program attorneys would not face undue restrictions in complying with their professional obligations. The proposed rule would also amend several definitions and allow for the separate treatment of court appointments.

**DATES:** Comments should be received on or before November 12, 2002.

**ADDRESSES:** Comments must be submitted in writing and may be sent by regular mail, or may be transmitted by fax or email to: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002–4250; 202/336–8952 (fax); *mcondray@lsc.gov* (email).

**FOR FURTHER INFORMATION CONTACT:** Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002–4250; (202) 336–8817 (phone); 202/336–8952 (fax); *mcondray@lsc.gov* (email).

**SUPPLEMENTARY INFORMATION:** On January 17, 1995, the Legal Services Corporation (LSC or the Corporation) published for public comment proposed revisions to 45 CFR part 1604, LSC's regulation on the outside practice of law. 60 FR 3367. Although LSC received public comment on the proposed revisions, no final action was ever taken on the rule. Many of the issues outstanding in 1995 remain important today and LSC is interested in adopting final revisions to part 1604. LSC is not, however, issuing a final rule because several of the prior proposed revisions may not be consistent with statutory changes imposed by Congress in the intervening years. Moreover, there may be other issues with the regulation which have arisen in the past seven years which are not adequately addressed by the prior proposed rule without further consideration. Accordingly, LSC is re-issuing a Notice of Proposed Rulemaking (NPRM). LSC

specifically invites comment on the impact of the restriction on claiming and accepting attorneys' fees, other restrictions stemming from the 1996 appropriations act, program integrity requirements, and time-keeping requirements on the proposals contained herein and the general issue of outside practice of law by LSC recipient attorneys.

**Section-by-Section Analysis**

*Section 1604.1 Purpose*

This section sets out the framework for other changes that appear in this NPRM. LSC proposes to add language to authorize a recipient to adopt written policies to permit its program attorneys to engage in *pro bono* legal assistance and to comply with their obligations as members of the Bar and officers of the court. The proposed rule recognizes, however, that those demands must not interfere with the attorneys' overriding responsibility to serve the program's clients. LSC further proposes to clarify that this part should not be construed to permit recipients to unduly restrict legal services attorneys from engaging in those activities. The use of the word ''unduly'' acknowledges that there may be some restrictions imposed by the LSC Act, LSC appropriations or other legislation and/or LSC regulations, or by recipients that are necessary to comply with applicable law or accomplish the overriding goals of the LSC Act.

*Section 1604.2 Definitions*

Section 1604.2(a) ''Full-time Attorney''

LSC proposes to delete the definition of ''attorney,'' because it is inconsistent with the definition of ''attorney'' in part 1600 of the Corporation's regulations, Definitions. Instead, LSC proposes to substitute a definition of ''full-time attorney'' that incorporates the definition of ''attorney'' in Part 1600. Under the proposed rule, a ''full-time attorney'' would be defined as an attorney who is a full-time employee of a recipient. LSC has not proposed a separate definition for the term ''full-time,'' preferring to leave the decision as to what constitutes ''full-time'' to the recipient's own personnel and outside practice policies and to any appropriate statutory definitions found elsewhere.

Section 1604.2(b) ''Outside Practice of Law''

LSC proposes to amend this definition to explain what outside practice is, rather than what it is not. The regulation is intended to and currently applies only to the outside practice of law by recipients' employees and not to other outside activities by recipients' employees that do not constitute the outside practice of law. LSC believes that this amendment will clarify this point and aid in the comprehension and usability of the regulation.

LSC further proposes to substitute the words ''receiving that'' for ''entitled to receive.'' This revision would make it clear that an attorney could represent a client in an outside practice case who is eligible for representation from the recipient even if the client is also receiving legal assistance from the recipient, as long as the recipient is representing the client on a different matter.

LSC notes that this definition is not intended to include work done by legal services attorneys when serving in the military reserves as JAG Corps attorneys. Although LSC has chosen not to include language on this issue in the rule, it intends to continue the policy established in prior General Counsel opinions, which have consistently found that an attorney is not engaged in the outside practice of law while serving as a JAG Corps reserve officer. Comments are solicited as to whether the rule should include language expressly stating this policy.

Section 1604.2(c) ''Court Appointment''

LSC proposes to add a definition for the term ''court appointment.'' The proposed definition, ''an appointment in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice,'' is based on the language relating to court appointments currently found in sections 1604.4 and 1604.5 of the regulation, rather than the following language in § 1006(d)(6) of the Act:

Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

The proposed definition on appointments is broader than the statutory one, which applies only to uncompensated appointments; but LSC believes it is appropriate because it is more protective of program resources.

*Section 1604.3 General Policy*

LSC proposes to expand and amend this section to require recipients to adopt written policies relating to the outside practice of law, rather than permitting programs to determine on an ad hoc basis, whether outside practice is to be permitted in a particular instance (as is the case under the existing rule). LSC anticipates, however, that such policies would give the recipient's executive director substantial discretion in making outside practice of law determinations.

Under the proposed rule, the required policies would be permitted to permit the outside practice of law by full-time attorneys only to the extent permitted by Part 1604, but would be permitted to contain additional limitations not imposed by Part 1604. This provision is intended to address the concern that, in revising this regulation to take account of the evolving obligations of all attorneys to do *pro bono* work, recipients would be subject to pressures from their attorneys to do outside practice that was not absolutely required by professional obligations and that interfered with the program's ability to serve the clients it is funded to serve. This concern is especially important in view of the fact that LSC recipients lack adequate resources to serve more than a small fraction of the eligible persons who have real legal needs. LSC believes that the proposed language will ensure that recipients can adopt policies that balance the demands of the profession, the attorney's desire to do outside work, and the needs of the community served by the program.

The restrictions of this part, as currently applicable and as proposed, apply only to full-time attorneys. Although LSC does not propose to address the outside practice of law by part-time attorneys, the regulation would expressly provide that recipients' policies may include restrictions on outside practice by part-time attorneys.

*Section 1604.4 Permissible Outside Practice*

LSC proposes to combine and revise the provisions currently in sections 1604.4, Compensated Outside Practice, and 1604.5, Uncompensated Outside Practice, into one section retitled Permissible Outside Practice.

Under the current structure of the regulation, the general rule on the outside practice of law is stated in the negative; that is, the outside practice of law is prohibited except as provided. LSC proposes to, instead, state the rule in the affirmative, providing guidance on the terms under which the outside practice of law may be approved. The proposed revision also refers to a full-time attorney's responsibilities to clients, rather than simply ''full-time responsibilities.'' LSC intends an executive director to make a case-by-case determination as to whether involvement in a specific case or matter would be consistent with a full-time

attorney's responsibilities to the program's clients. A full-time attorney's responsibilities to program clients should be determined by reference to the program's definition of ''full-time,'' not by reference to a specific attorney's working habits. Thus, an attorney in the habit of working substantial amounts of overtime on program activities should not be penalized for deciding to allot some of that attorney's own time to an outside practice case rather than to program activities. In addition, an attorney should be permitted to take reasonable amounts of leave to engage in permitted outside practice.

LSC proposes to include language intended to address a concern that, if a program attorney handled outside practice cases that were controversial or dealt with areas prohibited to the recipient (*e.g.*, abortion litigation), the employing recipient would be seen as handling the cases and viewed as using outside practice as a way to get around other restrictions. The proposed language, which is similar to language in the regulation on prohibited political activities, would require the attorney to make it clear that this was not a program case, and to do whatever was necessary to ensure that it not be perceived as such. In practical terms, the restriction might require the attorney to use a home address or post office box for correspondence, or a home telephone number or direct dial number that would not go through the recipient's switchboard or voice mail greeting, or other similar processes to ensure that the recipient was not identified as the sponsor of the representation. The proposed restriction on identification would not apply to court appointments or to cases which are undertaken to fulfill a mandatory *pro bono* obligation, which are treated separately in the regulation.

Proposed paragraph (c) sets forth the five specific situations in which the outside practice of law would be permitted: a newly employed closing cases from a previous law practice; when the attorney is acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; when the attorney is acting on behalf of a religious, community, or charitable group; when the attorney is participating in a *pro bono* or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group; or when the attorney is satisfying an obligation to participate in pro *bono work* under applicable State or local rules or practices of professional responsibility.

With respect to newly employed attorneys, proposed paragraph (c)(1) is intended to make explicit what has always been implicit under the current part 1604, *i.e.*, that work for a client from a previous practice should not be done on program time.

LSC proposes to expressly permit an attorney to represent another member of the recipient's staff without having to prove that the individual is a close friend. LSC also proposes to add language to make it clear that the attorney may represent him or herself.

LSC also proposes to amend the current provision permitting representation of religious, community or charitable groups, to permit the representation of an individual client who has been referred to him or her by such a group through a formal *pro bono* or referral program that does regular referrals. For example, under the proposed rule it would be permissible for an attorney to represent a client who has been referred by the ACLU, NAACP or Catholic Charities. Prior General Counsel opinions have permitted outside practice both on behalf of organizations as well as on behalf of individuals referred by those organizations and LSC believes that it is appropriate to incorporate these interpretations into the rule.

LSC proposes to add a paragraph, (c)(5), to make it clear that legal services attorneys should be permitted to act in the same way as other attorneys with respect to *pro bono* work that is undertaken to meet professional obligations, whether the obligation is aspirational, as under state rules that are modeled on Rule 6.1 of the American Bar Association's (''ABA'') Model Rules of Professional Conduct, or mandatory, as is now the case in a few local jurisdictions across the country.

*Section 1604.51 Compensation*

The 1995 NPRM contained a new proposed provision on compensation, providing, among other things, that a recipient would be allowed to permit an attorney to accept attorneys' fees for certain cases, as long as the fees would be remitted to the recipient. While this proposed provision was clearly permissible at the time it was proposed, LSC is concerned that it is no longer consistent with the current statutory and regulatory restrictions on the claiming, collecting and retention of attorney's fees. In order to solicit comment on this issue, LSC is reprinting the original text of the preamble and the proposed regulatory text as they appeared in 1995:

Although the statute prohibits all compensated outside practice, the exception in proposed paragraph (a) for work on cases held over from a previous private practice is justified under the general principle that neither LSC nor the recipient can interfere with an attorney's professional responsibilities to a client. Since the representation was undertaken before the lawyer became a legal services attorney, fairness dictates that the attorney should be permitted to take fees for completion of the work.

Paragraph (b) proposes that a recipient may permit an attorney to accept attorneys' fees for § 1604.4(c)(2)–(5) cases, as long as the fees are remitted to the recipient. Several project directors have questioned why an attorney cannot keep fees awarded for outside practice approved by the recipient. The answer is simple. The LSC Act provision on outside practice, § 1007(a)(4), prohibits all compensated outside practice, subject to overriding considerations of professional responsibility, but permits uncompensated outside practice under LSC guidelines.

What this section does, in essence, is to define as ''uncompensated outside practice'' any representation where the attorney does not seek or receive personal compensation for the representation. Thus, the attorney can perform work *pro bono*, without any fee, but can also undertake work where fees could potentially be awarded, as long as the attorney does not keep any such fee but remits it to the recipient.

Proposed § 1604.5(b)(2) provides that attorneys' fees shall be remitted to a recipient when allowed by applicable rules of professional responsibility. The Committee added the reference to the rules of professional responsibility because of a concern that restrictions on fee-splitting could, in some states, prohibit an attorney from turning over attorneys' fees from an outside practice case to the recipient. Recipients would need to consult the status of the law in their state. The Committee understands that, in general, fee-splitting between a staff attorney and a legal services organization such as a recipient is not restricted under state or local rules, but requests comments on the issue.

The Committee also raised the issue of how such attorneys' fees would be treated for tax purposes. Because the Corporation does not generally regulate the tax obligations of recipients' employees, this issue does not appear to be one that should be addressed by regulation. Rather, it is a matter of local concern which a recipient may want to consider when drafting its policies on outside practice.

The LSC Act and LSC's regulation on fee-generating cases, 45 CFR part 1609,

have consistently been interpreted as prohibiting recipients from taking attorneys' fees from a client's recovery of damages or retroactive statutory benefits. That restriction is accordingly incorporated into this provision of the rule.

Paragraph (b)(3) is intended to make it clear that if a recipient receives attorneys' fees from one of its attorneys' outside practice cases, it could reimburse the attorney, the client, the *pro bono* or legal referral organization, or anyone else who had contributed resources to cover costs or out-of-pocket expenses to support the representation.

*Section 1604.6 Use of Recipient Resources*

For the five types of outside practice cases described in proposed § 1604.4(c)(1)–(5), this proposed provision proposes would allow attorneys to use some recipient resources if necessary to carry out the attorney's professional responsibilities. However, it would be up to the local recipient to establish policies that would determine whether its attorneys could use recipient resources for a specific case to the extent allowed by this rule.

More specifically, LSC proposes, for newly employed attorneys closing old cases, that a recipient may allow its attorneys to use only a *de minimis* amount of program resources, including time. Under a ''*de minimis*'' standard, an attorney could make a brief phone call or use the fax machine during working hours, but would have to take leave for court appearances. For other cases, LSC proposes a somewhat less strict standard. In those situations, a recipient would be permitted to allow its attorneys to use a limited amount of program resources, including time, for those cases. Under the ''limited'' standard, in addition to whatever an attorney could do under the *de minimis* standard, the attorney could, for example, make a brief court appearance during normal working hours without taking leave. An attorney could also be permitted to use a program computer or typewriter to prepare pleadings or other documents. However, if the attorney participated in a long trial or extended negotiation, he or she would normally be required to take leave to do so. LSC also proposes that if a recipient has a procedure to identify copying, postage and similar costs, and the attorney reimbursed the recipient, the use of those resources would also be permissible under either standard. This position is consistent with the longstanding LSC policy. Finally, language is included that would allow an attorney to use a recipient's resources only when the recipient's LSC or private funds are not used for any activities for which the use of such funds is prohibited.

LSC seeks comments on the appropriateness of using recipient resources for any outside practice, and whether or not the distinction between ''*de minimis*'' and ''limited'' use of resources makes sense and is workable. In particular, LSC invites comment on the impact the 1996 restrictions, LSC's program integrity rules at 45 CFR Part 1610 and LSC's timekeeping rules at 45 CFR part 1635 on the proposals set forth herein.

*Section 1604.7 Court Appointments*

This proposed section would treat court appointments and mandatory *pro bono* representation separately from outside practice, because there are substantially different considerations for court appointments and mandatory *pro bono* than there are for *pro bono* or other outside cases that an attorney undertakes on a strictly voluntary basis.

Proposed paragraph (a)(1) simply restates a general rule that applies to court appointments as well as to outside practice under the current part 1604 regarding the permissibility of a full-time attorney accepting a court appointment to provide representation. Proposed paragraph (a)(2) is based on § 1006(d)(6) of the LSC Act. It is intended to protect recipients from efforts that have been made by some judges to appoint legal services attorneys to handle court appointments in lieu of private attorneys, and/or to refuse to provide compensation for appointed cases handled by legal services attorneys, when private attorneys appointed to similar cases would have been paid. Proposed paragraph (a)(3) is also a requirement carried over from the current part 1604, although it makes more sense under this proposal, since the proposed rule makes it clear that legal services attorneys can handle court appointments on program time.

LSC proposes to add a new paragraph providing that, if an attorney is mandated to engage in *pro bono* representation by applicable state or local court rules or practices or by rules of professional responsibility, such representation shall be treated in the same manner as court appointments for the purposes of paragraphs (a)(1), (a)(3), (b) and (c) of this section. While LSC recognizes that the ABA Model Rules do not currently mandate *pro bono* services for any attorney, LSC also recognizes that mandatory *pro bono* is under active consideration in a number of states and is a reality in certain local jurisdictions. It is the intent of LSC that legal services attorneys be permitted to undertake outside representation to fulfill any mandatory professional obligations to provide *pro bono* assistance to which they are now or may be subject in the future.

Finally, this section would allow a full-time attorney to use program resources to undertake representation required by court appointment or mandatory *pro bono,* and would allow the attorney to identify the recipient as his or her employer when engaged in such representation.

**List of Subjects in 45 CFR Part 1604**

Legal services.

For the reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1604 to read as follows:

## PART 1604—OUTSIDE PRACTICE OF LAW

Sec.

1604.1 Purpose.
1604.2 Definitions.
1604.3 General policy.
1604.4 Permissible outside practice.
1604.5 Compensation.
1604.6 Use of recipient resources.
1604.7 Court appointments.

**Authority:** 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

### § 1604.1 Purpose.

This part is designed to authorize recipients to adopt written policies that permit legal services attorneys employed by recipients to engage in *pro bono* legal assistance and to comply with the reasonable demands made upon them as members of the Bar and as officers of the Court, as long as those demands do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act. Nothing in this part shall be construed to permit recipients to unduly restrict the ability of any attorney to engage in such activities.

### § 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated.

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice.

**§ 1604.3 General policy.**

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

(c) A recipient may also adopt policies that apply to outside practice by attorneys employed part-time by the recipient, but are not required to do so under the provisions of this part.

**§ 1604.4 Permissible outside practice.**

A recipient may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a *pro bono* or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group; or

(5) Satisfying an obligation to participate in *pro bono* work under applicable State or local rules or practices of professional responsibility.

**§ 1604.5 Compensation.**

(a) A recipient may permit a full-time attorney to seek and receive personal compensation for work performed pursuant to § 1604.4(c)(1).

(b) A recipient may permit a full-time attorney to seek and accept a fee paid by, awarded or approved by a court or administrative body or included in a settlement if—

(1) The attorney is acting pursuant to § 1604.4(c)(2) through (5);

(2) Subject to the applicable law and rules of professional responsibility, any such fees paid to the attorney are remitted to the recipient; and

(3) The fee is not deducted from the individual client's recovery of compensatory damages or retroactive benefits.

(c) From the fees remitted to the recipient pursuant to paragraph (b)(2) of this section, the recipient may reimburse any individual or organization for actual costs or out-of-pocket expenses incurred in the representation.

**§ 1604.6 Use of recipient resources.**

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to § 1604.4(c)(2) through (5), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

**§ 1604.7 Court appointments.**

(a) A recipient may permit a full-time attorney to accept a court appointment if the director of the recipient determines that:

(1) Such an appointment or case is consistent with the attorney's responsibilities to the recipient's clients;

(2) The appointment was made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A full-time attorney may identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide *pro bono* legal assistance in addition to the attorneys' work on behalf of the recipient's clients, such legal assistance shall be treated in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section.

**Victor M. Fortuno,**

*Vice President for Legal Affairs and General Counsel.*

[FR Doc. 02–23089 Filed 9–10–02; 8:45 am]

**BILLING CODE 7050–01–P**

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR Part 1002

**[STB Ex Parte No. 542 (Sub–No. 4)]**

## Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2002 New Fees

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Board proposes to: establish 22 fees for services for which no fee currently is assessed; raise the below-cost fee that currently applies to six fee items; update fees for nine existing fee items; and amend, renumber and delete certain rules to conform to existing and proposed fee collection policies and processes. The Board proposes these changes under the Independent Offices Appropriations Act and OMB Circular A–25, User Fees. We request comments on these proposals.

**DATES:** Comments are due on October 11, 2002.

**ADDRESSES:** Send comments (an original plus 10 copies) referring to *Ex Parte* No. 542 (Sub-No. 4) to: Surface Transportation Board, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Anne K. Quinlan (202) 565–1727 or David T. Groves (202) 565–1551. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877–8339.)

**SUPPLEMENTARY INFORMATION:** The Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), is the basis for user fees charged by Federal agencies. Under the IOAA, agencies are

required to ensure that ''* * * each service or thing of value provided by an agency * * * to a person * * * be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a). Office of Management and Budget (OMB) Circular No. A–25 User Fees, revised July 8, 1993 (Circular A–25), establishes federal policy regarding fees assessed for government services pursuant to the IOAA. Circular A–25 states that the general policy of the federal government is that ''[a] user charge will be assessed against each identifiable recipient for special benefits derived from federal activities beyond those received by the general public.'' Circular A–25, section 6.

Pursuant to these directives, the Board is proposing to establish 22 new fees to cover services and activities that have not previously been included in the Board's user fee regulations, including a catch-all ''basic'' fee for STB adjudicatory services not already covered by a specific fee. Specifically, the Board proposes to establish new fees to cover the following services, which confer special benefits on identifiable recipients. Under section 1002.1, we propose to charge a fee for courier services involved in retrieval of off-site agency records [rule 1002.1(e)]. Under section 1002.2, we propose to charge fees to address: petitions for exemption, and petitions to revoke exemptions, under 49 U.S.C. 13541 [fee items (f)(2)(ii) and (iii)]; requests for dispute determinations under 49 U.S.C. 10901(d) [fee item (f)(12)(iv)]; requests to extend trail use negotiation periods [fee item (f)(27)(ii)]; requests for waiver or clarification of Board regulations in major rail finance transactions under 49 U.S.C. 11323, and in other cases not otherwise covered [fee items (f)(38)(vii)–(41)(vii) and (f)(65), respectively]; formal complaints by small shippers in rail maximum rate cases [fee item (f)(56)(ii)]; requests for orders compelling a carrier to file a common carrier rate [fee item (f)(56)(v)]; appeals from procedural and discovery rulings [fee items (f)(61)(ii) and (f)(64)(iii), respectively]; requests for expedited relief under 49 CFR parts 1146 and 1147 [fee items (f)(63)(i) and (ii), respectively]; motions to compel discovery [fee items (f)(64)(i) and (ii)]; requests to use voting trust agreements [fee items (f)(86)(ii) and (iii)]; and a catch-all, basic fee for STB adjudicatory services not otherwise covered [fee item (f)(88)].

The Board currently assesses a below-full cost fee of $150 (comparable to the fee for filing a matter with a court system) for six fee items, specifically: trail use requests [fee item (f)(27)]; Amtrak conveyance proceedings [fee item (f)(47)]; Amtrak compensation proceedings [fee item (f)(48)]; labor arbitration proceedings [fee item (f)(60)]; appeals to Board decisions and petitions to revoke exemptions [fee item (f)(61)]; and motor carrier undercharge proceedings [fee item (f)(62)]. We propose to raise this fee to the basic fee level of $200 to better reflect Board costs.

Cost data for the above proposed fees are based on contemporaneous time and motion studies for some fee items, based on after-the-fact interviews with staff involved in the proceedings for other fee items, and, for a few fee items, based on what we believe are conservative projections by informed staff.

Finally, the Board proposes to amend several fee regulations to accomplish the following: (1) Reflect current business practices with respect to fee processing; (2) permit use of the billing account system to collect fees for documents filed for recording under 49 U.S.C. 11301; (3) change the process for handling fee waiver requests; (4) update two fees previously overlooked; (5) revise three fee items; and (6) delete a few obsolete regulations. The proposed regulations are set forth in the Appendix.

Pursuant to 5 U.S.C. 605(b) we certify that the proposed rules will not have a significant economic impact on a substantial number of small entities. The economic impact of the proposed fees will not be significant because the Board fee would represent only a small portion of the overall cost of the related endeavor. Moreover, few small entities avail themselves of the services to which the proposed fees apply. Finally, the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's website at *http://www.stb.dot.gov;* call the Board's Information Officer at (202) 565–1674; or pick up in person from the Information Officer, Suite 100, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. To purchase a copy of the decision, write to, call, email, or pick up in person from Dā-2-Dā Legal Copy Service, Room 405, 1925 K Street, NW., Washington, DC 20006, (202) 293–7776, *da2dalegal@earthlink.net.* [Assistance for the hearing impaired is available through Federal Information Relay Services (FIRS): (800) 877–8339.]

**List of Subjects in 49 CFR Part 1002**

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 28, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend 49 CFR part 1002 as follows:

## PART 1002—FEES

1. The authority citation for part 1002 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A) and 553, 31 U.S.C. 9701, and 49 U.S.C. 721.

Section 1002.1(g)(11) also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

2. Amend section 1002.1 as follows:

a. Redesignate paragraphs (e) through (h) as paragraphs (f) through (i);

b. Remove newly redesignated paragraph (f)(2) and designate newly redesignated paragraph (f)(3) as paragraph (f)(2);

c. Add new paragraph (e) and revise newly redesignated paragraphs (g)(7), (g)(8) and (h) to read as follows:

**§ 1002.1 Fees for records search, review, copying, certification, and related services.**

* * * * *

(e) Fees for courier services to transport agency records to provide on-site access to agency records stored off-site will be set at the rates set forth in the Board's agreement with its courier service provider. Rate information is available on the Board's website (*http://www.stb.dot.gov*), or can be obtained from the Board's Information Officer, Suite 100, Surface Transportation Board, Washington, DC 20423–0001.

* * * * *

(g) * * *

(7) The fee for photocopies shall be $1.00 per letter or legal size exposure with a minimum charge of $5.00.

(8) The fees for ADP data are set forth in paragraph (f) of this section.

* * * * *

(h) Fees for services described in paragraphs (a) through (g) of this section may be charged to accounts established in accordance with 49 CFR 1002.2(a)(2), or paid for by check, money order, currency, or credit card in accordance with 49 CFR 1002.2(a)(3).

* * * * *

3. Amend section 1002.2 as follows:

a. From paragraph (g)(1)(ii) remove ''$6.00'' and in its place add ''$20.00'';

b. Remove paragraph (f)(78)(ii) and redesignate paragraph (f)(78)(i) as paragraph (f)(78);

c. Revise the last sentence of paragraph (a)(1), paragraph (a)(2), the first sentence of paragraph (b), and paragraphs (f)(2), (f)(27), (f)(47), (f)(48), (f)(56), (f)(60) through (f)(62), (f)(86), (f)(98), (f)(100) and (f)(101).

d. Add paragraphs (f)(12)(iv), (f)(38)(vii), (f)(39)(vii), (f)(40)(vii), (f)(41)(vii), (f)(63) through (f)(65), and (f)(88).

The added and revised text is set forth as follows:

**§ 1002.2 Filing fees.**

(a) * * *

(1) * * * Filing fees for tariffs, including schedules, and contract summaries, including supplements (Item 78), and filing fees for documents submitted for recording (Item 83) may be charged to accounts established by the Board in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* Form STB–1032 must be submitted to the Board's Section of Financial Services to establish STB billing accounts for filing fees for tariffs and for documents submitted for recording.

* * * * *

(b) Any filing, other than a tariff filing, that is not accompanied by the appropriate filing fee, payment via credit card or STB billing account, or a request for waiver of the fee, is deficient. * * *

* * * * *

(f) *Schedule of filing fees.*

| Type of proceeding | Fee |
|---|---|
| * * * * * * * | |
| (2)(i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303 | 1,500 |
| (ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered | 2,300 |
| (iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d) | 1,900 |
| * * * * * * * | |
| (12) * * * | |
| (iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10901(d) | 10,100 |
| * * * * * * * | |
| (27)(i) A request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d) | 200 |
| (ii) A request to extend the period for negotiation of a trail use agreement | 300 |
| * * * * * * * | |
| (38) * * * | |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) | 3,800 |
| (39) * * * | |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) | 3,800 |
| (40) * * * | |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) | 3,800 |
| (41) * * * | |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) | 3,800 |
| * * * * * * * | |
| (47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562 | 200 |
| (48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act | 200 |
| * * * * * * * | |
| (56) A formal complaint alleging unlawful rates or practices of carriers: | |
| (i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) | 61,400 |
| (ii) A formal complaint involving rail maximum rates filed by a small shipper | 150 |
| (iii) All other formal complaints (except competitive access complaints) | 6,000 |
| (iv) Competitive access complaints | 150 |
| (v) A request for an order compelling a carrier to file a common carrier rate | 200 |
| * * * * * * * | |
| (60) A labor arbitration proceeding | 200 |
| (61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d) | 200 |
| (ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings | 250 |
| (62) Motor carrier undercharge proceeding | 200 |
| (63) Expedited relief for service inadequacies: | |
| (i) A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency | 200 |
| (ii) A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy | 200 |
| (64) Discovery: | |
| (i) A motion to compel discovery in formal complaint proceedings under 49 U.S.C. 10704(c)(1) | 2,300 |
| (ii) A motion to compel discovery in all other proceedings | 950 |
| (iii) An appeal of discovery ruling | 2,100 |
| (65) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a) | 400 |

| Type of proceeding | Fee |
|---|---|
| * * * * * * * | |
| (86) Informal opinions: | |
| (i) A request for an informal opinion not otherwise covered | 1,100 |
| (ii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) in connection with a major financial proceeding as defined at 49 CFR 1180.2(a) | 3,500 |
| (iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered | 350 |
| * * * * * * * | |
| (88) Basic fee for STB adjudicatory services not otherwise covered | 200 |
| * * * * * * * | |
| (98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Board or State proceeding that: | |
| (i) Does not require a FEDERAL REGISTER notice: | |
| (A) Set cost portion | 100 |
| (B) Sliding cost portion | [1] 32 |
| (ii) Does require a FEDERAL REGISTER notice: | |
| (a) Set cost portion | 300 |
| (b) Sliding cost portion | 32 |
| * * * * * * * | |
| (100) Uniform Railroad Costing System (URCS) software and information: | |
| (i) Initial PC version URCS Phase III software program and manual | 50 |
| (ii) Updated URCS PC version Phase III cost file—per year | 25 |
| (iii) Public requests for *Source Codes* to the PC version URCS Phase III | 100 |
| (101) Carload Waybill Sample data or recordable disk (R–CD): | |
| (i) Requests for Public Use File on R–CD—per year | 250 |
| (ii) Waybill—Surface Transportation Board or State proceedings on R–CD—per year | 500 |
| (iii) User Guide for latest available Carload Waybill Sample | 50 |
| (iv) Specialized Programming for Waybill requests to the Board | [2] 76 |
| * * * * * * * | |

[1] Per party.
[2] Per hour.

[FR Doc. 02–22918 Filed 9–10–02; 8:45 am]
BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR 1109 and 1114

**[STB Ex Parte No. 638]**

## Procedures To Expedite Resolution of Rate Challenges To Be Considered Under the Stand-Alone Cost Methodology

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Board proposes to amend its regulations at parts 1109 and 1114 to expedite the resolution of rate challenges considered under the stand-alone cost (SAC) methodology. We are proposing to change both our discovery standard and the way we handle discovery disputes in rate cases considered under the SAC methodology. We are also proposing to institute a requirement that a shipper seeking rate relief from a railroad in such cases engage in non-binding mediation of its dispute with the railroad prior to filing its complaint with us. We request comments on these proposals.

**DATES:** Comments are due October 11, 2002, with reply comments due 20 days thereafter.

**ADDRESSES:** Send comments (an original plus 10 copies) referring to *Ex Parte* No. 638 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Stilling (202) 565–1567. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at *www.stb.dot.gov;* call the Board's Information Officer at (202) 565–1674; or pick up in person from the Information Officer, Suite 100, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. To purchase a copy of the decision, write to, call, e-mail, or pick up in person from Dā-2-Dā Legal Copy Service, Room 405, 1925 K Street, NW., Washington, DC 20006, (202) 293–7776, *da2dalegal@earthlink.net.* [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We tentatively conclude that our action will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

### List of Subjects in 49 CFR Parts 1109 and 1114

Practice and procedure, Railroads.

Decided: September 3, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend 49 CFR parts 1109 and 1114 as follows:

## PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

Add new § 1109.4, *Mandatory Mediation in Rate Cases To Be*

*Considered Under the Stand-Alone Cost Methodology,* as follows:

**§ 1109.4 Mandatory Mediation in Rate Cases To Be Considered Under the Stand-Alone Cost Methodology.**

(a) A shipper seeking rate relief from a railroad or railroads in a case involving the stand-alone cost methodology must engage in non-binding mediation of its dispute with the railroad prior to filing a formal complaint under part 1111.

(b) The shipper must file a request for mediation with the Board, indicating its intent to file a complaint alleging a violation of 49 U.S.C. 10701 and 10704. This request will engage the Board's processes and serve to fix the relevant limitations period for any relief for rates or charges already paid, just as would the filing of a formal complaint. The request for mediation must specify the relevant facts and nature of the dispute in sufficient detail to frame the issues requiring mediation. The shipper must serve a copy of its request on the defendant railroad as specified in § 1104.12. A mediator will be assigned by the Board within 5 business days of filing of the shipper's request.

(c) The mediator will work with the parties to try to reach a settlement of all or some of their dispute or to narrow the issues in dispute, and reach stipulations that may be incorporated into any subsequent adjudication before the Board if mediation does not fully resolve the dispute.

(d) If the parties reach a settlement, the mediator may assist in preparing a settlement agreement. If the parties fail to reach a settlement, the shipper may proceed to file a formal complaint with the Board. If the parties reach a partial settlement, the shipper may proceed to file a formal complaint with the Board on the remaining issues, which will be handled under the Board's existing rules.

(e) Within 5 business days of the assignment to mediate, the mediator shall contact the parties to discuss ground rules and the time and location of any meeting. The precise procedure used to facilitate the mediation is flexible and is within the mediator's discretion.

(f) The entire mediation process shall be private and confidential, and shall be completed within 60 days of the filing of the shipper's request. If the mediation process cannot be competed in 60 days, a request for an extension may be filed by the mediator, after consultation with the parties, prior to the end of the 60 day period, and may be considered by the Board.

## PART 1114—EVIDENCE; DISCOVERY

1. Amend § 1114.21 as follows:

a. Revise the first sentence of paragraph (a)(1);

b. Redesignate current paragraphs (b)–(f) as (c)–(g);

c. Add new paragraph (b).

The revised and added text reads as follows:

**§ 1114.21 Applicability; general provisions.**

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding or a rate case to be considered under the stand-alone cost methodology. * * *

(b) *Discovery in stand-alone cost rate cases.* In a rate case to be considered under the stand-alone cost methodology, parties may obtain discovery only of information for which the party seeking discovery has a clear, demonstrable need in order to make its case and which is not readily available to it through means other than discovery.

2. Add to § 1114.31, new paragraphs (a)(1)–(4) as follows:

**§ 1114.31 Failure to respond to discovery.**

(a) * * *

(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology, the time for filing a reply to a motion to compel is governed by § 1104.13.

(2) *Reply to motion to compel in stand-alone cost rate cases.* A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology.

(3) *Conference with parties.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology, Board staff may convene an informal conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost rate cases.* Within 5 business days after a conference with the parties convened pursuant to subparagraph (a)(3) of this section, the Secretary will issue a summary ruling on the motion to compel discovery in a stand-alone cost rate case. If no conference is convened, the Secretary will issue this summary ruling within 10 business days after the filing of the reply to the motion to compel.

* * * * *

[FR Doc. 02–22808 Filed 9–9–02; 11:54 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AI60**

## Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of Black-footed Ferrets in South-central South Dakota

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), in cooperation with the Rosebud Sioux Tribe (Tribe), the U.S. Forest Service, and the U.S. Bureau of Indian Affairs propose to reintroduce endangered black-footed ferrets (*Mustela nigripes*) into south-central South Dakota on the Rosebud Sioux Reservation. The purposes of this proposed reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. If this rule is finalized by October 2002, we will release surplus captive-raised and/or wild-born black-footed ferrets in the fall of 2002, and release additional animals annually for several years thereafter until a self-sustaining population is established. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Rosebud Sioux Reservation black-footed ferret population would be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). We would manage this population under provisions of this proposed special rule. A draft environmental assessment has been prepared on this proposed action.

**DATES:** Comments from all parties on both the proposed rule and the draft environmental assessment must be received by: October 11, 2002. A public hearing has been scheduled for September 26, 2002 from 4:00 p.m. until 6:00 p.m. in the Commons Area at the Multi-Cultural Center in Mission, South Dakota. An informational meeting/open house will be held prior to this meeting

from 10:00 a.m. until 4:00 p.m. at the same location.

**ADDRESSES:** Send your comments on this proposed rule or the draft environmental assessment to Pete Gober, Field Supervisor, or Scott Larson, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501, or telephone (605) 224–8693. Comments received will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling (605) 224–8693.

**FOR FURTHER INFORMATION CONTACT:** Mike Lockhart at (307) 721–8805.

**SUPPLEMENTARY INFORMATION:**

## Background

1. *Legislative:* Congress made significant changes to the Act in 1982 with addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as ''experimental.'' Based on the best available information, we must determine whether an experimental population is ''essential'' or ''nonessential'' to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies consult with the Service before authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify its critical habitats. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individuals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, the donor ferret population is a captive-bred population, which was propagated with the intention of re-establishing wild populations to achieve recovery goals. In addition, wild progeny from other NEP areas (and which also originated from captive sources) may be directly translocated to the proposed reintroduction site.

2. *Biological:* The black-footed ferret is a member of the Mustelid or weasel family; has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length; and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, extends over 12 western States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson *et al.* 1969, updated 1974; Forrest *et al.* 1985). The range of the ferret coincides with that of prairie dogs (Anderson *et al.* 1986), and ferrets with young have been documented only in the vicinity of active prairie dog colonies. Historically, black-footed ferrets have been reported in association with black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.* 1986).

Significant reductions in both prairie dog numbers and distribution occurred during the last century due to widespread poisoning of prairie dogs, the conversion of native prairie to farmland, and outbreaks of sylvatic plague, particularly in the southern portions of several species of prairie dog ranges in North America. Sylvatic plague arrived from Asia in approximately 1900. It is an exotic disease foreign to the evolutionary

history of prairie dogs, who have little or no immunity to it. Black-footed ferrets are also highly susceptible to sylvatic plague. This severe reduction in the availability of their principal prey species, in combination with other factors such as secondary poisoning from prairie dog toxicants, resulted in the near extinction of the black-footed ferret in the wild by the early 1970s.

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, abruptly disappeared. As a result, we believed the species to be extinct. However in 1981, a small population was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population declined to only 18 animals due to an outbreak of sylvatic plague and canine distemper. Following this critical decline, the remaining individuals were taken into captivity in 1986–1987 to serve as founders for a captive propagation program. Since that time, captive-breeding efforts have been highly successful and have facilitated ferret reintroductions over a broad area of formally occupied range. Today, the captive population of juveniles and adults annually fluctuates between 300 and 600 animals depending on time of year, yearly reproductive success, and annual mortalities. The captive ferret population is currently divided among six captive-breeding facilities throughout the United States and Canada, with a small number on display for educational purposes at several facilities. Also, 65 to 90 ferrets are located at several field-based captive-breeding sites in Arizona, Colorado, Montana, and New Mexico.

3. *Recovery Goals/Objectives:* The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) contains the following recovery objectives for downlisting, that is, reclassification from endangered to threatened:

(a) Increasing the captive population of ferrets to 200 breeding adults by 1991 (which has been achieved);

(b) Establishing a prebreeding population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010 (on-going); and,

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historical range (on-going).

Although several reintroduction efforts have occurred throughout the ferret's range, populations may have become self-sufficient at only one site in South Dakota.

We can reclassify the black-footed ferret from endangered to threatened status when the recovery objectives listed above have been achieved, assuming that the mortality rate of established populations remains at or below a rate at which new populations become established or increase. We have been successful in rearing black-footed ferrets in captivity, and in 1997 we reached captive-breeding program objectives.

In 1988, we divided the single captive population into three subpopulations to avoid the possibility of a catastrophic event eliminating the entire captive population (*e.g.*, contagious disease). Additional breeding centers were added later, and currently there are six separate subpopulations in captivity. Current recovery efforts emphasize the reintroduction of animals back into the wild from the captive source stock. Surplus individuals produced in captivity are now available for use on reintroduction areas.

4. *Reintroduction Sites:* The Service, in cooperation with western State and Federal agencies, Tribal representatives, and conservation groups, evaluates potential black-footed ferret reintroduction sites and has previously initiated ferret reintroduction projects at several sites within the historical range of the species. The first reintroduction project occurred in Wyoming in 1991 and subsequent efforts have taken place in South Dakota and Montana in 1994, Arizona in 1996, a second effort in Montana in 1997, in Colorado/Utah in 1999, a second site in South Dakota in 2000, and Mexico in 2001. The Service and the Black-footed Ferret Recovery Implementation Team (comprised of 27 State and Federal agencies, Indian Tribes, or conservation organizations) have identified the Rosebud Sioux Reservation (Reservation) as a high-priority black-footed ferret reintroduction site due to its extensive black-tailed prairie dog habitat and the absence of sylvatic plague (Black-footed Ferret Recovery Implementation Team 2000).

In the early 1990s, the Bureau of Indian Affairs (1995) estimated the acreage of prairie dog colonies on Rosebud Tribal Trust lands at 18,218 hectares (ha) (45,000 acres (ac)). In the mid-1990s, the Tribe evaluated a black-footed ferret reintroduction effort and completed some of the activities (habitat evaluations) necessary to begin such reintroduction efforts. In 2001, the Tribe began additional activities to work toward a ferret reintroduction and has worked with the Service to gather information necessary to establish an NEP designation for any ferret reintroductions that may occur.

a. *Rosebud Sioux Reservation Experimental Population Reintroduction Area:* The proposed area to be designated as the Rosebud Sioux Reservation Black-footed Ferret Experimental Population Area (Experimental Population Area) overlays all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties would be considered part of an NEP. Within the Experimental Population Area, the proposed primary reintroduction area will be in large black-tailed prairie dog complexes located in Todd County near the town of Parmelee. The Town of Rosebud is approximately 10 air miles away and is the location of the Rosebud Sioux Tribal offices. Rosebud is approximately 160 kilometers (100 miles) south of Pierre, the capital of South Dakota.

The Experimental Population Area supports at least two large complexes of black-tailed prairie dog colonies located within the four-county area. These counties encompass approximately 1,391,862 ha (3,437,900 ac). Approximately 26 percent or 356,411 ha (880,336 ac) of the Experimental Population Area is Tribal and Allotted Trust lands of the Rosebud Sioux Tribe. The majority of this Tribal and Allotted Trust land is native rangeland used for grazing.

Large acreages within the Experimental Population Area are owned by private landowners (approximately 70 percent), although much less in the primary reintroduction area, but no ferrets will be released on private lands. Designating reintroduced ferrets as an NEP should minimize potential issues that may arise with a reintroduction in the vicinity of private lands. The Tribe and other cooperators agree that if ferrets disperse onto private lands, they will capture and translocate the ferrets back to Tribal lands if requested by the landowner or if necessary for the protection of the ferrets. Any activity needing access to private lands will be conducted only with the permission of the landowner.

Black-footed ferret dispersal to and occupation of areas outside of the Experimental Population Area is unlikely to occur towards the east, north, and south due to the large size of the Experimental Population Area, the absence of suitable nearby habitat (large contiguous prairie dog colonies), cropland barriers (e.g., expansive cultivation over the eastern portion of the Experimental Population Area), and physical barriers (e.g., the Missouri River to the east). Any expansion

westerly from the reintroduction site will be handled by recapturing ferrets and bringing them into the Experimental Population Area or through future cooperative efforts with the Pine Ridge Indian Reservation. The Tribe estimates a minimum of approximately 6,072 ha (15,000 ac) of black-tailed prairie dog colonies are potentially available to black-footed ferrets in a localized area in northwestern Todd County and could support over 150 ferret families (characterized as an adult female, three kits, and one-half an adult male; i.e., one adult male for every two adult females). Large, contiguous prairie dog colonies and the absence of physical barriers between prairie dog colonies in this portion of the Reservation (the primary ferret release area) should facilitate ferret distribution throughout this complex.

b. *Primary Reintroduction Areas:* The proposed primary reintroduction area within the Experimental Population Area would occur on prairie dog colonies near Parmelee, in northwestern Todd County. The last remaining population of ferrets in South Dakota was known to exist in this area and adjacent Mellette County until the early 1970s (Henderson *et al.* 1969, updated 1974). This population was studied and monitored extensively until it disappeared from the wild by 1974. During monitoring efforts of this ferret population in the 1960s, researchers located eight road-killed ferrets during their years of work (Hillman and Linder 1973). No road-killed ferrets have been turned in or noted from that area since the population was believed extirpated in the early 1970s. There have been many ferret surveys conducted in this area in the 1980s and 1990s with no ferrets being located. The Tribe conducted additional ferret surveys in 2002 and did not locate any ferrets.

Black-footed ferrets will be released only if biological conditions are suitable, and meet the management framework developed by the Tribe, in cooperation with the Bureau of Indian Affairs, the Service, and landowners/land managers. The Service will re-evaluate ferret reintroduction efforts in the Experimental Population Area should any of the following conditions occur:

(i) Failure to maintain sufficient habitat on specific reintroduction areas to support at least 30 breeding adults after 5 years.

(ii) Failure to maintain prairie dog habitat in the primary reintroduction area at or near the level available in 2002.

(iii) A wild ferret population is found within the Experimental Population Area following the initial reintroduction and prior to the first breeding season. The only black-footed ferrets currently occurring in the wild result from reintroductions in Arizona, Colorado/Utah, Montana, South Dakota, Wyoming, and Mexico. Consequently, the discovery of a black-footed ferret at the proposed Experimental Population Area prior to the reintroduction would confirm the presence of a new population and would prevent designation of an experimental population for the area.

(iv) Discovery of an active case of canine distemper or any other disease contagious to black-footed ferrets in any animal on or near the reintroduction area within 6 months prior to the scheduled release that the cooperators believe may compromise the reintroduction.

(v) Fewer than 20 captive black-footed ferrets are available for the first release.

(vi) Funding is not available to implement the reintroduction phase of the project on the Reservation.

(vii) Land ownership changes significantly or cooperators withdraw from the project.

All the above conditions will be based on information routinely collected by us or the Tribe.

5. *Reintroduction Procedures:* In conformance with standard black-footed ferret reintroduction protocol, no fewer than 20 captive-raised or wild-translocated black-footed ferrets will be released in the Experimental Population Area in the first year of the program, and 20 or more animals will be released annually for the next 2 to 4 years. Under this proposal, we anticipate releasing 50 or more ferrets in the first year and believe a self-sustaining wild population could be established on the Reservation within 5 years. Released ferrets will be excess to the needs of the captive-breeding program and their use will not affect the genetic diversity of the captive ferret population (ferrets used for reintroduction efforts can be replaced through captive breeding). In the future, it may be necessary to interchange ferrets from established, reintroduced populations to enhance the genetic diversity of the population on the Experimental Population Area.

Recent studies (Biggins *et al.* 1998, Vargas *et al.* 1998) have documented the importance of outdoor ''preconditioning'' experience on captive-reared ferrets prior to release in the wild. Ferrets exposed to natural prairie dog burrows in outdoor pens and natural prey prior to release survive in the wild at significantly higher rates than do cage-reared, non-preconditioned ferrets. At a minimum, all captive-reared ferrets released within the Experimental Population Area will receive adequate preconditioning treatments at existing pen facilities in South Dakota or other western States. In addition, we may translocate wild-born ferrets (from other NEPs with self-sustaining populations of ferrets) to the Experimental Population Area.

The Tribe will develop specific reintroduction plans and submit them in a proposal to the Service as part of an established, annual black-footed ferret allocation process. Ferret reintroduction cooperators submit proposals by mid-March of each year, and the Service makes preliminary allocation decisions (numbers of ferrets provided to specific projects) by May. Proposals submitted to the Service include updated information on habitat, disease, project/ferret status, proposed reintroduction and monitoring methods, and predator management. In this manner, the Service and reintroduction cooperators evaluate the success of prior year efforts and apply current knowledge to various aspects of reintroduction efforts, thereby providing greater assurance of long-range reintroduction success.

We will transport ferrets to identified reintroduction areas within the Experimental Population Area and release them directly from transport cages into prairie dog burrows. Depending on the availability of suitable vaccine, we will vaccinate released animals against certain diseases (particularly canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors, where warranted. All ferrets we release will be marked with passive integrated transponder tags (PIT tags), and we may promote radio-telemetry studies to document ferret behavior and movements. Other monitoring will include spotlight surveys, snowtracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the released ferrets could die during the first year of release. Mortality is usually highest during the first month following release. In the first year of the program, a realistic goal is to have at least 25 percent of the animals survive the first winter. The goal of the Reservation reintroduction project is to establish a free-ranging population of at least 30 adults within the Experimental Population Area within 5 years of release. At the release site, population demographics and potential sources of

mortality will be monitored on an annual basis (for up to 5 years). We do not intend to change the nonessential designation for this experimental population unless we deem this reintroduction a failure or the black-footed ferret is recovered in the wild.

6. *Status of Reintroduced Population:* We determine this reintroduction to be nonessential to the continued existence of the species for the following reasons:

(a) The captive population (founder population of the species) is protected against the threat of extinction from a single catastrophic event by housing ferrets in six separate subpopulations. As a result, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species is 240 adult ferrets maintained in the captive-breeding population. Animals selected for reintroduction purposes are surplus to the captive population. Hence, any use of animals for reintroduction efforts will not affect the overall genetic diversity of the species.

(c) Captive breeding can replace any ferrets lost during this reintroduction attempt. Juvenile ferrets produced in excess of the numbers needed to maintain the captive-breeding population are available for reintroduction.

This proposed reintroduction would be the ninth release of ferrets back into the wild. The other experimental populations occur in Wyoming, southwestern South Dakota, north-central Montana (with two separate reintroduction efforts), Arizona, Colorado/Utah (a single reintroduction area that overlays both States), and northcentral South Dakota. A nonessential population of ferrets has been established in Mexico. Reintroductions are necessary to further the recovery of this species. The NEP designation alleviates landowner concerns about possible land use restrictions. This nonessential designation provides a flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners are unaffected.

7. *Location of Reintroduced Population:* Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since the mid-1980s, black-footed ferret surveys have been conducted in the Experimental Population Area or close by, and no wild ferrets have been located. Over 121,457 ha (300,000 ac) of prairie dog colonies were surveyed for black-footed ferrets in the mid-1980s during a prairie dog control effort on the Oglala Sioux Tribe's Pine Ridge Indian Reservation (Superintendent Memorandum 1989). No ferrets were located. In addition to these surveys, the Tribe and others have spent many hours surveying prairie dog colonies at the primary reintroduction site. No ferrets or signs of ferrets (e.g., skulls, feces, trenches) were located. Therefore, we conclude that wild ferrets are no longer present in the Experimental Population Area, and that this reintroduction will not overlap with any wild population.

All released ferrets and their offspring should remain in the Experimental Population Area due to the presence of prime habitat (lands occupied by prairie dog colonies) and surrounding geographic barriers. In an attempt to identify its origin, we will capture any ferret that leaves the Experimental Population Area and will either return it to the release site, translocate it to another site, or place it in captivity. If a ferret leaves the primary reintroduction area, but remains within the Experimental Population Area, and occupies private property, the landowner can request its removal. Ferrets will remain on private lands only when the landowner does not object to their presence there.

We will mark all released ferrets and will attempt to determine the source of any unmarked animals found. We will undertake efforts to confirm whether any ferret found outside the Experimental Population Area originated from captive stock. If the animal is unrelated to members of this or other experimental populations (i.e., it is from non-captive stock), we will place it in captivity as part of the breeding population to improve the overall genetic diversity of the captive population. Existing contingency plans allow for the capture and retention of up to nine ferrets shown not to be from any captive stock. In the highly unlikely event that a ferret from captive stock is found outside the Experimental Population Area and if landowner permission is granted, we will move the ferret back to habitats that would support the primary population(s) of ferrets.

8. *Management:* This reintroduction will be undertaken in cooperation with the Rosebud Sioux Tribe, the Bureau of Indian Affairs, and the Forest Service in accordance with the ''Cooperative Management Plan for Black-footed Ferrets, Rosebud Sioux Reservation''. Copies of the Cooperative Management Plan may be obtained from the Rosebud Sioux Tribe, Game, Fish and Parks Department, P.O. Box 430, Rosebud, South Dakota 57570. In the future, we will evaluate whether other black-footed ferret reintroductions are feasible within the Experimental Population Area. Cooperating Tribes, agencies, and private landowners would be involved in the selection of any additional sites. Management considerations of the proposed reintroduction project include:

(a) *Monitoring:* Several monitoring efforts will occur during the first 5 years of the program. We will annually monitor prairie dog distribution and numbers, and the occurrence of sylvatic plague. Testing resident carnivores (e.g., coyotes) for canine distemper will begin prior to the first ferret release and continue each year. We will monitor released ferrets and their offspring annually using spotlight surveys, snowtracking, other visual survey techniques, and possibly radio-telemetry of some individuals. The surveys will incorporate methods to monitor breeding success and long-term survival rates.

Through public outreach programs, we will inform the public and other appropriate State and Federal agencies about the presence of ferrets in the Experimental Population Area and the handling of any sick or injured ferrets. To meet our responsibilities to treat the Tribe on a Government-to-Government basis, we will request that the Tribe inform Tribal members of the presence of ferrets on Reservation lands, and the proper handling of any sick or injured ferrets that are found. The Tribe will serve as the primary point of contact to report any injured or dead ferrets. Reports of injured or dead ferrets also must be provided to the Service Field Supervisor (*see* **ADDRESSES** section). It is important that we determine the cause of death for any ferret carcass found. Therefore, we request that discovered ferret carcasses not be disturbed, but reported as soon as possible to appropriate Tribal and Service offices.

(b) *Disease:* The presence of canine distemper in any mammal on or near the reintroduction site will cause us to reevaluate the reintroduction program. Prior to releasing ferrets, we will establish the presence or absence of canine distemper in the release area by collecting at least 20 coyotes (and possibly other carnivores). Sampled predators will be tested for canine distemper and other diseases.

We will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into core ferret release areas. Any dead mammal or any unusual behavior observed in animals found within the area should be reported to us. Efforts are under way to

develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague in prairie dog towns will take place before and during the reintroduction effort, and annually thereafter.

(c) *Genetics:* Ferrets selected for reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than overall captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases can correct this disparity. The ultimate goal is to establish wild ferret populations with the maximum genetic diversity that is possible from the founder ferrets. The eventual interchange of ferrets between established populations found elsewhere in the western United States will ensure that genetic diversity is maintained to the extent possible.

(d) *Prairie Dog Management:* We will work with the Tribe, affected landowners, and other Federal and State agencies to resolve any management conflicts in order to—(1) Maintain sufficient prairie dog acreage and density to support no less than 30 adult black-footed ferrets; and (2) maintain suitable prairie dog habitat on core release areas at or above 2002 survey levels.

(e) *Mortality:* We will only reintroduce ferrets that are surplus to the captive-breeding program. Predator control, prairie dog management, vaccination, ferret preconditioning, and improved release methods should reduce mortality. Public education will help reduce potential sources of human-caused mortality.

The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as recreation, livestock grazing, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a ferret within the Experimental Population Area provided that the take is unintentional and was not due to negligent conduct. Such conduct will not constitute ''knowing take,'' and we will not pursue legal action. However, when we have evidence of knowing (i.e., intentional) take of a ferret, we will refer matters to the appropriate authorities for prosecution. Any take of a black-footed ferret, whether incidental or not, must be reported to the local Service Field Supervisor (*see* **ADDRESSES** section). We expect levels of incidental take to be low since the reintroduction is compatible with existing land use practices for the area.

Based on studies of wild black-footed ferrets at Meeteetse, Wyoming, and other places, black-footed ferrets can be killed by motor vehicles and dogs. We expect a rate of mortality similar to what was documented at Meeteetse and, therefore, we estimate a human-related annual mortality rate of about 12 percent or less of all reintroduced ferrets and their offspring. If this level is exceeded in any given year, we will develop and implement measures to reduce the level of mortality.

(f) *Special Handling:* Service employees and authorized agents acting on their behalf may handle black-footed ferrets for scientific purposes; to relocate ferrets to avoid conflict with human activities; for recovery purposes; to relocate ferrets to other reintroduction sites; to aid sick, injured, and orphaned ferrets; and salvage dead ferrets. We will return to captivity any ferret we determine to be unfit to remain in the wild. We also will determine the disposition of all sick, injured, orphaned, and dead ferrets.

(g) *Coordination with Landowners and Land Managers:* The Service and cooperators identified issues and concerns associated with the proposed ferret reintroduction before preparing this proposed rule. The proposed reintroduction also has been discussed with potentially affected State agencies and landowners within the proposed release area. Affected State agencies, landowners, and land managers have indicated support for the reintroduction, if ferrets released in the proposed Experimental Population Area are established as an NEP and if land use activities in the proposed Experimental Population Area are not constrained without the consent of affected landowners.

(h) *Potential for Conflict With Grazing and Recreational Activities:* We do not expect conflicts between livestock grazing and ferret management. Grazing and prairie dog management on private lands within the proposed Experimental Population Area will continue without additional restriction during implementation of the ferret recovery activities. With proper management, we do not expect adverse impacts to ferrets from hunting, prairie dog shooting, prairie dog control, and trapping of furbearers or predators in the proposed Experimental Population Area. If proposed prairie dog shooting or control locally may affect the ferret's prey base within the proposed primary release area, State, Tribal, and Federal biologists will determine whether ferrets could be impacted and, if necessary, take steps to avoid such impacts. If private activities impede the establishment of ferrets, we will work closely with the Tribe and landowners to suggest alternative procedures to minimize conflicts.

(i) *Protection of Black-footed Ferrets:* We will release ferrets in a manner that provides short-term protection from natural (predators, disease, lack of prey base) and human-related sources of mortality. Improved release methods, vaccination, predator control, and management of prairie dog populations should help reduce natural mortality. Releasing ferrets in areas with little human activity and development will minimize human-related sources of mortality. We will work with the Tribe and landowners to help avoid certain activities that could impair ferret recovery.

(j) *Public Awareness and Cooperation:* We will inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret. The designation of the NEP for the Reservation and adjacent areas would provide greater flexibility in the management of the reintroduced ferrets. The NEP designation is necessary to secure needed cooperation of the Tribe, landowners, agencies, and other interests in the affected area. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the Experimental Population Area will further the conservation of the species.

**Public Comments Solicited**

The opportunity to release ferrets on Rosebud Tribal Trust lands in the fall of 2002 is dependent upon sufficient numbers of captive-bred or wild-born ferrets being available, the timing of the releases when those ferrets are available, and the completion of the nonessential experimental population rulemaking process. It is imperative that ferret kits born in captivity are preconditioned and released at proper developmental ages to enhance their survival in the wild. In order to maximize the window of opportunity and ensure success for the Reservation ferret reintroduction effort, it will be important to have the site ready to accept ferrets by October 1, 2002. It has become urgent to expedite this nonessential experimental population rulemaking process in order to ensure that an adequate number of ferrets can be released at proper ages and with adequate preconditioning experience. Consequently, we are proposing a 30-day public comment period for the proposed rule instead of the standard 60 days.

The Service wishes to ensure that this proposed rulemaking to designate the Reservation black-footed ferret population as an NEP and the draft environmental assessment on the proposed action effectively evaluate all potential issues associated with this action. Therefore, we request comments or recommendations concerning any aspect of this proposed rule and the draft environmental assessment from the public, as well as Tribal, local, State, and Federal government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. To promulgate a final rule to implement this proposed action and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information received. Such information may lead to a final rule that differs from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold 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 request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, available for public inspection in their entirety.

**Public Hearing**

A public hearing has been scheduled for September 26, 2002, from 4 p.m. until 6 p.m. in the Commons Area at the Multi-Cultural Center in Mission, South Dakota. An informational meeting/open house will be held prior to this meeting from 10 a.m. to 4 p.m. at the same location. All interested parties are encouraged to attend and learn more about the proposed Rosebud black-footed ferret reintroduction effort.

**Peer Review**

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this NEP rule. The purpose of such review is to ensure that the NEP designation decision is based on the best scientific information available.

**Required Determinations**

*Regulatory Planning and Review (E.O. 12866)*

In accordance with the criteria in Executive Order 12866, the proposed rule to designate NEP status for the black-footed ferret reintroduction into south-central South Dakota is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million or more and will not have an adverse effect upon any economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

Lands within the NEP area affected by this rule include Gregory, Mellette, Todd, and Tripp Counties in South Dakota. The primary reintroduction area where ferrets will be released is Rosebud Tribal Trust lands in Todd County, and most of the prairie dog colonies within the primary release area are on these lands. Prairie dog colonies off the Rosebud Tribal Trust lands but within the primary reintroduction area and those colonies within the Experimental Population Area but outside the primary reintroduction area are not needed for the Reservation reintroduction effort to be successful. Land uses on private, Tribal, and State school lands will not be hindered by the proposal, and only voluntary participation by private landowners will occur.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily another Department of the Interior bureau (i.e., Bureau of Indian Affairs) and the Department of Agriculture (Forest Service). The action proposed by this rulemaking is consistent with the policies and guidelines of the other Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the black-footed ferret in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues. The Service has previously designated experimental populations of black-footed ferrets at seven other locations (in Colorado/Utah, Montana, South Dakota, Arizona, and Wyoming) and for other species at numerous locations throughout the nation.

*Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The area affected by this rule consists of the Rosebud Indian Reservation and private, Federal, and State lands that fall within the south-central tier of counties in South Dakota (Mellette, Todd, Tripp, and Gregory counties). Reintroduction of ferrets allowed by this rule will not have any significant effect on recreational activities in the Experimental Population Area. We do not expect any closures of roads, trails, or other recreational areas. Suspension of prairie dog shooting for ferret management purposes will be localized and prescribed by the Tribe. We do not expect ferret reintroduction activities to affect grazing operations, resource development actions, or the status of any other plant or animal species within the release area. Because only voluntary participation in ferret reintroduction by private landowners is proposed, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of an NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these ferrets, will not create inconsistencies with other agency actions, and will not conflict with existing or proposed human activity, or Tribal and public use of the land.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

The NEP designation will not place any additional requirements on any city, county, or other local municipalities. The proposed specific site designated for release of the experimental population of ferrets is predominantly Rosebud Sioux Tribal Trust land administered by the Rosebud Sioux Tribe, who support this project. The State of South Dakota has expressed support for accomplishing the reintroduction through a nonessential experimental designation. Accordingly, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Since this rulemaking does not require any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (*i.e.*, it is not a ''significant regulatory action'' under this law).

*Takings (E.O. 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements with respect to the reintroduced listed species within the NEP. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, we do not foresee any activity that may jeopardize the species' continued existence. Furthermore, the results of a conference are advisory and do not restrict agencies from carrying out, funding, or authorizing activities. Additionally, regulatory relief can be provided regarding take of reintroduced species within NEP areas, and a special rule has been developed stipulating that unintentional take (including killing or injuring) of the reintroduced black-footed ferrets would not be a violation of the Act, when such take is incidental to an otherwise legal activity (*e.g.*, livestock management, mineral development) that is in accordance with Federal, Tribal, State, and local laws and regulations.

Most of the lands within the primary reintroduction area are administered by the Rosebud Sioux Tribe. Multiple-use management of these lands by industry and recreation interests will not change as a result of the experimental designation. Private landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs, and may elect to have black-footed ferrets removed from their land should ferrets move to private lands. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of ferrets will conflict with existing human activities or hinder public use of the area. The South Dakota Department of Game, Fish and Parks has previously endorsed the ferret reintroductions under NEP designations and are supportive of this effort. The NEP designation will not require the South Dakota Department of Game, Fish and Parks to specifically manage for reintroduced ferrets. A takings implication assessment is not required.

*Federalism (E.O. 13132)*

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As stated above, most of the lands within the primary reintroduction area are Tribal Trust lands, and multiple-use management of these lands will not change to accommodate black-footed ferrets. The designation will not impose any new restrictions on the State of South Dakota. The Service has coordinated extensively with the Tribe and State of South Dakota, and they endorse the NEP designation as the only feasible way to pursue ferret recovery in the area. A Federalism Assessment is not required.

*Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the order.

*Paperwork Reduction Act*

This regulation contains information collection requirements under the Paperwork Reduction Act (and approval by the Office of Management and Budget) under 44 U.S.C. 3501 *et seq.* The collected information covers general take or removal, depredation-related take, and specimen collection. Authorization for this information collection has been approved by OMB and has been assigned OMB control number 1018–0095 (Expires 10/21/2004). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

*National Environmental Policy Act*

The Service has prepared a draft environmental assessment as defined under authority of the National Environmental Policy Act of 1969. It is available from Service offices identified in the **ADDRESSES** section.

*Government-to-Government Relationship with Tribes (E.O. 13175)*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have closely coordinated this rule with the affected tribe, the Rosebud Sioux Tribe. Throughout development of this rule, we have maintained regular contact with the Rosebud Sioux Tribe and have received their full support for this reintroduction and NEP designation. We intend to fully consider all of their comments on the proposed NEP designation and ferret reintroduction submitted during the public comment period.

*Energy Supply, Distribution or Use (E.O. 13211)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

*Clarity of This Regulation (E.O. 12866)*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to

Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may e-mail the comments to *Execsec@ios.doi.gov.*

**References Cited**


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**Authors**

The primary authors of this rule are Mike Lockhart and Scott Larson (*see* **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulations Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the U.S. 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. Amend § 17.11(h) by revising the existing entry for ''Ferret, black-footed'' under ''MAMMALS'' to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | Historic range | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | | * |
| Ferrett, black-footed | *Mustela nigripes* ... | Western U.S.A., Western Canada. | Entire, except where listed as an experimental population. | E | 1, 3, 433, 545, 546, 582, 646, 703. | NA | NA |
| Do ..... | .....do ..... | .....do ..... | U.S.A. [specific portions of AZ, CO, MT, SD, Ut, and WY, see 17.84(g)(9)]. | XN | 433, 545, 546, 582, 646, 703. | NA | 17.84(g) |
| * | * | * | * | * | * | | * |

3. Amend § 17.84 by revising paragraph (g)(1) and adding paragraphs (g)(6)(vii) and (g)(9)(vii) and adding a map to follow the existing maps at the end of this paragraph (g) to read as follows:

**§ 17.84 Special rules—vertebrates.**

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through (vii) of this section are nonessential experimental populations. We will manage each of these populations in accordance with their respective management plans.

* * * * *

(6) * * *

(vii) Report such taking in the Rosebud Sioux Reservation Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone 605–224–8693).

* * * * *

(9) * * *

(vii) The Rosebud Sioux Reservation Experimental Population Area is shown on the map of south-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area include all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties will be considered part of the nonessential experimental population after the first breeding season following the first year

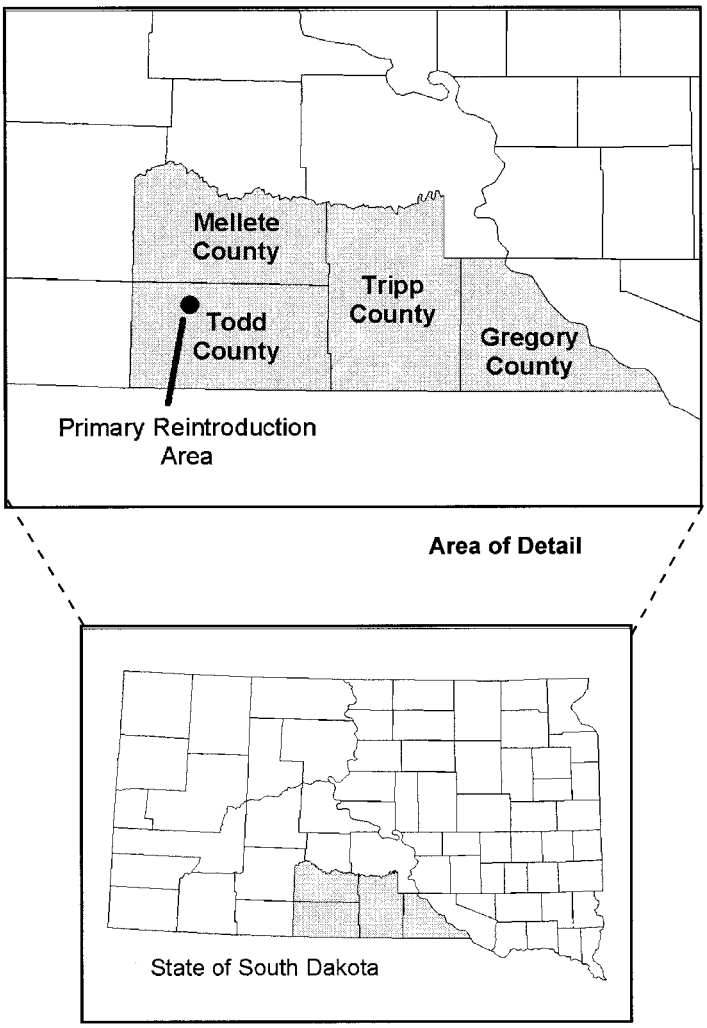
of black-footed ferret release. A black-footed ferret occurring outside of the Rosebud Sioux Reservation Experimental Population Area would initially be considered as endangered but may be captured for genetic testing. If necessary, disposition of the captured animal may occur in the following ways:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for use in the captive-breeding program.

* * * * *

BILLING CODE 4310–55–P




Rosebud Sioux Tribe ITOPA SAPA KIN (Black-footed Ferret) Experimental Population Area - South Dakota

Dated: August 22, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02–23068 Filed 9–10–02; 8:45 am]

BILLING CODE 4310–55–C

# Notices

**Federal Register**

Vol. 67, No. 176

Wednesday, September 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Notice of Request for Extension of a Currently Approved Information Collection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection. This information collection is required in petitions filed with the Foreign Agricultural Service for emergency relief from duty-free imports of perishable products under section 204(d) of the Andean Trade Promotion and Drug Eradication Act.

**DATES:** Comments on this notice must be received on or before November 12, 2002 to be assured consideration.

**ADDRESSES:** Mail or deliver comments to Diana Wanamaker, Imports Policies and Programs Division, Foreign Agricultural Service, Stop 1021, 1400 Independence Ave., SW., Washington, DC 20250–1021, or e-mail to *Diana.Wanamaker@fas.usda.gov,* or fax to (202) 720–0876.

**FOR FURTHER INFORMATION CONTACT:** Diana Wanamaker, Stop 1021, 1400 Independence Avenue, SW., Washington, DC 20250–1021, (202) 720–1330.

**SUPPLEMENTARY INFORMATION:**

*Title:* Emergency Relief from Duty-Free Imports of Perishable Products from Andean Countries.

*OMB Number:* 0551–0033.

*Expiration Date of Approval:* August 31, 2002.

*Type of Request:* Extension for a currently approved information collection.

*Abstract:* The Andean Trade Preference Act (the ''Act'') (19 U.S.C. 3201 *et seq.*) was retitled the ''Andean Trade Promotion and Drug Eradication Act'' under section 3101 of H.R. 3009, the ''Trade Act of 2002''. The Act authorized the President to proclaim duty-free treatment for imports from Bolivia, Colombia, Ecuador and Peru, except for specifically excluded products. Section 3104 of H.R. 3009 amended the Act to extend the expiration date from December 4, 2001 to December 31, 2006, and made the Act retroactive to December 4, 2001. Section 3103(a) of H.R. 3009 renumbered section 204(e) of the Act as section 204(d). Section 204(d) provides for emergency relief from duty-free imports of certain perishable agricultural products from the beneficiary Andean countries. Section 204(d) provides, in part, that a petition for emergency import relief may be filed with the Secretary of Agriculture at the same time a petition for import relief is filed with the United States International Trade Commission (ITC) pursuant to the provisions of section 201 of the Trade Act of 1974, as amended (19 U.S.C. 2251). Emergency import relief is limited to restoration of general tariffs during the period of the ITC's investigation. Under 7 CFR 1540 Subpart C, a procedure is provided for an entity to submit a petition for emergency relief to the Administrator of the Foreign Agricultural Service. Section 150.43 requests that the following information, to the extent possible, be included in a petition: a description of the imported perishable product concerned; country of origin of imports; data indicating increased imports are a substantial cause of serious injury (or threat of injury) to the domestic industry producing a like or directly competitive product; evidence of serious injury; and a statement indicating why emergency action would be warranted. The information collected provides essential data for the Secretary regarding specific market conditions with respect to the industry requesting emergency relief. Within 14 days of the filing of a petition, the Secretary shall advise the President if there is reason to believe that emergency action is warranted, or to publish a notice of a determination not to recommend emergency action and advise the petitioner.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated at $1,106.

*Respondents:* Non-profit institutions, businesses, or farms.

*Estimated Number of Respondents:* 2.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 46 hours. Copies of the information collection can be obtained from Kimberly Chisley, the Agency Collection Coordinator, at (202) 720–2568.

*Request for Comments:* The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Signed at Washington, DC, on August 26, 2002.

**A. Ellen Terpstra,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 02–23076 Filed 9–10–02; 8:45 am]

**BILLING CODE 3410–10–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Forest Counties Payments Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Forest Counties Payments Committee will meet in Rhinelander, WI, on September 27, 2002. The purpose of the meeting is to receive comments from elected officials and the

general public to help develop recommendations the committee must make to Congress as specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. The meeting will consist of a public input session from 1 p.m. until 5 p.m.

**DATES:** The Rhinelander, WI, meeting will be held on September 27, 2002. Persons who are interested in providing comments to the committee have until September 30, 2002, to submit their written comments. Comments received after this date will be considered to the extent possible.

**ADDRESSES:** The September 27 meeting will be held in the Learning Resources Center Theater at the Nicolet Area Technical College, located on County Highway G, south of Rhinelander, WI. Those who cannot be present may submit written responses to the questions listed in **SUPPLEMENTARY INFORMATION** in this notice to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, P.O. Box 34718, Washington, DC 20043–4713, or electronically on the committee's Web Site at *http://countypayments.gov/comments.html.*

**FOR FURTHER INFORMATION CONTACT:** Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574 or via e-mail at *rphillips01@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub. L. 106–291) created the Forest Counties Payments Committee to make recommendations to Congress on a long term solution for making Federal payments to eligible States and counties in which Federal lands are situated. To formulate its recommendations to Congress, the committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393).

**Questions for Comment**

The Forest Counties Payments Committee asks that elected officials and others who wish to comment, either by mail or in person at the Rhinelander, WI, meeting, provide information in response to the following questions:

1. Do counties receive their fair share of Federal revenue sharing payments made to eligible States?
2. What difficulties exist in complying with and managing all of the Federal revenue sharing payments programs? Are some more difficult than others?
3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?
4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?
5. What are the economic and social effects from changes in revenues generated from public lands over the past 15 years as a result of changes in management on public lands in your State or county?
6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions or revenue sharing payments?
7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of public lands within your State or county?
8. What relationship, if any, should exist between Federal revenue sharing programs, and management activities on public lands?
9. What alternatives exist to provide equitable revenue sharing to States and counties and to promote ''sustainable forestry?'
10. What has been your experience regarding implementation of Public Law 106–393, the Secure Rural Schools and Community Self-Determination Act?
11. What changes in law, policies and procedures, and the management of public land have contributed to changes in revenue derived from the multiple use management of these lands?
12. What changes in law, policies and procedures, and the management of public land are needed in order to restore the revenues derived from the multiple use management of these lands?

Dated: August 22, 2002.

**Elizabeth Estill,**

*Deputy Chief, Programs and Legislation.*

[FR Doc. 02–23031 Filed 9–10–02; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Colville Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Colville Resource Advisory Committee will meet on Thursday, September 19, 2002 at the Colville National Forest Headquarters at 765 S. Main, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 12 noon. Agenda items include: (1) Review and recommend Title II Projects for Fiscal Year 2003 to be submitted to the forest designated official and (2) Public Forum.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to designated federal official Nora Rasure or Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114: (509) 684–7000.

Dated: September 4, 2002.

**Nora B. Rasure,**

*Forest Supervisor.*

[FR Doc. 02–23054 Filed 9–10–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ravalli County Resource Advisory Committee will be meeting to discuss project development for 2003. Agenda topics will include future project development and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

**DATES:** The meeting will be held on September 24, 2002, 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Ravalli County Resource Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: September 4, 2002.

**David T. Bull,**

*Forest Supervisor.*

[FR Doc. 02–23055 Filed 9–10–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–825]**

### Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Preliminary Results of New Shipper Review and Antidumping Duty Administrative Review, and Rescission, in Part, of the Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a timely request, properly filed, from Shinho Steel Co., Ltd. (Shinho Steel), the Department of Commerce (''the Department'') is conducting a new shipper review under the antidumping duty order on oil country tubular goods, other than drill pipe (OCTG), from Korea for the period August 1, 2000 through February 28, 2001. In response to requests from Shinho Steel and SeAH Steel Corporation (SeAH), the Department is conducting an administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe (''OCTG''), from Korea. Shinho Steel subsequently withdrew its request for an administrative review. The period of review (POR) for the administrative review for SeAH is August 1, 2000 through July 31, 2001. The preliminary results are listed below in the section entitled ''Preliminary Results of Review.''

**EFFECTIVE DATE:** September 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn or Scott Lindsay, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4236 or (202) 482–0780, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations are to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

#### Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on OCTG from Korea (60 FR 41058). the antidumping duty order on OCTG from Korea has an August anniversary date and a February semi-annual anniversary date. On February 28, 2001, the Department received a timely request, properly filed, for a new shipper review from Shinho Steel in accordance with section 751(a)(2)(B) of the Act and section 351.214(c)(2) of the Department's regulations.

On April 9, 2001, the Department initiated this new shipper review of Shinho Steel for the period August 1, 2000 through February 28, 2001. *See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Initiation of New Shipper Antidumping Administrative Review,* 66 FR 18438 (April 9, 2001). On August 31, 2001, the Department received timely requests from SeAH and Shinho Steel 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 OCTG on October 2, 2001 (66 FR 49925).

On January 22, 2002, Shinho Steel, in accordance with 19 CFR 351.214(j)(3), agreed to waive the time limits applicable to its new shipper review so that the Department might conduct its new shipper review concurrently with the 2000/2001 administrative review of OCTG from Korea. On February 6, 2002, we aligned the deadlines for Shinho Steel's new shipper review with the deadlines of the 2000/2001 administrative review. *See Oil Country Tubular Goods Other Than Drill Pipe, From Korea: Postponement of Time Limits for Preliminary Results of New Shipper Review,* 67 FR 5563 (February 6, 2002).

The Department subsequently determined it was impracticable to complete the administrative review within the standard time frame, and extended the deadline for completion of both the antidumping duty administrative review and consequently, the aligned new shipper review. *See Oil Country Tubular Goods from Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review,* 67 FR 30357 (May 6, 2002).

#### Period of Review

Pursuant to section 351.214(g)(1)(i)(B), the standard period of review (POR) in a new shipper proceeding initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semi-annual anniversary month. Shinho Steel requested that the Department extend the normal six-month period by one month. The Department's regulations provide it with the discretion to expand the normal POR to include an entry and sale to an unaffiliated customer in the United States of subject merchandise if the expansion of the period would likely not prevent the completion of the review within the time limits set forth in Sec. 351.214(i). *See Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment,* 61 FR 7308, 7318 (February 27, 1996); *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27319–20 (May 19, 1997). See also 19 CFR 351.214(f)(2)(ii).

Because we determined that the expansion of the period will not likely prevent the completion of the review within the prescribed time limits, we expanded the semi-annual review period by one month. Therefore, the POR for Shinho Steel's new shipper review has been defined as August 1, 2000 through February 28, 2001.

#### Rescission, In Part, of Administrative Review

Both SeAH and Shinho Steel requested an administrative review. Petitioners did not request an administrative review of any company. On October 2, 2001, Shinho Steel withdrew its request for an administrative review. The Department's regulations at 19 CFR 351.213(d)(1) provide that a party may withdraw its request for review within 90 days of the date of publication of the notice of initiation or the requested review. Shinho Steel withdrew its request for an administrative review within the 90-day period. Therefore, because there were no other requests for an administrative review of Shinho Steel, we are rescinding our administrative review with respect to Shinho Steel.

#### Scope of the Antidumping Duty Order

The products covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This

scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

**Verification**

As provided in section 782(i) of the Act, we verified information provided by Shinho Steel in the new shipper review following standard verification procedures, including on-site inspection of the manufacturers facilities and the examination of relevant sales and financial records. *See Verification of Sales Information submitted by Shinho Steel Corporation (''Shinho'') in the New Shipper Review of Oil Country Tubular Goods (''OCTG'') from Korea,* dated July 1, 2002. *Verification of Costs of Shinho Steel Co., Ltd, in the New Shipper Review of Oil Country Tubular Goods, Other Than Drill Pipe, from Korea.* dated July 1, 2002. This verification also included on-site verification at Shinho America's offices. The report for this portion at verification will be issued shortly.

**New Shipper Status**

Based on the questionnaire responses received from Shinho Steel, and our verification thereof, we preliminarily determine that this company has met the requirements to qualify as a new shipper during the POR. We have determined that Shinho Steel made its first sale or shipment of subject merchandise to the United States during the POR, that these sales were *bona fide* sales, and that Shinho Steel was not affiliated with any exporter or producer that previously shipped to the United States.

**Date of Sale**

It is the Department's practice normally to use the invoice date as the date of sale. We may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* section 351.401(i) of the Department's regulations; *see also* Preamble to *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27348–50.

For its U.S. sales, Shinho Steel reported the date of shipment as the date of sale. Shinho Steel reported the invoice date as the date of sale for its third country sales. Shinho Steel's invoice date for its third country sales is the same date on which the goods were shipped to the unaffiliated customer. Shinho Steel has stated the the dates of sale reported in both markets best reflect the dates on which the material terms of the transaction were set. The Department found no information at verification that indicates that another date better reflects that date on which the material terms of sale were established. Therefore, we are preliminarily using the dates of sale reported by Shinho Steel.

SeAH reported two channels of distribution for its U.S. sales. For U.S. channel 1 SeAH reported the date of invoice as the date of sales since ''the invoice was the first written documentation finalizing the material terms of sale.'' For U.S. channel 2, SeAH reported the shipment date as the date of sale since: (1) The material terms of sale sometimes change between the date of the written purchase order and the invoice date; and (2) the shipment date was always prior to the date of invoice. As such, SeAH has reported that date of shipment best reflects the date on which the material terms of sale for its channel 2 sales are established. For its third country sales, SeAH reported the purchase order date as date of sale. The Department is preliminarily using the dates of sale reported by SeAH.

**Transactions Reviewed**

Shinho Steel produced OCTG in Korea and shipped it to the United States. Shinho Steel's affiliate, Shinho America Inc. (Shinho America), was the importer of record for all U.S. sales of subject merchandise. All of Shinho Steel's U.S. sales are classified as constructed export price (CEP) sales (*see* ''Constructed Export Price'' section below).

SeAH produced OCTG in Korea and shipped it to the United States. SeAH's affiliate Pusan Pipe America, Inc. (PPA), was the importer of record for all U.S. sales. All of SeAH's U.S. sales are classified as CEP sales (*see* ''Constructed Export Price'' section below). The Department's questionnaire instructed the respondent to report CEP sales made after importation if the dates of sale fell within the POR (*see* page C–1 of the Department's October 9, 2001, Questionnaire). We reviewed U.S. sales that involved subject merchandise that had entered the United States and had been placed in the physical inventory of SeAH's U.S. affiliate during the POR. The questionnaire also instructed the respondent to report CEP sales made prior to importation when the entry dates fell within the POR. Consequently, we have limited our U.S. database to these sets of transactions.

**Comparison Market**

The Department determines the viability of a comparison market by comparing the aggregate quantity of comparison market sales to U.S. sales. An exporting country is not considered a viable comparison market if the aggregate quantity of sales of subject merchandise to that market amounts to less than five percent of the quantity of sales of subject merchandise into the United Stats during the POR. *See* section 773(a)(1)(B) of the Act; 19 CFR 351.404.

For both Shinho Steel and SeAH, the aggregate quantity of sales of subject merchandise in Korea during the POR amounted to less than five percent of each company's quantity of sales of subject merchandise to the United States during the POR. As such, we preliminarily determine that Korea is not a viable comparison market for either Shinho Steel or SeAH.

According to section 773(a)(1)(B)(ii) of the Act, the price of sales to a third country can be used as the basis for normal value only if such price is representative, if the aggregate quantity (or, where appropriate, value) of sales to that country is at least five percent of the quantity (or value) of total sales to the United States, and if the Department does not determine that the particular market situation in that country prevents proper comparison with the export price or constructed export price.

Shinho Steel sold subject merchandise during the POR to Indonesia, its largest third country market. However, the sales to Indonesia,

on both a value and a volume basis, were less than the five percent threshold defined in section 773(a)(1)(B)(ii)(II) of the Act and 19 CFR 351.404. As such, in accordance with section 773(a)(4) of the Act, we are using constructed value (CV) as the basis for NV for Shinho Steel's sales for purposes of these preliminary results. *See* ''Normal Value Comparisons'' section below.

The only viable third country market to which SeAH sold subject merchandise during the POR was Jordan. SeAH's sales to Jordan, on both a value and a volume basis, were greater than the five percent threshold defined in section 773(a)(1)(B)(ii)(II) of the Act and 19 CFR 351.404. In addition, there is no evidence on the record supporting a particular market situation in Jordan that would not permit a proper comparison of third country (Jordanian) and U.S. prices. Therefore, for SeAH, in accordance with section 773(a)(1)(B)(ii) of the Act, the preliminary results are based on the price at which the foreign like product was first sold for consumption in the third 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 export price (EP) or constructed export price (CEP) sale.

**Normal Value Comparisons**

To determine whether Shinho Steel's or SeAH's sales of subject merchandise to the United States were made at less than normal value, we compared each company's CEP to the NV, as described in the ''Constructed Export 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. transaction prices.

**Constructed Export Price**

We preliminarily determine that all of SeAH's U.S. sales were made ''in the United States'' by PPA, SeAH's U.S. affiliate, on behalf of SeAH within the meaning of section 772(b) of the Act. We also preliminarily determine that all of Shinho Steel's U.S. sales were made ''in the United States'' by Shinho America, Shinho Steel's U.S. affiliate, on behalf of Shinho Steel within the meaning of section 772(b) of the Act. As such, both SeAH's and Shinho Steel's U.S. sales should be treated as CEP transactions. *See AK Steel Corp.* v. *United States,* 226 F.3d 1361, 1374 (Fed. Cir. 2000).

Shinho Steel reported one channel of distribution for its U.S. sales. For Shinho Steel, the starting point for the calculation of CEP was Shinho America's ex-warehouse dock, duty paid, price to its unaffiliated customers in the United States.

SeAH reported two channels of distribution for its U.S. sales: CEP sales of further manufactured merchandise from inventory and CEP sales shipped directly from Korea. For SeAH's channel 1 U.S. sales, the starting point for the calculation of CEP was either the delivered price or the ex-warehouse price to the unaffiliated customer in the United States. For SeAH's channel 2 U.S. sales, the starting point for calculation of CEP was the duty delivered price to the unaffiliated U.S. customer.

We identified the appropriate starting price for both Shinho Steel and SeAH by adjusting for early payment discounts. Where applicable, we made deductions from SeAH's and Shinho Steel's starting price for movement expenses, including foreign inland freight, ocean freight, marine insurance, foreign and U.S. brokerage and handling, U.S. inland freight, U.S. wharfage, and U.S. customs duties in accordance with section 772(c)(2) of the Act. In accordance with section 772(d)(1) of the Act, we also deducted credit expenses and indirect selling expenses, including inventory carrying costs. In accordance with section 772(c)(1)(B) of the Act, we added duty drawback to the starting price. We verified that Shinho Steel performed no further manufacturing on U.S. sales. Finally, for Shinho we deducted an amount of profit allocated Shinho America's selling activities in accordance with section 772(d)(3) of the Act.

For SeAH, where appropriate, we also deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Act. This deduction for further manufacturing was based on the fees charged by unaffiliated U.S. processors. SeAH indicated that although the further processors' invoices did not have separate line items for applicable further manufacturing costs (*e.g.*, processing, materials, overhead, SGA, *etc.*), the further processor's invoice covered all these costs. We note that SeAH did not report a separate SGA expense related to further processing. Instead, SeAH included all of the expenses incurred by PPA, including the SGA expense associated with PPA's dealings with further manufacturing, as part of its indirect selling expenses incurred in the United States (INDIRSU). We have accepted SeAH's reported SGA since even if the portion of PPA's SGA expenses associated with further manufacturing were assigned to further manufacturing, all SGA expenses including those assigned to further manufacturing would be deducted from CEP. In addition, those SGA expenses assigned to further manufacturing would also be included in the CEP offset cap as defined in section 351.412(f)(2) of the Department's regulations. Finally, we deducted an amount of profit allocated PPA's selling activities, including further manufacturing related expenses, in accordance with section 772(d)(3) of the Act.

**Normal Value**

*A. Model Match*

In making comparisons in accordance with section 771(16) of the Act, we considered all products described in the ''Scope of the Antidumping Duty Order'' section of this notice, sold in the comparison market in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Appendix V of the Department's October 9, 2001 antidumping questionnaire.

*B. Constructed Value*

*Shinho Steel:* We used CV as the basis for NV because there was no viable comparison market in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We included Shinho Steel's cost of materials and fabrication (including packing), SG&A expenses, and profit. *See* section 773(e)(2)(A) of the Act. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses 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 profit, we calculated rates derived from Shinho Steel's year 2000 financial statements.

*SeAH:* We used CV as the basis for NV when there were no usable contemporaneous sales of subject merchandise in the comparison market in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We included SeAH's cost of materials and fabrication (including packing), SG&A expenses, and profit. *See* section 773(e)(2)(A) of the Act. 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 relied on SeAH's reported weighted-average third country selling expenses.

*C. Price-to-Price Comparisons*

Where appropriate, for comparison to CEP, we made adjustments to NV by deducting Korean inland freight from the factory to the port, brokerage and handling, terminal charges, wharfage, international ocean freight and packing, in accordance with section 773(a)(6)(B) of the Act, and direct selling expenses (credit expenses) in accordance with section 773(a)(6)(C)(iii) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act.

Finally, the Department added duty drawback to third-country prices for comparison to duty-inclusive cost of production and U.S. price. *See e.g., Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review,* 64 FR 13369 (March 17, 1999).

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade (''LOT'') of the U.S. sales. The NV LOT is that of the starting-price sales in the comparison market. The Court of Appeals for the Federal Circuit has held that the statute unambiguously requires Commerce to deduct the selling expenses set forth in section 772(d) from the CEP starting price prior to performing its LOT analysis. *See Micron Technology, Inc.* v. *United States,* 243 F.3rd 1301, 1315 (Fed. Cir. 2001). Consequently, the Department will continue to adjust the CEP, pursuant to section 772(d), prior to performing the LOT analysis, as articulated by the Department's regulations at section 351.412. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

To determine whether comparison market 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 unaffiliated customer. If the comparison-market sales are at a different level of trade 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 level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 17, 1997).

In Jordan, SeAH reported only one LOT and, therefore, could not quantify a level of trade adjustment. SeAH contends that when the CEP adjustments are made, the CEP LOT is less advanced than the foreign market LOT, qualifying SeAH for a CEP offset. A comparison of the selling functions that SeAH reported for its two U.S. sales channels indicates that the difference in selling functions of the two channels was not substantial. As such, the difference in selling functions was insufficient to support SeAH's claim that each channel was a different LOT. Therefore, in accordance with section 351.412(c)(2), we find that SeAH has only one LOT for its sales in the United States.

For SeAH's sales in the foreign market (i.e., the third-country market), the relevant transaction for the Department's analysis is between the SeAH and the unaffiliated Korean trading company. After deducting the selling expenses set forth in section 772(d) from the CEP starting price, SeAH's sales to Jordan are at a more advanced LOT than the CEP sales.

As set forth in section 351.412(f) of the Department's regulations, a CEP offset will be granted where (1) normal value is compared to CEP sales, (2) normal value is determined at a more advanced LOT than the LOT of the CEP, and (3) despite that fact that the party has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. Since the selling functions provided by PPA for SeAH's sales to the United States, after deducting the selling expenses set forth in section 772(d) from the CEP starting price, are at a marketing stage which is less advanced than for the SeAH's sales to Jordan, we preliminarily determine that sales in Jordan are being made at a more advanced LOT than those to the United States. Because there is only one level of trade in Jordan, the data available do not permit us to determine the extent to which this difference in LOT affects price comparability. Therefore, in accordance with section 351.412(f), we are granting SeAH a CEP offset. To calculate this offset, we deducted indirect selling expenses from NV to the extent of U.S. indirect selling expenses.

**Currency Conversion**

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

**Company Name Change**

On May 2, 2002, Shinho Steel informed the Department that, effective April 1, 2002, it had legally changed its name to Husteel Co. Ltd. We note that the date of the name change is after the POR. A changed circumstances review addressing this name change is currently being conducted in Certain Circular Welded Non-Alloy Steel Pipe from Korea (A–580–809). *See Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Initiation of Changed Circumstances Antidumping Duty Administrative Review,* 67 FR 41394 (June 18, 2002).

**Preliminary Results of Review**

We preliminarily determine that the following dumping margin exists:

| Manufacturer/Exporter | Time period | Margin (percent) |
|---|---|---|
| SeAH Steel Corporation | 08/01/2000–07/31/2001 | 0.39 |
| Shinho Steel Company | 08/01/2000–02/28/2001 | 0.00 |

**Cash Deposit Requirements**

If these preliminary results are not modified in the final results of these reviews, the following deposit rates will be effective upon publication of the final results of this new shipper and administrative review for all shipments of OCTG from Korea 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 SeAH and Shinho Steel, the cash deposit rate will be the rates established in the final results of these reviews; (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 12.17 percent. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea,* 60 FR 33561 (June 28, 1995).

**Comments and Hearing**

The Department will disclose calculations performed in connection with these preliminary results of reviews within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of the new shipper review concurrently with the final results of the administrative review. *See* ''Background'' section of this notice, above.

**Assessment Rates**

Upon completion of these reviews, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to these reviews. The Department will issue appropriate appraisement instructions directly to the Customs Service within 15 days of publication of the final results of reviews. If these preliminary results are adopted in the final results of review, we will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. 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.

These reviews 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: August 26, 2002.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02–23079 Filed 9–10–02; 8:45 am]

**BILLING CODE 3510–DS–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–841]**

### Structural Steel Beams From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of preliminary results of antidumping duty administrative review of structural steel beams from the republic of korea.

**SUMMARY:** The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on structural steel beams (''SSBs'') from the Republic of Korea in response to a request from respondent INI Steel Company (''INI'') (formerly Inchon Iron & Steel Co. Ltd.). This review covers imports of subject merchandise from INI. The period of review (''POR'') is February 11, 2000, through July 31, 2001.

Our preliminary results of review indicate that INI has sold the subject merchandise at less than normal value (''NV'') during the POR. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of INI's subject merchandise during the POR, in accordance with sections 19 CFR 351.106 and 351.212(b) of the Department's regulations.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** September 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482–0182 and (202) 482–3434, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute and Regulations**

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 (2001).

**Background**

On August 1, 2001, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on structural steel beams from the Republic of Korea. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 66 FR 39729 (August 1, 2001). On August 30, 2001, respondent INI requested a review in accordance with 19 CFR 351.213(b)(1). On October 1, 2001, the Department published in the **Federal Register** a notice of initiation of administrative review of this order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 49924 (October 1, 2001).

On October 4, 2001, the Department issued a questionnaire for this review to INI. INI submitted Section A questionnaire responses on November 8, 2001. On December 7, 2001, INI submitted its Sections B through D questionnaire responses. INI submitted its cost reconciliation on December 7, 2001, in the context of the Section D response.

On October 9, 2001, Nucor Corp., Nucor-Yamato Steel Co., TXI-Chaparral Steel Co. (''Petitioners'') made an entry of appearance.

On October 12, 2001, the Department granted INI's request that it be allowed to report its cost based on fiscal year 2000, and the first half of the fiscal year 2001, which is a cost period of January 1, 2000, through June 30, 2001, fiscal year rather than for the period of review, February 11, 2000, through July 31, 2001.

On February 13, 2002, the Department issued a supplemental questionnaire covering INI's Section A though E responses. INI provided its supplemental questionnaire response on March 15, 2002.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On May 1, 2002, the Department extended the time limit for the preliminary results in this review to August 31, 2002. However, due to a Federal holiday, the signature date will be Tuesday, September 3, 2002. *See Structural Steel Beams from Korea: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 21638 (May 1, 2002).

The Department issued its second supplemental questionnaire on May 17, 2002. INI responded on June 14, 2002. On June 26, 2002, INI submitted its sales reconciliation. The Department issued its third supplemental questionnaire on June 28, 2002. INI responded on July 9, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

**Scope of the Review**

The products covered by this investigation are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

**Verification**

As provided in section 782(i) of the Act, we verified sales and cost information provided by INI from July 15, 2002, to July 26, 2002, in Inchon, Korea. We verified the CEP sales response of INI's U.S. affiliate, Hyundai U.S.A., from August 12, 2002, to August 13, 2002, in Englewood Cliffs, New Jersey. We used standard verification procedures, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

**Affiliation**

In order to complete the dumping calculation, the Department must determine whether respondents sold subject merchandise through affiliated companies within the United States. In this review, INI reported that it was affiliated with one of the companies to which it sold subject merchandise, Hyundai USA, for some portion of the POR. As discussed below, the Department preliminarily determines that INI was affiliated with Hyundai USA for the entire POR.

The Hyundai Group chaebol was formed by the late C.Y. Jung, father of Mong Koo (''M.K.'') Jung and Mong Hun (''M.H.'') Jung. During the POR, 10 members of the Hyundai Group chaebol, including INI and Hyundai Motors Company, filed for separation from the Hyundai Group chaebol with the Korean Fair Trade Commission. *See INI Steel Company Home Market Sales, United States Sales, and Cost of Production Verification Report; Antidumping Duty Administrative Review on Structural Steel Beams from Korea* (September 3, 2002) (''*INI Sales and Cost Verification Report*''). Eight of the 10 companies filed for separation on August 23, 2000, and two companies, INI and Sampyo Manufacturing Company, filed for separation prior to August 23, 2000. On August 31, 2000, the Korean Fair Trade Commission granted separation for the 10 companies after meeting certain conditions under the Korean antitrust and fair trade laws. *See INI Sales and Cost Verification Report.* After separation, the 10 aforementioned companies (including INI) formed another chaebol, *i.e.*, the Hyundai Motors Group chaebol, and filed for chaebol status with the Korean

government. INI claims that the Hyundai Motors Group chaebol was founded as of August 31, 2000 but because the Korean Fair Trade Commission only formally classifies enterprise groups (chaebols) once a year, in April, the Korean Government formally recognized the Hyundai Motors Group chaebol on April 2, 2001. *See* INI's March 15, 2002, supplemental questionnaire response, at 5.

In order to determine whether INI and Hyundai USA are affiliated, we first examined INI. Specifically, we examined whether M.K. Jung exercises any control over INI. At verification, we found that M.K. Jung is the chairman of both the lead company in the Hyundai Motors Group chaebol, *i.e.*, the Hyundai Motors Company, and the chairman of the Hyundai Motors Group chaebol, of which INI is a part. *See INI Sales and Cost Verification Report.* In addition, we have additional record evidence that M.K. Jung controls INI. *See Analysis for the preliminary results of review for structural steel beams from Korea—INI Steel Company (''INI'')* (September 3, 2002) (''*INI Preliminary Analysis Memo*''). Therefore, the Department preliminarily determines that M.K. Jung exercises control over INI. (*See* 19 CFR 102(b) (definition of affiliated persons).) However, the Department intends to seek additional information related to INI and its affiliation with Hyundai USA in order to, inter alia, understand M.K. Jung's control over INI. The Department will allow interested parties to comment on this new information before making a final determination.

Next the Department examined Hyundai USA. After the Hyundai Motors Group separated from the Hyundai Group chaebol, the Hyundai Group chaebol consists of several member companies, including Hyundai Corporation, which wholly owns Hyundai USA, and Hyundai Engineering and Construction Company, Ltd. At verification, we found that M.H. Jung is the chairman of both the Hyundai Group chaebol and Hyundai Engineering and Construction Company, Ltd., the principal company in the Hyundai Group chaebol. Therefore, the Department preliminarily finds that M.H. Jung controls Hyundai Corp. and its wholly-owned subsidiary Hyundai USA. (*See* 19 CFR 102(b).) However, the Department intends to seek additional information related to INI and its affiliation with Hyundai USA in order to, inter alia, understand M.H. Jung's control over Hyundai USA. The Department will allow interested parties to comment on this new information before making a final determination.

As discussed above, M.K. Jung and M.H. Jung have the same father. Under section 771(33)(A) of the Act, the Jung brothers, as half brothers, are considered affiliated persons. Additionally, because the Department has preliminarily determined that the Jung brothers control INI and Hyundai USA, respectively, these companies are also affiliated. That is to say, INI and Hyundai USA are under the common control of one entity, the Jung brothers. *See* section 771(33)(F) of the Act. *See also Allied Tube and Conduit Corp. v. United States, et al* 127 F. Supp. 207, 222 (C.I.T. 2000). Accordingly, we are re-classifying all of INI's sales through Hyundai USA as CEP sales, even those originally classified by INI as EP sales (*i.e.*, post-August 30, 2000 sales), because INI and Hyundai USA were affiliated during the entire POR.

**Normal Value Comparisons**

To determine whether INI's sales of subject merchandise from Korea to the United States were made at less than normal value, we compared the export price (''EP'') or constructed export price (''CEP'') to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. Pursuant to section 777A(d)(2), we compared the export prices of individual U.S. transactions to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade at prices above the cost of production (''COP'') as discussed in the ''Cost of Production Analysis'' section below.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''Scope of the Review'' section of this notice supra, which were produced and sold by INI in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to SSB products sold in the United States. We have relied on four product characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: hot formed or cold formed, shape/size (section depth), strength/grade, whether or not coated. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the October 4, 2001, antidumping duty questionnaire and instructions, or to constructed value (''CV''), as appropriate.

**Export Price and Constructed Export Price**

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this administrative review, INI has classified its sales as both EP and CEP.

INI identified three channels of distribution for U.S. sales. For U.S. sales channel one (*i.e.*, INI sales through Hyundai Corporation, INI's affiliated trading company in South Korea, to Hyundai USA, a wholly-owned subsidiary of Hyundai Corporation located in the United States and an affiliate (INI claims affiliation only prior to August 30, 2000) of INI, and finally, to an unaffiliated customer), INI has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. At the time, INI was still a member of the Hyundai Group chaebol and clearly affiliated with Hyundai USA. Therefore, for these channel one sales, we based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act.

For U.S. sales channel two (*i.e.*, INI sales to Hyundai USA after INI disassociated itself from the Hyundai Group), INI classified these sales as EP sales; however, as explained in our ''Affiliation'' section above, we have found INI affiliated with the Hyundai Corporation and its wholly-owned subsidiary Hyundai USA for the entire POR and have preliminarily classified these sales as CEP sales. For channel three (*i.e.*, INI sales to unaffiliated U.S. customers), we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United

States or for export to the United States prior to importation, and CEP methodology was not otherwise indicated.

We calculated EP on the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the warehouse, foreign warehousing expenses, foreign inland freight from the warehouse to the port of export, foreign wharfage and lashing expenses, international freight, marine insurance, other U.S. transportation expenses (*i.e.*, U.S. wharfage, brokerage, and other charges), and U.S. customs duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. Where applicable, we made a deduction to gross unit price for other discounts. For a further discussion of this issue, *see INI Preliminary Analysis Memo.*

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the warehouse, foreign warehousing expenses, foreign inland freight from the warehouse to the port of export, foreign wharfage and lashing expenses, international freight, marine insurance, other U.S. transportation expenses (*i.e.*, U.S. wharfage, brokerage, and other charges), and U.S. customs duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. Where applicable, we made a deduction to gross unit price for other discounts. Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in the CEP. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, commissions, and bank expenses) and indirect selling expenses. In order to eliminate any double-counting, the Department has only included those actual interest expenses attributable to subject merchandise that exceed imputed credit expense as an indirect selling expense. In the instant review because Hyundai USA's actual interest expense was greater than the imputed credit expense, we reduced actual interest expense by the amount of the imputed credit expenses reported on INI's U.S. sales database.

For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

We made changes to INI's reported EP and CEP sales database as a result of verification. *See INI Sales and Cost Verification Report; INI Preliminary Analysis Memo and Report on the Verification of U.S. Sales by Hyundai U.S.A. in the Antidumping Administrative Review of Structural Steel Beams from South Korea* (September 3, 2002)(''*Hyundai U.S.A. Sales Verification Report*'').

**Normal Value**

*1. Home Market Viability*

We compared the aggregate volume of home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Korea was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of home market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise for both companies, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the home market sales of the foreign like product. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Korea, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the EP or CEP or NV sales, as appropriate.

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value (''CV'') Comparisons'' sections of this notice.

*2. Arm's-Length Test*

INI reported that it made sales in the home market to affiliated and unaffiliated end users and unaffiliated distributors. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated party, we determined that sales made to the affiliated party were made at arm's length. *See* 19 CFR 351.403(c). Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. Certain of INI's affiliated home market customers did not pass the arm's length test. We did not consider the downstream sales from these customers to the first unaffiliated customer because INI's affiliated home market customers further manufactured the subject merchandise into merchandise outside of the scope of the order.

*3. Cost of Production (''COP'') Analysis*

Because the Department determined that INI made sales in the home market at prices below the cost of producing the subject merchandise in the SSB investigation and, therefore, excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that INI made sales in the home market at prices below the cost of producing the merchandise in this administrative review. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry to determine whether INI made home market sales during the POR at prices below their respective COP within the meaning of section 773(b) of the Act.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of INI's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and

administrative expenses (''SG&A''), including interest expenses, and packing costs. We relied on the COP data submitted by INI in their original and supplemental cost questionnaire responses. For the preliminary results of review, we revised INI's COP information based on our verification finding that it had erroneously excluded donations from its total general and administrative (''GNA'') ratio. *See INI Sales and Cost Verification Report.*

B. Test of Home Market Prices

On a product-specific basis, we compared the weighted-average COP for INI, adjusted where appropriate, to their 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 less than the COP, we examined whether such sales were made: (1) Within an extended period of time, in substantial quantities; and (2) at prices which did not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices (plus interest revenue), less any applicable billing adjustments, movement charges, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the extended period were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' pursuant to section 773(b)(2)(C)(i) within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. As a result, we disregarded such below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. Based on this test, we disregarded below-cost sales from our analysis for INI. For those sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade, we compared EP or CEP to CV, in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated INI's constructed value (''CV'') based on the sum of their cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by INI 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 actual weighted-average home market direct and indirect selling expenses. For CV, we instructed INI to make this same adjustment described in the COP section above.

**Price-to-Price Comparisons**

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse, warehousing expenses, and inland freight from plant/distribution warehouse to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit, warranty expense and interest revenue, where appropriate in accordance with section 773(a)(6)(C). In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Where applicable, we modified the gross unit price based on billing adjustments. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(a)(1)(B)(i), we based NV on CV.

We did not make any adjustments to INI's reported home market sales data in the calculation of NV.

**Price-to-CV Comparisons**

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a home market match of identical or similar merchandise. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. Where applicable, we make adjustments to CV in accordance with section 773(a)(8) of the Act.

**Level of Trade**

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 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 selling, general and administrative (''SG&A'') expenses and profit. For EP, the 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 sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the 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 an 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 sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this administrative review, we obtained information from INI about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United*

*States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar.

In the present review, INI did not request a LOT adjustment for any channels but did request a CEP offset on its sales in channel one prior to August 30, 2000, the date INI claims to become unaffiliated with members of the Hyundai Group chaebol (*i.e.*, Hyundai Corporation and Hyundai U.S.A. and other Hyundai Group members). To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

In both the U.S. and home markets, INI reported one level of trade. *See* INI's December 7, 2001, Sections B–D response, at B–16 and C–16. INI sold through two channels of distribution in the home market: (1) Unaffiliated distributors; and (2) affiliated and unaffiliated end-users. INI claims to have sold through three channels of distribution in the U.S. market: (1) INI sales through Hyundai Corporation, INI's affiliated trading company in South Korea, to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of INI (prior to August 30, 2000), and finally, to an unaffiliated customer; (2) INI sales to Hyundai U.S.A.; and (3) INI sales to unaffiliated U.S. customers. However, because we have preliminarily determined that INI is affiliated with Hyundai Corporation and Hyundai U.S.A., we have combined channels one and two into channel one. Also, we have reclassified channel three as channel two.

For sales in home market channels one and two, INI performed all sales-related activities, including arranging for freight and delivery; warranty; after-sales service; and extending credit. INI's home market sales in channels one and two were made from inventory. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the home market.

For sales in U.S. channel one (the selling activities of INI and Hyundai Corporation combined), the following selling activities are performed: (1) After sales services; (2) warranties; (3) arrangement for freight and delivery; and (4) credit risk. For sales in U.S. channel two (INI's selling activities), the following selling activities are performed: (1) After sales service; (2) warranties; (3) arrangement for freight and delivery; and (4) credit risk. Because these selling functions are the same for both sales channels, we preliminarily determine that there is one LOT in the U.S. market.

In comparing INI's home market and U.S. market sales, it appears that INI offered many of the same selling functions in both markets, including: Arranging for freight and delivery; warranty; after-sales service; and extending credit. Accordingly, we determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT. Consequently, we preliminarily determine that a LOT adjustment or CEP offset is not warranted in this case.

**Currency Conversion**

For purposes of the preliminary results, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank in accordance section 773A(a) of the Act.

**Preliminary Results of Review**

As a result of our administrative review, we preliminarily determine that the following weighted-average dumping margin exists for the period February 11, 2000, through July 31, 2001:

STRUCTURAL STEEL BEAMS FROM KOREA

| Manufacturer/exporter/reseller | Margin (percent) |
|---|---|
| INI | 1.85 |

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs must be limited to issues raised in case briefs and may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs and comments must be served on interested parties in accordance with 19 CFR 351.303(f). Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. 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, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon completion of this administrative review, the Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the U.S. Customs Service within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the U.S. Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

**Cash Deposit**

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company) see 19 CFR 106(c)(1); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published 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 merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 37.21 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Interested Parties**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 20, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–23080 Filed 9–10–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Membership of the National Oceanic and Atmospheric Administration Performance Review Board

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of membership of NOAA Performance Review Board.

**SUMMARY:** In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of nineteen members to serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees, and SES recertification. The appointment of members to the NOAA PRB will be for a period of 24 months.

**EFFECTIVE DATE:** The effective date of service of the nineteen appointees to the NOAA Performance Review Board is September 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** James P. Faulkner, Executive Resources Program Manager, Human Resources Management Office, Office of Finance and Administration, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530 (ext. 204).

**SUPPLEMENTARY INFORMATION:** The names and position titles of the members of the NOAA PRB are set forth below (all are NOAA officials, except Tyra Smith, Director, Human Resources, Bureau of the Census, Department of Commerce; Gerald R. Lucas, Deputy Chief Financial Officer, Economic Development Administration, Department of Commerce; and Timothy J. Houser, Deputy Under Secretary for International Trade, International Trade Administration, Department of Commerce):

Mary M. Glackin, Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service.
John E. Oliver, Jr. Deputy Assistant Administrator, National Marine Fisheries Service.
Louisa Koch, Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.
Jamison Hawkins, Deputy Assistant Administrator for Ocean and Coastal Zone Management, National Ocean Service.
John E. Jones, Jr., Deputy Assistant Administrator for Weather Services, National Weather Service.
Sonya S. Stewart, Chief Financial Officer/Chief Administrative Officer, Office of Finance and Administration.
Mary Beth S. Nethercutt, Director, Office of Legislative Affairs.
Tyra Smith, Director, Human Resources, Bureau of the Census.
David Kennedy, Director, Office of Response and Restoration, National Ocean Service.
David Rogers, Director, Office of Weather and Air Quality Research, Office of Oceanic and Atmospheric Research.
Gregory Mandt, Director, Office of Climate, Water and Weather Services, National Weather Service.
Rebecca Lent, Deputy Assistant Administrator, National Marine Fisheries Service.
Helen M. Hurcombe, Director, Acquisition, Grants and Facility Service, Office of Finance and Administration.
Jolene A. Lauria Sullens, Deputy Chief Financial Officer/Director of Budget, Office of Finance and Administration.
Gerald R. Lucas, Deputy Chief Financial Officer, Economic Development Administration, Department of Commerce.
Lee Dantzler, Director, National Oceanographic Data Center National Environmental Satellite, Data and Information Service.
Jordan P. St. John, Director, Office of Public and Constituent Affairs, Office of Public and Constituent Affairs, NOAA.
Timothy J. Houser, Deputy Under Secretary for International Trade, International Trade Administration, Department of Commerce.
Louis W. Uccellini, Director, National Centers for Environmental Prediction, National Weather Service.

Dated: September 4, 2002.

**Scott B. Gudes,**

*Undersecretary for Oceans and Atmosphere.*

[FR Doc. 02–23053 Filed 9–10–02; 8:45 am]

**BILLING CODE 3510–12–M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on the Extension of Temporary Amendment to the Requirements for Participating in the Special Access Program for Caribbean Basin Countries and the Outward Processing Program

September 5, 2002.

**AGENCY:** The Committee for the Implementation of Textile Agreements (The Committee).

**ACTION:** Request for public comments concerning the extension of amendment to the requirements for participation in the Special Access Program and the Outward Processing Program.

**FOR FURTHER INFORMATION CONTACT:** Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In order to qualify for Special Access Program treatment, a textile product must be assembled from U.S. fabric in a Caribbean Basin Initiative (CBI) or Andean Trade Preference Act (ATPA) country with which the United States has entered into a bilateral agreement regarding guaranteed access levels under the Special Access Program. The product must be assembled from fabric formed and cut in the United States; meaning that all fabric components of the assembled product (with the exception of findings and trimmings, including elastic strips) must be U.S. formed and cut. Upon entry into the United States, the product must be classified under heading 9802.00.8015 of the Harmonized Tariff Schedule of the United States.

Findings and trimmings of non-U.S. origin may be incorporated into the assembled product provided they do not exceed 25 percent of the cost of the components of the assembled product. Certain non-U.S. formed, U.S. cut interlinings for suit jackets and suit-type jackets may currently qualify as findings and trimmings under a temporary amendment to the Special Access Program.

A notice and letter to the Commissioner of Customs published in the Federal Register on December 28, 2000 (see 65 FR 82327) extended through December 31, 2002 the exemption period for women's and girls' and men's and boys' chest type plate, ''hymo'' piece or ''sleeve header'' of woven or weft inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 435, 443, 444, 633, 635, 643 and 644, which are entered under the Special Access Program (9802.00.8015), provided they are cut in the United States.

On January 1, 2000, goods covered under the Outward Processing Program (9802.00.8017) were also authorized to use this exemption, as outlined in the letter and notice to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69746, published on December 14, 1999).

The purpose of this notice is to request public comment on CITA's intention to extend through December 31, 2004, this exemption for women's and girls' and men's and boys' ''hymo'' type interlining. There will be a 30-day comment period beginning on September 11, 2002 and extending through October 11, 2002. Anyone wishing to comment or provide data for information regarding domestic production or availability of the products mention above is invited to submit comments or information to James C. Leonard, III, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230: ATTN: Richard Stetson.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2000). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.02–23037 Filed 9–10–02; 8:45 am]

**BILLING CODE 3510–DR–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity; Notice of a Demonstration Project for Expanded Access to Mental Health Counselors

**AGENCY:** Department of Defense.

**ACTION:** Notice of a demonstration project.

**SUMMARY:** This notice is to advise interested parties of a Military Health System (MHS) demonstration project entitled *Demonstration Project for Expanded Access to Mental Health Counselors.* The National Defense Authorization Act (NDAA) of Fiscal Year (FY) 2001, Public Law (PL) 106–398, section 731 has directed the Secretary of Defense to conduct a demonstration project for expanded access to mental health counselors under TRICARE. According to the legislation, the Secretary of Defense shall conduct a demonstration project under which licensed and certified professional mental health counselor who meet eligibility requirements for participation as providers under the TRICARE program may provide services to covered beneficiaries under Chapter 55 of Title 10, United States Code, without referral by physicians or adherence to supervision requirements.

**EFFECTIVE DATE:** This demonstration project applies to all covered beneficiaries 18 years of age or older under chapter 55 of Title 10, United States Code who receive mental health services within the demonstration region and a non-demonstration region following full implementation of the demonstration, which will occur upon announcement of this notice and will be in effect for two years.

**FOR FURTHER INFORMATION CONTACT:** CAPT Mark Paris, Office of the Assistant Secretary of Defense (Health Affairs)—TRICARE Management Activity, (703) 681–0064.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

Section 731 of the National Defense Authorization Act for Fiscal Year 2001 directs the Department to conduct a demonstration project under which licensed and certified professional mental health counselors who meet eligibility requirements for participation as providers under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or the TRICARE program may provide services to covered beneficiaries under chapter 55 of Title 10, U.S.C., without referral by physicians or adherence to supervision requirements.

Currently, licensed or certified mental health counselors must meet several eligibility and administrative requirement to be an authorized Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE provider. These requirements include documentation of a referral from a physician, ongoing supervision of their services by a physician, and certification of written communication and follow-up with the physician following each service visit. Services provided by other mental health professionals, including licensed clinical social workers, clinical psychologists, and psychiatric nurse specialists, are currently reimbursed

independent of referral or supervision by a physician.

The NDAA for FY 2001 requires the Department of Defense to conduct a demonstration project for expanded access to mental health counselors under TRICARE. The Secretary of Defense has been directed to conduct a demonstration project under which licensed and certified professional mental health counselors who meet eligibility requirements for participation as providers under the TRICARE program may provide services to covered beneficiaries under chapter 55 of Title 10, United States Code, without referral by physicians or adherence to supervision requirements.

The legislation further requires an assessment of the extent to which independent reimbursement of licensed or certified mental health counselors impacts utilization and reimbursement costs for such services, and affects the confidentiality of and treatment outcomes for covered beneficiaries seeking mental health services. The legislation also directs a description of the administrative costs associated with documenting referrals and supervision, and an assessment of the impact of independent reimbursement on the willingness of providers to participate in TRICARE.

**B. Description of Demonstration Project**

*Location of Project:* The Demonstration will be conducted in the TRICARE Central Region because of the relatively high utilization of mental health counselors in that region. Comparison data will be gathered from the Central Region and if necessary, from another TRICARE region.

*Project Components:* The Project will include implementation and evaluation components.

**I. Implementation**

Licensed and/or certified mental health counselors in the Colorado Springs and Omaha catchment areas who are members of the Central Region TRICARE network will be invited to participate in this two year demonstration. Under the demonstration, participating counselors will be allowed to provide services to TRICARE beneficiaries without receipt of either a physician referral or physician case supervision. Counselors will be asked to sign a participant agreement form acknowledging the temporary nature of the demonstration. Potential beneficiaries/clients of these counselors will be provided with information about the demonstration and be asked to sign an informed consent form to acknowledge their understanding of the demonstration and the potential risks of participation. There will be no other changes to the normal treatment processes for beneficiaries. Claims submitted by participating counselors will be flagged and processed for independent reimbursement by TRICARE (to allow for processing without the supervision and referral).

**II. Evaluation**

Rand Corporation will be responsible for gathering data on:

A. Utilization and reimbursement regarding non-physician mental health professionals other than licensed or certified professional mental health counselors under CHAMPUS and the TRICARE program.

B. Utilization and reimbursement regarding physicians who make referrals to, and supervise mental health counselors.

C. Administrative costs incurred as a result of the requirement for documentation of referral to mental health counselors and supervision activities for such counselors.

D. A comparison of data for a one-year period for the area in which the demonstration is being conducted with corresponding data for a similar area in which the demonstration project is not being implemented.

E. A description of the ways in which allowing for independent reimbursement of licensed or certified professional mental health counselors affects the confidentiality of mental health and substance abuse services for covered beneficiaries under CHAMPUS and the TRICARE program.

F. A description of the effect, if any, of changing reimbursement policies on the health and treatment of covered beneficiaries under CHAMPUS and the TRICARE program, including a comparison of the treatment outcomes of covered beneficiaries who receive mental health services from licensed or certified professional mental health counselors acting under physician referral and supervision, other non-physician mental health providers recognized under CHAMPUS and the TRICARE program, and physicians, with treatment outcomes under the demonstration project allowing independent practice of professional counselors on the same basis as other non-physician mental health providers.

G. The effect of policies of the Department on the willingness of licensed or certified professional mental health counselors to participate as health care providers in CHAMPUS and the TRICARE program.

H. Any policy requests or recommendations regarding mental health counselors made by health care plans and managed care organizations participating in CHAMPUS or the TRICARE program.

Dated: August 4, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–23029 Filed 9–10–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meetings of the Pentagon Memorial Design Competition Jury

**AGENCY:** Department of Defense, Director, Administration and Management.

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Pentagon Memorial Design Competition Jury will meet in closed sessions on September 30, October 1, and October 2, 2002. The Jury was chartered on August 26, 2002, by the Department of Defense to review and evaluate the designs submitted in response to the Baltimore District, Corps of Engineers announcement of the design competition for a Pentagon Memorial to the victims of the September 11, 2001 terrorist attack on the Pentagon.

In accordance with the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App II (1982), discussion of procurement sensitive information, as covered by 5 U.S.C. 552b(c)(4)(1988)), will take place throughout the meetings, and that, accordingly, the meetings will be closed to the public.

**DATES:** Monday through Wednesday, September 30—October 2, 8 a.m.–5 p.m.

**ADDRESSES:** National Building Museum, 401 F Street NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Jerry Shiplett, Special Assistant to the Director, Real Estate and Facilities, Washington Headquarters Services, on 703–614–9203.

Dated: September 4, 2002.

**L.M. Bynum,**

*Alternate Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–23030 Filed 9–10–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Additional Public Hearing in the City of Washington, NC (Beaufort County) and Extension of Public Comment Period for the Draft Environmental Impact Statement and Draft Clean Air Act Conformity Determination for Introduction of F/A–18 E/F (Super Hornet) Aircraft to the East Coast of the United States

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 102(2) of the National Environmental Policy Act, of 1969 and the regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the Department of the Navy prepared and filed a Draft Environmental Impact Statement (DEIS) and Draft Clean Air Act (CAA) Conformity Determination with the Environmental Protection Agency on July 26, 2002. An announcement of public hearing dates and locations was published in the **Federal Register** (Volume 67, Number 148) on August 1, 2002, and a Notice of Availability was published in the **Federal Register** (Volume 67, Number 149) on August 2, 2002. At the public hearing held on August 29, 2002, in Plymouth, NC, it was requested that another meeting be held in the City of Washington in Beaufort County, NC. This notice announces the date and location of an additional public hearing on the DEIS.

**DATES AND ADDRESSES:** A public hearing has been scheduled for September 26, 2002, at Washington High School, 400 Slatestown Road, Washington, NC. An open information session will precede the scheduled public hearing and will allow individuals to review the data presented in the DEIS. The open information session is scheduled from 4:30 p.m. to 6:30 p.m., followed by the public hearing from 7 p.m. to 9:30 p.m.

Federal, State, and local agencies, as well as interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the DEIS and Draft CAA Conformity Determination and will be responded to in the Final Environmental Impact Statement (EIS). Equal weight will be given to both oral and written statements.

In the interest of available time and to ensure all who wish to give an oral statement have the opportunity to do so; each speaker's comments will be limited to three (3) minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing, mailed, or faxed to the contact.

The Department of the Navy also announces that the public comment period for the DEIS and Draft CAA Conformity Determination has been extended from October 2, 2002, to October 11, 2002. The Notice of Availability provided for a 60-day comment period on the DEIS which would have ended on October 2, 2002. However, due to the fact that an additional pubic hearing has been scheduled for September 26, 2002, the Navy has extended the public comment period on the DEIS and Draft CAA Conformity Determination to October 11, 2002. All comments on the DEIS must be postmarked on or before October 11, 2002, to be considered in the Final EIS. Comments may be mailed to: Commander, Atlantic Division, Naval Facilities Engineering Command, Attn: Fred Pierson (Code BD32FP), 1510 Gilbert Street, Norfolk, VA 23511–2699, Fax (757) 322–4894.

A copy of the DEIS was distributed to the following library: Beaufort County Library, 122 Van Norden, Washington, NC. An electronic copy is also available for public viewing at: *http://www.efaircraft.ene.com.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Pierson, Atlantic Division, Naval Facilities Engineering Command, Norfolk, VA at (757) 322–4935. A limited number of single copies of the DEIS, Executive Summary, and Draft CAA Conformity Determination are available upon request by contacting Mr. Pierson.

Dated: September 9, 2002.

**R.E. Vincent II,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 02–23243 Filed 9–10–02; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 12, 2002.

**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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 5, 2002.

**John Tressler,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Federal Student Aid**

*Type of Review:* Revision.
*Title:* Income Contingent Repayment Plan Alternative Documentation of Income.
*Frequency:* Annually.
*Affected Public:* Individuals or household.
*Reporting and Recordkeeping Hour Burden:*
*Responses:* 690,685.
*Burden Hours:* 227,927.

*Abstract:* A William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan uses this form to submit alternative documentation of income if the borrower's adjusted gross income is not available or does not accurately reflect the borrower's current income.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2127. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@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 e-mail 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. 02–23062 Filed 9–10–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 12, 2002.

**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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 5, 2002.

**John Tressler,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Federal Student Aid**

*Type of Review:* Revision.

*Title:* Direct Loan Income Contingent Repayment Plan Alternative Documentation of Income.

*Frequency:* Once every five years.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 314,861.

Burden Hours: 62,972.

*Abstract:* This form is the means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan provides written consent for the Internal Revenue Service to disclose certain tax return information 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*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2126. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651 or to the e-mail *address vivian_reese@ed.gov*. Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@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 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. 02–23063 Filed 9–10–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Advisory Committee on Student Financial Assistance; Meeting

**AGENCY:** Advisory Committee on Student Financial Assistance, Education.

**ACTION:** Notice of upcoming teleconference meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at 202–219–2099 or via e-mail at *hope.gray@ed.gov* no later than 2 p.m. on Monday, September 23, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

**DATE AND TIME:** Friday, September 27, 2002, beginning at 11 a.m. and ending at approximately 11:30 a.m.

**ADDRESS:** Capitol Place, 80 F Street, NW., Room 413, Washington, DC 20001

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 413, Washington, DC 20202–7582 (202) 219–2099.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student

financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: Promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs, and minimizing burden on students and institutions.

Reauthorization of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in several areas, such as, Performance-Based Organization (PBO); Title IV Modernization; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committee to: Monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. The most important charge of the Advisory Committee is to make recommendations to maintain and improve access to postsecondary education. Each of these responsibilities flows logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The agenda will focus exclusively on conducting the election of officers for the Advisory Committee. Space is limited and you are encouraged to contact the Advisory Committee staff through the Internet at *ADV.COMSEA@ed.gov* no later than Tuesday, September 24, 2002, if you wish to participate. Also, you may contact the Advisory Committee staff at (202) 219–2099.

The Advisory Committee will meet in Washington, DC via teleconference on Friday, September 27, 2002, from 11 a.m. until approximately 11:30 a.m.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: September 5, 2002.

**Brian K. Fitzgerald,**

*Staff Director, Advisory Committee on Student Financial Assistance.*

[FR Doc. 02–23077 Filed 9–10–02; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice 02–26: High Energy Physics Outstanding Junior Investigator Program

**AGENCY:** Department of Energy.

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for support under its Outstanding Junior Investigator (OJI) Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical high energy physics or accelerator physics research, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of individual research programs by outstanding scientists early in their careers. Awards made under this program will help to maintain the vitality of university research and assure continued excellence in the teaching of physics.

**DATES:** To permit timely consideration for award in Fiscal Year 2003, formal applications submitted in response to this notice must be received before November 1, 2002.

**ADDRESSES:** We encourage you to submit formal applications in response to this solicitation electronically through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. Applications must be submitted through IIPS in PDF format by an authorized institutional business official. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, formal applications may be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. ATTN: Program Notice 02–26.

When submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant, the following address must be used: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–26.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jeffrey Mandula, Division of High Energy Physics, SC–221/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Telephone: (301) 903–4829. E-Mail: *jeffrey.mandula@science.doe.gov.*

**SUPPLEMENTARY INFORMATION:** The Outstanding Junior Investigator program was started in 1978 by the Department of Energy's Office of Science. A principal goal of this program is to identify exceptionally talented high energy physicists early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is therefore restricted to non-tenured investigators who are conducting experimental or theoretical high energy physics or accelerator physics research. Since its debut, the program has initiated support for between five and ten new Outstanding Junior Investigators each year. The program has been very successful and contributes importantly to the vigor of the U.S. High Energy Physics program. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. The full range of activities currently supported by the Division of High Energy Physics is eligible for support under this program.

The DOE expects to make five to ten grant awards in Fiscal Year 2003, to meet the objectives of this program. It is

anticipated that approximately $500,000 will be available in Fiscal Year 2003, subject to availability of appropriated funds. In the recent past, awards have averaged $60,000 per year, with the number of awards determined by the number of excellent applications and the total funds available for this program. Multiple year funding of grant awards is expected, including renewal beyond the initial project period, as long as the recipient's tenure status is unchanged. Funding will be provided on an annual basis subject to availability of funds.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605.10(d):

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of applicant's personnel and adequacy of proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605)

Issued in Washington, DC, on September 4, 2002.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 02–23071 Filed 9–10–02; 8:45 am]

**BILLING CODE 6450–02–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER02–924–002, et al.]**

## Michigan Electric Transmission Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

September 3, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Michigan Electric Transmission Company, LLC

[Docket No. ER02–924–002]

Take notice that on August 27, 2002, Michigan Electric Transmission Company, LLC, the successor to Michigan Electric Transmission Company, submitted the Refund Report required by the Federal Energy Regulatory Commission's (Commission) July 18, 2002 letter order in this proceeding.

Copies of this filing were served on all parties included on the official service list established in this proceeding.

*Comment Date:* September 17, 2002.

### 2. Utility Contract Funding, L.L.C.

[Docket No. ER02–2102–001]

Take notice that on August 27, 2002, Utility Contract Funding, L.L.C. submitted a revised tariff rate schedule pursuant to section 205 of the Federal Act, 16 U.S.C. 824d, and Rule 35.12 of the Commission's regulations to reflect the change in its name from Cedar Brakes III, L.L.C.

*Comment Date*: September 17, 2002.

### 3. Orion New York GP II, Inc.

[Docket No. ER02–2435–001]

Take notice that on August 28, 2002, Orion New York GP II, Inc. (OPNY) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an amended FERC Electric Rate Schedule No. 1 (to comply with the requirements of Order No. 614) authorizing OPNY to make sales at market-based rates. OPNY has requested this rate schedule become effective on October 7, 2002.

OPNY intends to sell electric power at wholesale. In transactions where OPNY sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. OPNY's Rate Schedule provides for the sale of energy and capacity at agreed prices.

*Comment Date*: September 18, 2002.

### 4. PacifiCorp

[Docket No. ER02–2506–000]

Take notice that on August 28, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with Part 35 of the Commission's Rules and Regulations (18 CFR Part 35), a Notice of Cancellation of FERC Electric Tariff Fourth Revised Volume No. 3, Service Agreement 94 between PacifiCorp and LG&E Energy.

Copies of this filing were supplied to LG&E Energy and the Public Utility Commission of Oregon.

*Comment Date*: September 18, 2002.

### 5. American Electric Power

[Docket No. ER02–2507–000]

Take notice that on August 28, 2002, American Electric Power Service Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission) a Facilities, Operation and Maintenance Agreement (Facility Agreement) dated August 1, 2002, between Columbus Southern Power Company (d/b/a AEP), Consolidated Electric Cooperative, Inc. (CEC) and Buckeye Power, Inc. (Buckeye).

The Facility Agreement provides for the establishment of a new delivery point, pursuant to the provisions of the Power Delivery Agreement between Columbus Southern Power, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. AEP requests an effective date of October 1, 2002 for the Facility Agreement.

AEP states that copies of its filing were served upon CEC, Buckeye and the Public Utilities Commission of Ohio.

*Comment Date*: September 18, 2002.

### 6. Kiowa Power Partners, LLC

[Docket No. ER02–2509–000]

Take notice that on August 28, 2002, Kiowa Power Partners, LLC, 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Kiowa), which will own and operate a natural gas-fired electric generating facility to be constructed in Pittsburg County, Oklahoma, submitted for filing with the Federal Energy Regulatory Commission (Commission) its initial Rate Schedule FERC No. 1 which will enable Kiowa to engage in the sale of electric energy and capacity at market-based rates.

*Comment Date*: September 18, 2002.

**7. MidAmerican Energy Company**

[Docket No. ER02–2510–000]

Take notice that on August 28, 2002, MidAmerican Energy Company (MidAmerican), 401 Douglas Street, P.O. Box 778, Sioux City Iowa 51102, filed with the Federal Energy Regulatory Commission (Commission) a Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement between MidAmerican, as transmission provider, and GEN–SYS Energy, as transmission customer, dated August 16, 2002.

MidAmerican requests an effective date of August 16, 2002, for the agreements and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment Date*: September 18, 2002.

**8. Central Power and Light Company**

[Docket No. ER02–2511–000]

Take notice that on August 27, 2002, American Electric Power Service Corporation (AEPSC), as designated agent for Central Power and Light Company (CPL) submitted for filing amendments to the Interconnection Agreement between CPL and Magic Valley Electric Cooperative, Inc. (MVEC) dated July 24, 2002 that recognizes the establishment of additional points of interconnection between the parties at MVEC's Aderhold Substation and CPL's Weslaco Switching Station.

AEPSC seeks effective dates of June 26, 2002 and November 1, 2002 for the interconnections at Aderhold and Weslaco respectively. AEPSC served copies of the filing on MVEC and the Public Utility Commission of Texas.

*Comment Date*: September 17, 2002.

**9. Aquila, Inc.**

[Docket No. ER02–2512–000]

Take notice that on August 28, 2002, Aquila, Inc. (Aquila) tendered for filing Service Agreement No. 95 under Aquila's FERC Electric Tariff, Third Revised Volume No. 25, a firm point-to-point transmission service agreement between Aquila's WestPlains Energy-Colorado division and Rocky Mountain Generation Cooperative, Inc.

UtiliCorp requests an effective date for the service agreement of August 28, 2002.

*Comment Date*: September 18, 2002.

**10. Aquila, Inc.**

[Docket No. ER02–2513–000]

Take notice that on August 28, 2002, Aquila, Inc. (Aquila) tendered for filing with the Federal Energy Regulatory Commission (Commission) Service Agreement No. 94 under Aquila's FERC Electric Tariff, Third Revised Volume No. 25, a short-term non-firm point-to-point transmission service agreement between Aquila's WestPlains Energy-Colorado division and Rocky Mountain Generation Cooperative, Inc.

UtiliCorp requests an effective date for the service agreement of August 28, 2002.

*Comment Date*: September 18, 2002.

**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–23028 Filed 9–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0242; FRL–7199–3]**

## Syracuse Environmental Research Associates, Inc. and Syracuse Research Corporation; Transfer of Data

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

**ACTION:** Notice.

**SUMMARY:** This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, have been awarded a contract to perform work for OPP, and access to this information will enable Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, to fulfill the obligations of the contract.

**DATES:** Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, will be given access to this information on or before September 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7248; e-mail address: *johnson.erik@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

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/*.

**II. Contractor Requirements**

Under Contract No. 68–W0–2035, Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, will perform upon request by EPA: (1) Evaluate monitoring data and characterize the nature and extent of exposure using probabilistic techniques, (2) analyze effects data using state of the art statistical techniques and characterize ecological hazard, and (3) evaluate and analyze data from the open literature when state of the art statistical techniques are required and when specifically requested by EPA. The contractor may be required to develop new data analysis techniques or statistical methods; assessment tools and technologies, models, software, and create and/or populate data bases to review or complete an assessment.

OPP has determined that access by Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, until the requirements in this document have been fully satisfied. Records of information provided to Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, will be maintained by EPA Project Officers for this contract. All information supplied to Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, by EPA for use in connection with this contract will be returned to EPA when Syracuse Environmental Research Associates, Inc. and its subcontractor, Syracuse Research Corporation, have completed their work.

**List of Subjects**

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: August 29, 2002.

**Linda Vlier Moos,**

*Acting Director, Information Resourrces and Services Division, Office of Pesticide Programs.*

[FR Doc. 02–22990 Filed 9–10–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0197; FRL–7197–3]**

## Pesticide Product; Registration Applications

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

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket ID number OPP–2002–0197, must be received on or before October 11, 2002.

**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 ID number OPP–2002–0197 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224 and e-mail address: *miller.Joanne@epamail.epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>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,'' ''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 ID number OPP–2002–0197. 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 ID number OPP–2002–0197 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), 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 ID number OPP–2002–0197. 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 registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Registration Applications

EPA received applications as follows to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

*Products Containing Active Ingredients Not Included in Any Previously Registered Products*

1. *File Symbol*: 3125–LUR. *Applicant*: Bayer Corporation, 8400 Hawthorn Road, Kansas City MO, 64120–0013.*Product name*: Olympus 70% Water Dispersible Granular Herbicide. *Product type*: Herbicide. *Active ingredient*: Propoxycarbazone-sodium (methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1*H*-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate, sodium salt) at 70%. *Proposed classification/Use*: None. For use on wheat to control certain grasses and broadleaf weeds.

2. *File Symbol*: 3125–LUE. *Applicant*: Bayer Corp. *Product name*: Olympus 70% Water Dispersible Granular Herbicide in Water-Soluble Packets. *Product type*: Herbicide. *Active ingredient*: Propoxycarbazone-sodium at 70%. *Proposed classification/Use*: None. For use on wheat to control certain grasses and broadleaf weeds.

3.*File Symbol*: 3125–LUG. *Applicant*: Bayer Corp. *Product name*: Olympus Technical Herbicide. *Product type*: Herbicide. *Active ingredient*: Propoxycarbazone-sodium at 95.3%. *Proposed classification/Use*: None. For manufacturing use of end use products to be used to control certain grasses and broadleaf weeds on wheat.

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: August 27, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 02–22612 Filed 9–10–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0196; FRL–7197–8]**

## Diazinon; Receipt of Requests for Amendments, and Cancellations

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

**ACTION:** Notice.

**SUMMARY:** Several companies that manufacture diazinon [O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate] pesticide products have asked EPA to cancel or amend the registrations for their end-use products containing diazinon to delete all indoor uses, certain agricultural uses and certain outdoor non-agricultural uses. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requests for voluntary termination of the above-mentioned uses through registration cancellations or amendments were submitted to EPA in December 2001, and January, February, March, April, May, June, and July 2002. EPA intends to grant these requests by issuing a cancellation order at the close of the comment period for

this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of these requests. Upon the issuance of the cancellation order, any distribution, sale, or use of diazinon products listed in this notice will only be permitted if such distribution, sale, or use is consistent with the terms of that order.

**DATES:** Comments on the requested amendments to delete uses and the requested registration cancellations must be submitted to the address provided below and identified by docket ID number OPP–2002–0196. Comments must be received on or before October 11, 2002.

**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 ID number OPP–2002–0196 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5776; fax number: (703) 308–7042; e-mail address: *parsons.laura@epa.gov*.

**SUPPLEMENTARY INFORMATION:** This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. The third part proposes existing stocks provisions that will be set forth in the cancellation order that the Agency intends to issue at the close of the comment period for this announcement.

## I. General Information

### *A. Does This Action Apply to Me?*

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I 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/*. To access information about the risk assessment for diazinon, go to the Home Page for the Office of Pesticide Programs or go directly to *http://www.epa.gov/pesticides/op/diazinon.htm*.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0196. 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 ID number OPP–2002–0196 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 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0196. 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 notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

### *A. Background*

Certain registrants requested in letters dated June, August, and September 2001, that their diazinon registrations be amended to delete all indoor uses, certain agricultural uses, and any other uses that the registrants do not wish to maintain. The requests also included deletions of outdoor non-agricultural uses from the labeling of certain end-use products so that such products would be labeled for agricultural uses only. Similarly, other diazinon end-use registrants requested voluntary cancellation of their diazinon end-use registrations with indoor use and/or certain outdoor non-agricultural uses, and any other uses that the registrants do not wish to maintain. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requested cancellations and amendments are consistent with the requests in December 2000 by the manufacturers of diazinon technical products, and EPA's approval of such requests, to terminate all indoor uses and certain agricultural uses from their diazinon product registrations because of EPA's concern with the potential exposure risk, especially to children. The indoor uses and agricultural uses subject to cancellation are identified in List 1 below:

List 1—Uses to be Canceled

1. *Indoor uses:* Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including but not limited to food/feed handling establishments, greenhouses, schools, residences, commercial buildings, museums, sports facilities, stores, warehouses and hospitals.

2. *Agricultural uses:* Alfalfa, bananas, Bermuda grass, dried beans, dried peas, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, forestry, (ground squirrel/rodent burrow, dust stations for public health use), kiwi, lespedeza, parsley, parsnips, pastures, peppers, potatoes (Irish and sweet), sheep, sorghum, squash (winter and summer), rangeland, Swiss chard, tobacco, and turnips (roots and tops).

As mentioned above, the requests announced in this **Federal Register** notice also include registration cancellations and/or amendments to terminate certain uses that the registrants do not wish to maintain. The specific requests are identified in Tables 1 and 2.

EPA has begun the process of reviewing the requested amendments which cannot be finalized until the end of the public comment period and provided that no substantial comments need to be addressed. EPA also intends to grant the requested product and use cancellations by issuing a cancellation order at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of these requests.

### *B. Requests for Voluntary Cancellation of End-Use Products*

The registrants and end-use product registrations containing diazinon for which cancellation was requested are identified in the following Table 1.

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

| Company | Registration No. | Product |
|---|---|---|
| Farnam Companies, Inc. | 270–282 | Diazinon 2EC |
| Prentiss Inc. | 655–457<br>655–462<br>655–519 | Prentox Diazinon 4E Insecticide<br>Prentox Diazinon 4S Insecticide<br>Prentox Liquid Household Spray #1 |
| Universal Cooperatives, Inc. | 1386–573<br>1386–651 | Diazinon Emulsifiable Lawn and Garden Insecticide<br>Security Brand 2% Diazinon Granules Lawn Insect Control |
| Virbac AH, Inc. | 2382–168<br>2382–171<br>2382–172 | Diazinon-Pyriproxyfen Collar for Dogs and Puppies #1<br>Diazinon-Pyriproxyfen Collar for Dogs and Puppies #3<br>Diazinon-Pyriproxyfen Collar for Dogs and Puppies #2 |
| ABC Compounding, Inc. | 3862–71 | Drop Dead Insect Spray |
| Cerexagri, Inc. | 4581–335 | Knox Out 2 FM |
| Amvac Chemical Corp. | 5481–224<br>5481–241 | Diazinon 4E<br>Alco Housing Authority Roach Concentrate |
| U.S. Marketing Distributors | 6409–14 | Professional Do it Yourself Exterminator's Kit Formula 400 |
| Voluntary Purchasing Group Inc. | 7401–67 | Ferti-Lome Rose Spray Containing Diazinon and Daconil |

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

| Company | Registration No. | Product |
|---|---|---|
| Earth Care/Division of United Industries Corp. | 8660–101<br>8660–106<br>8660–115 | Vertagreen 5% Diazinon Insecticide<br>Vertagreen Diazion Pre-Weed<br>Vertagreen Diazinon Pre-Weed Plus |
| The Andersons Lawn Fertilizer Division | 9198–189 | Proturf Insecticide One |
| Waterbury Companies, Inc. | 9444–89 | CB Aqueous Residual Insecticide |
| Athea Laboratories, Inc. | 10088–71 | Roach and Ant Killer |
| Verpas Products, Inc. | 13926–6 | Diaciclon F–5 |
| Wagnol Inc. | 33912–1 | Wagnol 40 Pest Control Spray Concentrate Contains Diazinon |
| T-Tex Corp. | 39039–5 | Dryzon WP Livestock Premise and Sheep Insecticide |
| Chem-Tech Ltd. | 47000–63 | Pressurized Household Insect Spray Concentrate Contains Diazinon and DDVP |
| Marman USA, Inc. | 48273–25 | Marman Diazinon AG 60 EC |
| Control Solutions Inc | 53883–58 | Martin's Diazinon 4E Indoor-Outdoor Insecticide |
| Arkopharma, Inc. | 69607–1 | Double Duty Flea and Tick Collar for Dogs |

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period.

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

In this case, all of the registrants have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested cancellations. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested cancellations at the close of the comment period for this announcement unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests.

### *C. Requests for Voluntary Amendments To Delete Uses From the Registrations of End-Use Products*

Pursuant to section 6(f)(1)(A) of FIFRA, the following companies have submitted a request to amend the registrations of their pesticide end-use products containing diazinon to delete certain uses from certain products. The following Table 2 identifies the registrants, the product registrations that they wish to amend, and the uses that they wish to delete through registration amendments.

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

| Company | Registration No. | Product Name: Use Deletions |
|---|---|---|
| Dragon Chemical Corp. | 16–119<br>16–157<br>16–166 | Dragon 5% Diazinon Granules: Celery<br>Diazinon 25% Diazinon Spray: Almonds<br>Dragon Diazinon Water-Based Concentrate: Almonds |
| Southern Agricultural Insecticides, Inc. | 829–264 | SA–50 Brand 5% Diazinon Granules: Celery |
| Universal Cooperative, Inc. | 1386–599<br><br><br><br><br><br>1386–648 | Diazinon 4 EC (AG): Beans, cucumbers, parsley, parsnips, peas, peppers, potatoes<br>(Irish), squash (summer and winter), sweet potatoes, Swiss chard, turnips, lawn<br>pest control, nuisance pests in outside areas, grassland insects, and indoor<br>ornamentals<br>5% Diazinon Insect Killer Granules: Celery |
| Knox Fertilizer Co. Inc. | 8378–32 | Shaw's 5% Diazinon Insect Granules: Celery |

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. The afore mentioned companies have requested to amend their registrations and have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested amendments to delete uses. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested amendments to delete uses at the close of the comment period for this announcement, unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests.

**III. Proposed Existing Stocks Provisions**

EPA received requests for voluntary cancellation of the diazinon registrations identified in Table 1 and requests for amendments to terminate certain uses of the diazinon registrations identified in Table 2. Pursuant to section 6(f) of FIFRA, EPA intends to grant these requests by issuing a cancellation order at the end of the 30–day comment period unless the Agency receives any substantive comment within the comment period that would merit its further review of these requests. In the event that EPA issues a cancellation order, EPA intends to include in that order the existing stocks provisions set forth in this section. For purposes of that cancellation order, the term ''existing stocks'' will be defined, pursuant to EPA's existing stocks policy at 56 FR 29362, of June 26, 1991, as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

EPA intends that the cancellation order includes the following existing stocks provisions:

1. *Distribution or sale of products bearing instructions for use on agricultural crops.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on the agricultural crops identified in List 1 will not be lawful under FIFRA 1–year after the effective date of the cancellation order. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for any of the agricultural uses identified in List 1 after the effective date of the cancellation order. However, it is lawful to ship such stocks for export consistent with the requirements of section 17 of FIFRA, or to properly dispose of the existing stocks in accordance with all applicable law.

2. *Distribution or sale of products bearing instructions for use on outdoor non-agricultural sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites will not be lawful under FIFRA 1–year after the effective date of the cancellation order. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites after the effective date of the cancellation order. However, it is lawful to ship such stocks for export consistent with the requirements of section 17 of FIFRA, or to properly dispose of the existing stocks in accordance with all applicable law.

3. *Distribution or sale of products bearing instructions for use on indoor sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use at or on any indoor sites (except mushroom houses), shall not be lawful under FIFRA as of the effective date of the cancellation order, except for shipping stocks for export consistent with the requirements of section 17 of FIFRA, or properly disposing of the existing stocks in accordance with all applicable law.

4. *Retail and other distribution or sale of existing stock of products for indoor use.* The distribution or sale of existing stocks by any person other than the registrants of products listed in Table 1 or 2 bearing instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002, except for shipping stocks for export consistent with the requirements of section 17 of FIFRA, or properly disposing of the existing stocks in accordance with all applicable law.

5. *Use of existing stocks.* EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: August 29, 2002.

**Susan Lewis,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 02–22989 Filed 9–10–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0236; FRL–7198–1]**

## Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2002–0236 must be received on or before October 11, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0236 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5704; and e-mail address: *tompkins.jim@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>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/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0236. 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 Highway, 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 ID number OPP–2002–0236 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 Highway, 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 ID number OPP–2002–0236. 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 identified 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. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the

FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**BASF Corporation**

*PP 2F4075*

EPA has received a pesticide petition (2F4075) from BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of sethoxydim, 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity (RAC) corn, sweet (K+CHR at 0.4 part per million (ppm); corn, sweet, forage at 3.0 ppm; corn, sweet, stover at 3.5 ppm; milk at 0.5 ppm; cattle, meat byproduct, at 1.0 ppm; goat, meat byproduct at 1.0 ppm; hog, meat byproduct at 1.0 ppm; horse, meat byproduct at 1.0 ppm; and sheep, meat by product at 1.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. The qualitative nature of the residues in plants and animals is adequately understood for the purposes of registration.

2. *Analytical method*. Analytical methods for detecting levels of sethoxydim and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances were submitted to EPA. The proposed analytical method involves extraction, partition, and clean-up. Samples are then analyzed by gas chromatography with sulfur-specific flame photometric detection. The limit of quantitation is 0.05 ppm.

3. *Magnitude of residues*. Sweet corn at 14 locations throughout the major sweet corn-growing regions of the United States were treated with Poast herbicide, in order to determine the magnitude of the residue in or on sweet corn RAC samples. The applications were applied over the top of the ''sethoxydim-resistant'' hybrid corn plants at the target rate of 0.3 pounds active ingredient per acre (lb ai/A) in two sequential applications, for a maximum seasonal rate of 0.6 lb ai/A. There was a 10–day target interval between applications, with the last application occurring 30 days prior to the anticipated fresh corn harvest date.

Fresh corn, forage, and stover samples were analyzed by common moiety methods that determine both parent plus metabolites. The highest individual total residues as parent equivalent for fresh corn, forage, and stover were 0.36, 2.67, and 3.32 ppm, respectively. The residue decline site showed trends in decreasing residues with increasing pre-harvest intervals (PHI) in fresh corn and forage. There was no decline trend for stover as residues remained somewhat consistent through the 71-91 DALA sampling.

*B. Toxicological Profile*

1. *Acute toxicity*. Based on the available acute toxicity data, sethoxydim does not pose any acute dietary risks. A summary of the acute toxicity studies follows:

i. *Acute oral toxicity, rat*. Toxicity Category III; lethal dose ($LD_{50}$) = 3,125 milligrams/kilogram (mg/kg) (male), 2,676 mg/kg (female).

ii. *Acute dermal toxicity, rat*. Toxicity Category III; $LD_{50}$ >5,000 mg/kg (male and female).

iii. *Acute inhalation toxicity, rat*. Toxicity Category III; lethal concentration ($LC_{50}$) (4–hour) = 6.03 mg/L (male), 6.28 mg/L (female).

iv. *Primary eye irritation, rabbit*. Toxicity Category IV; no irritation.

v. *Primary dermal irritation, rabbit*. Toxicity Category IV; no irritation.

vi. *Dermal sensitization, guinea pig*. Waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18% a.i.).

2. *Genotoxicity*. Ames assays were negative for gene mutation in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA 1537, with and without metabolic activity.

A Chinese hamster bone marrow cytogenetic assay was negative for structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells *in vivo*.

Recombinant assays and forward mutations tests in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative for genotoxic effects at concentrations of greater than or equal to 100%.

3. *Reproductive and developmental toxicity*. A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, and 1,000 mg/kg/day with a maternal no observed adverse effect level (NOAEL) of 180 mg/kg/day and a maternal lowest observed adverse effect level (LOAEL) of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOAEL of 180 mg/kg/day, and a developmental LOAEL of 650 mg/kg/day (21 to 22% decrease in fetal weights, filamentous tail, and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes).

A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, and 400 mg/kg/day with a maternal NOAEL of 320 mg/kg/day and a maternal LOAEL of 400 mg/kg/day (37% reduction in body weight gain without significant differences in group mean body weights and decreased food consumption during dosing); and a developmental NOAEL greater than 400 mg/kg/day highest dose tested (HTD).

A 2–generation reproduction study with rats fed diets containing 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) with no reproductive effects observed under the conditions of the study.

4. *Subchronic toxicity*. A 21–day dermal study in rabbits with a (NOAEL) of >1,000 mg/kg/day (limit dose). The only dose-related finding was slight epidermal hyperplasia at the dosing site in nearly all males and females dosed at 1,000 mg/kg/day. This was probably an adaptive response.

5. *Chronic toxicity*. A summary of the chronic toxicity studies follows.

i. A 1–year feeding study with dogs fed diets containing 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOAEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in male dogs at the 17.5-mg/kg/day dose level.

ii. A 2–year chronic feeding/carcinogenicity study with mice fed diets containing 0, 40, 120, 360, and 1,080 ppm (equivalent to 0, 6, 18, 54, and 162 mg/kg/day) with a systemic NOAEL of 120 ppm (18 mg/kg/day) based on non-neoplastic liver lesions in male mice at the 360 ppm (54 mg/kg/day) dose level. There were no carcinogenic effects observed under the conditions of the study. The maximum tolerated dose (MTD) was not achieved in female mice.

iii. A 2–year chronic feeding/carcinogenic study with rats fed diets containing 0, 2, 6, and 18 mg/kg/day with a systemic NOAEL greater than or equal to 18 mg/kg/day HDT. There were no carcinogenic effects observed under the conditions of the study. This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and an MTD was not achieved.

iv. A second chronic feeding/carcinogenic study with rats fed diets containing 0, 360, and 1,080 ppm (equivalent to 18.2/23.0, and 55.9/71.8 mg/kg/day (males/females). The dose levels were too low to elicit a toxic response in the test animals and failed to achieve an MTD or define a LOAEL. Slight decreases in body weight in rats at the 1,080 ppm dose level, although not biologically significant, support a free-standing NOAEL of 1,080 ppm (55.9/71.8 mg/kg/day (males/females)). There were no carcinogenic effects observed under the conditions of the study.

6. *Animal metabolism*. In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

7. *Metabolite toxicology*. As a condition to registration, BASF had been asked to submit additional toxicology studies for the hydroxy-metabolites of sethoxydim. EPA agreed with BASF's recommendation to use the most abundant metabolite, 5-OH-MSO2, as surrogate for all metabolites. Based on these data, it was concluded that the toxicological potency of the plant hydroxy-metabolites is likely to be equal or less than that of the parent compound. The tolerance expression for sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety, measured as parent. Hence, the hydroxy-metabolites are figured into all tolerance calculations.

8. *Endocrine disruption*. No specific tests have been performed with sethoxydim to determine whether the chemical may have an effect in humans that is similar to an effect produced by naturally-occurring estrogen or other endocrine effects.

*C. Aggregate Exposure*

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure, BASF has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from existing and pending tolerances for sethoxydim. (The TMRC is a ''worst case'' estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels.)

i. *Food*. The TMRC from existing tolerances for the overall U.S. population is estimated at approximately 44% of the RfD. BASF estimates indicate that dietary exposure will not exceed the RfD for any population subgroup for which EPA has data. This exposure assessment relies on very conservative assumptions 100% of crops will contain sethoxydim residues and those residues would be at the level of the tolerance which results in an overestimate of human exposure.

ii. *Drinking water*. Based on the available studies submitted to EPA for assessment of environmental risk, BASF does not anticipate exposures to residues of sethoxydim in drinking water. There is no established Maximum Concentration Level (MCL) for residues of sethoxydim in drinking water under the Safe Drinking Water Act (SDWA).

2. *Non-dietary exposure*. BASF has not estimated non-occupational exposure for sethoxydim. Sethoxydim is labeled for use by homeowners on and around the following use sites: Flowers, evergreens, shrubs, trees, fruits, vegetables, ornamental groundcovers, and bedding plants. Hence, the potential for non-occupational exposure to the general population exists. However, these use sites do not appreciably increase exposure. Protective clothing requirements, including the use of gloves, adequately protect homeowners when applying the product. The product may only be applied through hose-end sprayers or tank sprayers as a 0.14% solution. Sethoxydim is not a volatile compound so inhalation exposure during and after application would be negligible. Dermal exposure would be minimal in light of the protective clothing and the low application rate. According to BASF, post-treatment (re-entry) exposure would be negligible for these use sites as contact with treated surfaces would be low. BASF concludes that the potential for non-occupational exposure to the general population is insignificant.

*D. Cumulative Effects*

BASF also considered the potential for cumulative effects of sethoxydim and other substances that have a common mechanism of toxicity. BASF is aware of one other active ingredient which is structurally similar, clethodim. However, BASF believes that consideration of a common mechanism of toxicity is not appropriate at this time. BASF does not have any reliable information to indicate that toxic effects produced by sethoxydim would be cumulative with clethodim or any other chemical; thus, BASF is considering only the potential risks of sethoxydim in its exposure assessment.

*E. Safety Determination*

1. *U.S. population—Reference dose (RfD)*. Using the conservative exposure assumptions described above, BASF has estimated that aggregate exposure to sethoxydim will utilize 44% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*—i. *Developmental toxicity*. Developmental toxicity was observed in a developmental toxicity study using rats but was not seen in a developmental toxicity study using rabbits. In the developmental toxicity study in rats, a maternal NOAEL of 180 mg/kg/day and a maternal LOAEL of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining) was determined. A developmental NOAEL of 180 mg/kg/day and a developmental LOAEL of 650 mg/kg/day (21 to 22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes). Since developmental effects were observed only at doses where maternal toxicity was noted, the developmental effects observed are believed to be secondary effects resulting from maternal stress.

ii. *Reproductive toxicity*. A 2–generation reproduction study with rats fed diets containing 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) produced no reproductive effects during the course of the study. Although the dose levels were insufficient to elicit a toxic response, the Agency has considered this study usable for regulatory purposes and has established a free-standing NOAEL of 3,000 ppm (approximately 150 mg/kg/day) (60 FR 13941).

iii. *Reference dose*. Based on the demonstrated lack of significant developmental or reproductive toxicity, BASF believes that the RfD used to

assess safety to children should be the same as that for the general population, 0.09 mg/kg/day. Using the conservative exposure assumptions described above, BASF has concluded that the most sensitive child population is that of children ages 1 to 6. BASF calculates the exposure to this group to be approximately 95% of the RfD for all uses (including those proposed in this document). Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

*F. International Tolerances*

There are no Codex or Mexican maximum residue limits or tolerances for sethoxydim on sweet corn. There is a Canadian tolerance on corn of 0.5 ppm for sethoxydim and metabolites containing the cyclohex-2-enone moiety expressed as sethoxydim.

[FR Doc. 02–23088 Filed 9–10–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0092; FRL–7184–8]**

## List of Pests of Significant Public Health Importance; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice identifies pests of significant public health importance. Section 28(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires EPA, in coordination with, the U.S. Department of Health and Human Services (HHS), and U.S. Department of Agriculture (USDA), to identify pests of significant public health importance and, in coordination with the Public Health Service, to develop and implement programs to improve and facilitate the safe and necessary use of chemical, biological, and other methods to combat and control such pests of public health importance. Issuance of this list fulfills the requirement of FIFRA section 28(d) to identify pests of significant public health importance as a part of this process.

**FOR FURTHER INFORMATION CONTACT:** Robyn Rose, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9581; fax number: (703) 308–7026; e-mail address: rose.robyn@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I 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/*. To access information about OPP–2202–0092, go directly to the Home Page for the Office of Pestice Programs (OPP) at *http://www.epa.gov/pesticides,* and select ''pesticide registration notices.''

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0092. 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.

### II. What Guidance Does This Pesticide Reregistration (PR) Notice Provide?

The publication of the list does not affect the regulatory status of any registration or application for registration of any pesticide product. The list does not, by itself, determine whether a pesticide product might be considered a ''public health pesticide'' as that term is used in FIFRA. That term, as defined in FIFRA section 2(nn), requires consideration of the context of the pesticide use, including minor use status and use of the pesticide in public health control programs. Determining whether a pesticide is a public health pesticide is beyond the scope of the PR Notice.

Compilation of the list was a cooperative effort by HHS, USDA, and EPA. EPA coordinated the review by experts in public health and/or pesticide use patterns to compile this list. No person is required to take any action in response to this notice.

This PR Notice was developed from a draft document by the same title that was released for public comment on May 29, 2000 (65 FR 16615) (FRL–6498–2). The Agency received comments from various organizations. Commenters offered recommendations for improving the document. All comments were evaluated and considered by the Agency. This revised version embodies some of the recommendations of the commenters. A summary of the public comments, as well as the Agency's response to the comments, is being made available as described in Unit I.B.2.

### III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel, decision makers, and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, the PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not

applicable to a specific pesticide or situation.

**List of Subjects**

Environmental protection, Administrative practice procedure, Agricultural commodities, Pesticides and pests.

Dated: August 3, 2002.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 02–22816 Filed 9–10–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2002–0055; FRL–7199–9]**

## Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.*, a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 23, 2002 to August 23, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the docket ID number OPPT–2002–0055 and the specific PMN number or TME number, must be received on or before October 11, 2002.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0055. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

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

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e- mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select'' search,'' and then key in docket ID number— OPPT–2002–0055. The system is an'' anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0055 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0055 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

*D. How Should I Submit CBI To the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Why is EPA Taking This Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 23, 2002 to August 23, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you

are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 114 PREMANUFACTURE NOTICES RECEIVED FROM: 07/23/02 TO 08/23/02

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0844 | 07/23/02 | 10/21/02 | Solutia Inc. | (S) Resin for paints and coatings | (G) Hydroxyfunctional acrylic copolymer |
| P–02–0845 | 07/23/02 | 10/21/02 | CBI | (S) Ingredient for use in fragrances for soaps, detergents, cleaners and other household products | (G) Plant extract |
| P–02–0846 | 07/23/02 | 10/21/02 | Geo Specialty Chemicals, Inc. | (G) Dispersants | (G) Sulfonated naphthalene condensate, calcium salt |
| P–02–0847 | 07/23/02 | 10/21/02 | Geo Specialty Chemicals, Inc. | (G) Dispersants | (G) Sulfonated naphthalene condensate, sodium salt |
| P–02–0848 | 07/23/02 | 10/21/02 | Dupont Dow Elastomers, L.L.C. | (G) Molding resin | (G) Fluoroalkene copolymer |
| P–02–0849 | 07/23/02 | 10/21/02 | Dupont Dow Elastomers, L.L.C. | (G) Molding resin | (G) Fluoroalkene copolymer |
| P–02–0850 | 07/23/02 | 10/21/02 | Dupont Dow Elastomers, L.L.C. | (G) Molding resin | (G) Fluoroalkene copolymer |
| P–02–0851 | 07/23/02 | 10/21/02 | CBI | (G) Intermediate for chemical used as fertilizer dust control coating and agronomic enhancement product | (G) Maleic acid salt copolymer |
| P–02–0852 | 07/23/02 | 10/21/02 | CIBA Specialty Chemicals Corporation | (S) Photoacid generator for resists in semiconductor and display mfg. | (G) Camphorsulfonate |
| P–02–0853 | 07/23/02 | 10/21/02 | CBI | (G) Fertilizer dust control coating and agronomic enhancement product | (G) Maleic acid salt copolymer |
| P–02–0854 | 07/24/02 | 10/22/02 | CBI | (G) Component of coating with open use | (G) Poly (phosphate and carboxylate) ester |
| P–02–0855 | 07/24/02 | 10/22/02 | CBI | (G) Component of coating with open use | (G) Poly (phosphate and carboxylate) ester |
| P–02–0856 | 07/24/02 | 10/22/02 | CBI | (G) Component of coating with open use | (G) Poly (phosphate and carboxylate) ester |
| P–02–0857 | 07/24/02 | 10/22/02 | CBI | (G) Component of coating with open use | (G) Poly (phosphate and carboxylate) ester |
| P–02–0858 | 07/24/02 | 10/22/02 | CBI | (G) Component of coating with open use | (G) Poly (phosphate and carboxylate) ester |
| P–02–0859 | 07/24/02 | 10/22/02 | CBI | (G) Component of coating with open use | (G) Poly (phosphate and carboxylate) ester |
| P–02–0860 | 07/25/02 | 10/23/02 | UOP LLC | (G) Intermediate for catalyst/catalyst support for petrochemical and hydrocarbon processing | (G) Silicoaluminophosphate with template |
| P–02–0861 | 07/25/02 | 10/23/02 | UOP LLC | (S) Intermediate for catalyst/catalyst support for petrochemical processes | (G) Silico-titano-aluminophosphates |
| P–02–0862 | 07/25/02 | 10/23/02 | CBI | (S) Moisture cure coating | (G) Aliphatic polyester polyurethane polymer |
| P–02–0863 | 07/25/02 | 10/23/02 | 3M | (S) Chemical intermediate | (G) Fluoropolymer |
| P–02–0864 | 07/25/02 | 10/23/02 | 3M | (S) Chemical intermediate | (G) Fluoropolymeric sulfonic acid |
| P–02–0865 | 07/25/02 | 10/23/02 | 3M | (S) Chemical intermediate | (G) Perfluoro alkoxy acid fluoride derivative |
| P–02–0866 | 07/25/02 | 10/23/02 | Xerox Corporation | (G) Destructive use(site limited intermediate) | (G) Substituted anthraquinone |
| P–02–0867 | 07/25/02 | 10/23/02 | Xerox Corporation | (G) Open, non-dispersive use as a constituent in solid,crayon like inks for computer printers | (G) Substituted anthraquinone |
| P–02–0868 | 07/25/02 | 10/23/02 | Xerox Corporation | (G) Destructive use(site limited intermediate) | (G) Substituted anthraquinone |
| P–02–0869 | 07/25/02 | 10/23/02 | Xerox Corporation | (G) Destructive use(site limited intermediate) | (G) Substituted anthraquinone |
| P–02–0870 | 07/25/02 | 10/23/02 | 3M | (G) | (G) Perfluorinated difunctional acid fluoride |
| P–02–0871 | 07/25/02 | 10/23/02 | 3M | (S) Chemical intermediate | (G) Fluoropolymeric sulfonic acid salt |
| P–02–0872 | 07/25/02 | 10/23/02 | Ashland Inc. | (G) Open, dispersive-used in molding operations | (G) Unsaturated polyester |

I. 114 PREMANUFACTURE NOTICES RECEIVED FROM: 07/23/02 TO 08/23/02—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0873 | 07/26/02 | 10/24/02 | Ashland Inc., environmental health and safety | (G) Polyurethane prepolymer-moisture curable adhesive formulation for wood bonding. | (G) Polyurethane prepolymer |
| P–02–0874 | 07/26/02 | 10/24/02 | CBI | (S) Component in an industrial coating. | (S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,2-ethanediamine, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1′-methylenebis[4-isocyanatocyclohexane], compound with nu,nu-diethylethanamine |
| P–02–0875 | 07/26/02 | 10/24/02 | Solutia Inc. | (S) Wash primer for metal protection | (G) Modified phenoxy resin dispersion |
| P–02–0876 | 07/26/02 | 10/24/02 | Xerox Corporation | (G) Destructive use (site limited intermediate) | (G) Pyridone |
| P–02–0877 | 07/26/02 | 10/24/02 | Xerox Corporation | (G) Open, non-dispersive use as a constituent in solid, crayon like inks for computer printers | (G) Substituted pyridone |
| P–02–0878 | 07/26/02 | 10/24/02 | Xerox Corporation | (G) Destructive use (site limited intermediate) | (G) Dimer ester |
| P–02–0879 | 07/30/02 | 10/28/02 | CBI | (G) An open non-dispersive use | (G) Alicyclic hydrocarbon resin |
| P–02–0880 | 07/30/02 | 10/28/02 | CBI | (G) Encapsulant curative for open, non-dispersive use | (G) Castor oil, mixed esters with carboxylic acid anhydrides |
| P–02–0881 | 07/30/02 | 10/28/02 | CBI | (G) Open, non-dispersive use. | (G) Silated acrylic resin |
| P–02–0882 | 07/29/02 | 10/27/02 | CBI | (S) Color retention/laundry detergent; wrinkle reduction/fabric spray | (G) Aminosilicone polyether copolymer |
| P–02–0883 | 07/30/02 | 10/28/02 | 3M Company | (S) Polymer additive | (G) Fluorochemical polymer |
| P–02–0884 | 07/30/02 | 10/28/02 | 3M Company | (S) Intermediate | (G) Alkylethoxylate derivative |
| P–02–0885 | 08/02/02 | 10/31/02 | CBI | (G) Raw material for manufacturing of photosensitive material | (G) Disubstituted cresol |
| P–02–0886 | 08/02/02 | 10/31/02 | CBI | (G) Open, non-dispersive use in energy production | (G) Imidazoline derivative, reaction products with polybasic acid |
| P–02–0887 | 08/02/02 | 10/31/02 | CBI | (G) Raw material for manufacturing of photoimaging film | (G) Phosphine oxide derivative |
| P–02–0888 | 08/02/02 | 10/31/02 | CBI | (G) Polishing compound | (G) Ammonium amps homopolymer |
| P–02–0889 | 08/02/02 | 10/31/02 | Dainippon ink and Chemicals, Inc. | (S) Binder for general coatings | (S) Formaldehyde, polymer with 6-phenyl-1,3,5-triazine-2,4-diamine, isobutylated |
| P–02–0890 | 08/02/02 | 10/31/02 | BASF Corporation | (G) Additive for adhesive formulation | (G) Alkoxylated aliphatic alcohol |
| P–02–0891 | 08/06/02 | 11/04/02 | 3M Company | (S) Cure catalyst | (S) Phosphonium, triphenyl(phenylmethyl)-, salt with 1,1,2,2,3,3,4,4,4-nonafluoro-nu-methyl-1-butanesulfonamide (1:1) |
| P–02–0892 | 08/07/02 | 11/05/02 | CBI | (G) Flame/fire retardant - open, non-dispersive use | (G) Phosphoric acid monoamine salt |
| P–02–0893 | 08/07/02 | 11/05/02 | CBI | (G) Inkjet ink | (G) Ammonium sodium salt of substituted copper phthalocyanine derivative |
| P–02–0894 | 08/09/02 | 11/07/02 | Aoc L.L.C. | (S) Polyester component for gelcoat resin for spray up of fiberglass reinforced and non-reinforced plastics parts | (S) 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2,5-furandione |
| P–02–0895 | 08/09/02 | 11/07/02 | Reichhold, Inc. | (S) Binder of general coatings | (G) Amine salt of carboxylated epoxy ester polymer, with fatty acids and alkyloxylated alkyl ester. |
| P–02–0896 | 08/09/02 | 11/07/02 | CBI | (G) Chemical intermediate | (G) Polyester polyol |
| P–02–0897 | 08/09/02 | 11/07/02 | CBI | (G) Paint additive | (G) Polyurethane |
| P–02–0898 | 08/09/02 | 11/07/02 | CBI | (S) Printing ink resin | (G) Ester of acid modified hydrocarbon resin |
| P–02–0899 | 08/09/02 | 11/07/02 | CBI | (S) Printing ink resin | (G) Ester of acid modified hydrocarbon resin |
| P–02–0900 | 08/09/02 | 11/07/02 | CBI | (S) Printing ink resin | (G) Ester of acid modified hydrocarbon resin |
| P–02–0901 | 08/09/02 | 11/07/02 | CBI | (S) Printing ink resin | (G) Ester of acid modified hydrocarbon resin |
| P–02–0902 | 08/09/02 | 11/07/02 | CBI | (S) Printing ink resin | (G) Ester of acid modified hydrocarbon resin |

I. 114 PREMANUFACTURE NOTICES RECEIVED FROM: 07/23/02 TO 08/23/02—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0903 | 08/09/02 | 11/07/02 | CBI | (S) Printing ink resin | (G) Ester of acid modified hydrocarbon resin |
| P–02–0904 | 08/12/02 | 11/10/02 | CBI | (G) Component of an odorant composition for highly dispersive applications | (G) Substituted alkenone |
| P–02–0905 | 08/12/02 | 11/10/02 | E.I. Dupont De Nemours and Company, Inc. | (G) Intermediate-closed non-dispersive use | (G) Aromatic polyester polyol |
| P–02–0906 | 08/12/02 | 11/10/02 | E.I. Dupont De Nemours and Company, Inc. | (G) Intermediate-closed non-dispersive use | (G) Aromatic polyester polyol |
| P–02–0907 | 08/12/02 | 11/10/02 | E.I. Dupont De Nemours and Company, Inc. | (G) Intermediate-closed non-dispersive use | (G) Aromatic polyester polyol |
| P–02–0908 | 08/12/02 | 11/10/02 | E.I. Dupont De Nemours and Company, Inc. | (G) Intermediate-closed non-dispersive use | (G) Aromatic polyester polyol |
| P–02–0909 | 08/12/02 | 11/10/02 | E.I. Dupont De Nemours and Company, Inc. | (G) Intermediate-closed non-dispersive use | (G) Aromatic polyester polyol |
| P–02–0910 | 08/12/02 | 11/10/02 | E.I. Dupont De Nemours and Company, Inc. | (G) Intermediate-closed non-dispersive use | (G) Aromatic polyester polyol |
| P–02–0911 | 08/09/02 | 11/07/02 | CIBA Specialty Chemicals Corporation USA - additives | (S) Photoacid generator for resists in semiconductor and display mfg. | (G) Aromatic compound |
| P–02–0912 | 08/13/02 | 11/11/02 | CBI | (G) Raw material | (G) Di-substituted cyclic alkane |
| P–02–0913 | 08/14/02 | 11/12/02 | UBE America Inc. | (S) Raw material for polyurethane; raw material for acrylates/methacrylates | (S) 1,12-dodecanediol* |
| P–02–0914 | 08/13/02 | 11/11/02 | CBI | (G) Photoresist additive [open/non-dispersive use] | (G) Acrylic polymer |
| P–02–0915 | 08/13/02 | 11/11/02 | CBI | (G) Photoresist additive [open/non-dispersive use] | (G) Acrylic polymer |
| P–02–0916 | 08/14/02 | 11/12/02 | Reichhold, Inc. | (S) Intermediate | (G) Vegetable fatty acids, polymer with peroxide, alkyl acrylate, alkeneoic acid and alkenylbenzene. |
| P–02–0917 | 08/14/02 | 11/12/02 | Reichhold, Inc. | (S) Stain vehicle | (G) Vegetable fatty acids, polymer with peroxide, alkyl acrylate, cyclic carboxylic acid, alkeneoic acid, tetra hydroxy alkane and alkenylbenzene. |
| P–02–0918 | 08/14/02 | 11/12/02 | Reichhold, Inc. | (S) Intermediate | (G) Vegetable fatty acids, polymer with cyclic carboxylic acid and tetra hydroxy alkane. |
| P–02–0919 | 08/15/02 | 11/13/02 | Ashland Inc. | (G) Open, dispersive-used in molding operations | (G) Unsaturated polyester |
| P–02–0920 | 08/15/02 | 11/13/02 | 3M | (S) Additive | (G) Fluorochemical ester |
| P–02–0921 | 08/15/02 | 11/13/02 | CBI | (G) Open, non-dispersive (polyurethane) | (G) Aliphatic polyester-polyether polyurethane |
| P–02–0922 | 08/15/02 | 11/13/02 | CBI | (G) Open, non-dispersive (resin) | (G) Urethane acrylate dispersion |
| P–02–0923 | 08/19/02 | 11/17/02 | CBI | (G) Polymeric admixture for concrete | (G) Essentially linear hydrocarbon polymer functionalized with alkylamidoammonium and alkylamidosulfonato groups |
| P–02–0924 | 08/19/02 | 11/17/02 | R.T. Vanderbilt Compnay, Inc. | (S) Accelerator for dry rubber | (S) Tellurium, tetrakis[bis(2-methylpropyl)carbamodithioato-kappa s, kappa s']- |
| P–02–0925 | 08/19/02 | 11/17/02 | R.T. Vanderbilt Compnay, Inc. | (S) Accelerator for dry rubber | (S) Tellurium, tetrakis(dibutylcarbamothioato-kappa s, kappa s')- |
| P–02–0926 | 08/19/02 | 11/17/02 | R.T. Vanderbilt Compnay, Inc. | (S) Accelerator for dry rubber | (G) Tellurium dipentyldithiocarbamate |
| P–02–0927 | 08/20/02 | 11/18/02 | CBI | (G) Secondary insulation, molding compounds | (G) Benzophenone silyl ether |
| P–02–0928 | 08/19/02 | 11/17/02 | CBI | (G) Raw material | (G) Substituted-phenyl-alkyl-heteropolycycle |
| P–02–0929 | 08/19/02 | 11/17/02 | CBI | (G) Raw material | (G) Disubstituted-phenyl-alkyl-heteromonocycle |

I. 114 PREMANUFACTURE NOTICES RECEIVED FROM: 07/23/02 TO 08/23/02—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0930 | 08/20/02 | 11/18/02 | CBI | (G) Lubricant additive | (G) Lithium sulfonate |
| P–02–0931 | 08/20/02 | 11/18/02 | CBI | (G) Lubricant additive | (G) Sodium sulfonate |
| P–02–0932 | 08/20/02 | 11/18/02 | CBI | (G) Lubricant additive | (G) Potassium sulfonate |
| P–02–0933 | 08/20/02 | 11/18/02 | CBI | (G) Lubricant additive | (G) Calcium sulfonate |
| P–02–0934 | 08/20/02 | 11/18/02 | CBI | (G) Lubricant additive | (G) Magnesium sulfonate |
| P–02–0935 | 08/20/02 | 11/18/02 | CBI | (G) Water reducer in concrete | (G) Polyglycolether-polycarboxylate |
| P–02–0936 | 08/20/02 | 11/18/02 | CBI | (G) Intermediate for lubricant detergents | (G) Alkylbenzene sulfonic acid |
| P–02–0937 | 08/21/02 | 11/19/02 | CBI | (G) Ingredients for use in consumer products: highly dispersive use | (G) Alkanone oxime |
| P–02–0938 | 08/22/02 | 11/20/02 | Reichhold, Inc. | (G) Industrial ans architectual coatings | (G) Fatty acids, polymer with peroxide, alicyclic alcohol, alkyl acrylate, cyclic carboxylic acid, alkeneoic acid, terta hydroxy alkane, alkenylbenzene and glycol. |
| P–02–0939 | 08/22/02 | 11/20/02 | Reichhold, Inc. | (S) Intermediate | (G) Fatty acids, polymer with peroxide, alkyl acyylate, alkeneoic acid and alkenylbenzene |
| P–02–0940 | 08/22/02 | 11/20/02 | CBI | (G) Gellant for liquids | (G) Fatty acids, $C_{18}$-unsaturated, dimers, hydrogenated, polymers ethylenediamine and polyoxyalkylenamines. |
| P–02–0941 | 08/22/02 | 11/20/02 | CBI | (G) Gellant for liquids | (G) Fatty acids, $C_{18}$-unsaturated, dimers, hydrogenated, polymers with ethylenediamine and polyoxyalkylenamines. |
| P–02–0942 | 08/22/02 | 11/20/02 | CBI | (G) Gellant for liquids | (G) Fatty acids, $C_{18}$-unsaturated, dimers, polymers with ethylenediamine and polyoxyalkylenamines. |
| P–02–0943 | 08/22/02 | 11/20/02 | CBI | (G) Gellant for liquids | (G) Fatty acids, $C_{18}$-unsaturated, dimers, polymers with ethylenediamine and polyoxyalkylenamines. |
| P–02–0944 | 08/22/02 | 11/20/02 | CBI | (G) Gellant for liquids | (G) Fatty acids, $C_{18}$-unsaturated, dimers, polymers with ethylenediamine and polyoxyalkylenamines. |
| P–02–0945 | 08/22/02 | 11/20/02 | CBI | (G) Gellant for liquids | (G) Fatty acids $C_{18}$-unsaturated, dimers, hydrogenated, polymers with ethylenediamine and polyoxyalkyleneamines. |
| P–02–0946 | 08/22/02 | 11/20/02 | CBI | (S) Reactive dye for textile | (G) Substituted benzoic acid, alkali salt |
| P–02–0947 | 08/22/02 | 11/20/02 | CBI | (G) Industrial fillers | (G) Chemically treated silica |
| P–02–0948 | 08/22/02 | 11/20/02 | CBI | (G) Industrial fillers | (G) Chemically treated silica |
| P–02–0949 | 08/22/02 | 11/20/02 | Reichhold, Inc. | (S) Intermediate | (G) Fatty acids, polymer with alicyclic alcohol, cyclic carboxylic acid, tetra hydroxy alkane and glycol. |
| P–02–0950 | 08/22/02 | 11/20/02 | Dupont Company | (G) Packaging film and adhesive film | (G) Polyester copolymer |
| P–02–0951 | 08/22/02 | 11/20/02 | Dupont Company | (G) Packaging film and adhesive film | (G) Polyester copolymer |
| P–02–0952 | 08/22/02 | 11/20/02 | Dupont Company | (G) Packaging film and adhesive film | (G) Polyester copolymer |
| P–02–0953 | 08/23/02 | 11/21/02 | Stepan Company | (S) Additive for polyurethane flexible foams | (S) 1,3-isobenzofurandione, polymer with oxybis[propanol] |
| P–02–0954 | 08/23/02 | 11/21/02 | The Goodyear Tire and Rubber Company | (S) Polymerization catalyst | (G) Metallic diethylglycol ethylether complex |
| P–02–0955 | 08/23/02 | 11/21/02 | The Goodyear Tire and Rubber Company | (S) Chemical intermediate foe chemical synthesis | (G) Barium alcoholate |
| P–02–0956 | 08/23/02 | 11/21/02 | Cook Composites and Polymers Co. | (G) Additive for plastic resins | (G) 1,3-pronanediol, 2-ethyl-2-(hyroxymethyl)-, polymer with (chloromethyl) oxirane, 2-alkykl-2-propanoate |

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 45 NOTICES OF COMMENCEMENT FROM: 07/23/02 TO 08/23/02

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–01–0504 | 07/23/02 | 07/10/02 | (G) Polyurethane prepolymer;polyurethane hot melt adhesive |
| P–01–0584 | 08/01/02 | 07/11/02 | (G) Flouroacrylate copolymer |
| P–01–0763 | 08/02/02 | 07/31/02 | (G) Functionalized amine polymer |
| P–01–0792 | 07/31/02 | 07/16/02 | (G) Surface modified magnesium hydroxide |
| P–01–0856 | 08/07/02 | 07/23/02 | (S) Cashew, nutshell liquid, ethoxylated |
| P–02–0040 | 07/31/02 | 07/23/02 | (G) Modified polycarbonate |
| P–02–0041 | 07/23/02 | 07/08/02 | (G) Modified acrylic copolymer |
| P–02–0053 | 07/23/02 | 07/10/02 | (G) Neutralized acrylic copolymer |
| P–02–0061 | 07/30/02 | 06/30/02 | (S) Decanoic acid, 3-[[6-deoxy-2-o-(6-deoxy-.alpha.-l-mannopyranosyl)-.alpha.-l-mannaopyranosyl]oxy]-, 1-(carboxymethyl)octyl ester, mixture with 1-(carboxymethyl)octyl 3-[(6-deoxy-.alpha.-l-mannopyranousyl)oxy]decanoate |
| P–02–0106 | 08/19/02 | 08/08/02 | (G) Amino alkanol ester |
| P–02–0156 | 07/24/02 | 07/16/02 | (G) Metallic dimethacrylate |
| P–02–0166 | 08/16/02 | 08/01/02 | (G) Amino polyester |
| P–02–0175 | 08/16/02 | 08/01/02 | (G) Amine-accelerated, unsaturated polyester resin |
| P–02–0214 | 07/25/02 | 07/10/02 | (S) Lithium potassium titanium oxide |
| P–02–0220 | 07/23/02 | 07/12/02 | (G) Chemical intermediate |
| P–02–0226 | 07/23/02 | 07/01/02 | (G) Substituted phenol derivative |
| P–02–0232 | 07/23/02 | 07/03/02 | (G) Dehydrated castor oil modified expoxyester |
| P–02–0271 | 08/16/02 | 08/06/02 | (G) Vinylpyrrolidinone-vinylimidazole-copolymer |
| P–02–0279 | 07/23/02 | 07/01/02 | (G) Phenolic resin |
| P–02–0298 | 08/13/02 | 07/22/02 | (G) Glycerides, animal, reaction products with polyamines |
| P–02–0304 | 07/25/02 | 06/27/02 | (S) 1,12-dodecanediol |
| P–02–0316 | 07/23/02 | 07/02/02 | (G) Branched phenolic hardener |
| P–02–0332 | 07/23/02 | 06/28/02 | (G) Epoxy siloxane resin |
| P–02–0333 | 08/06/02 | 07/05/02 | (S) 1,3-isobenzofurandione, hexahydro-, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione and 1,2-propanediol, 2-ethylhexyl ester |
| P–02–0363 | 07/31/02 | 07/24/02 | (G) Polyalkoxylated aromatic chromophore |
| P–02–0415 | 08/20/02 | 08/01/02 | (G) Alkylene(diaryl phosphate) |
| P–02–0420 | 08/08/02 | 07/01/02 | (G) Modified starch |
| P–02–0435 | 07/23/02 | 07/09/02 | (G) Unsaturated polyester resin |
| P–02–0437 | 07/23/02 | 07/18/02 | (G) Siloxanes and silicones, d-me, 3-hydroxypropyl me, ethoxylated propoxylated benzoate ester |
| P–02–0459 | 07/23/02 | 06/24/02 | (G) Phosphoric acid ester |
| P–02–0460 | 07/23/02 | 07/08/02 | (S) Fatty acids, $C_{16–18}$ and $C_{18}$-unsaturated, branched and linear, mixed esters with pentaerythritol and tall-oil fatty acids |
| P–02–0485 | 08/09/02 | 07/30/02 | (G) Substituted mercaptan |
| P–02–0487 | 07/31/02 | 07/19/02 | (G) Vinyl polymer emulsion |
| P–02–0489 | 08/15/02 | 07/16/02 | (G) Acrylic copolymer |
| P–02–0491 | 08/14/02 | 08/02/02 | (G) Aromatic polyalkoxylate |
| P–02–0496 | 08/01/02 | 07/08/02 | (G) Acrylic resin |
| P–02–0500 | 07/23/02 | 07/10/02 | (S) Fatty acids, $C_{16–18}$ and $C_{18}$-unsaturated, branched and linear, polymers with glycerol, maleic anhydride and rosin |
| P–02–0512 | 08/02/02 | 07/08/02 | (S) Amides, from ammonia-ethanolamine reaction by-products and branched and linear $C_{16–18}$ and $C_{18}$-usatd. fatty acids |
| P–02–0520 | 07/23/02 | 07/12/02 | (G) Urethane prepolymer |
| P–02–0531 | 08/07/02 | 07/10/02 | (S) Fatty acids, $C_{16–18}$ $C_{18}$-unsaturated, branched and linear, esters with trimethylolpropane |
| P–02–0543 | 08/07/02 | 07/15/02 | (S) Fatty acids, $C_{16–18}$ and $C_{18}$-unsaturated, branched and linear, diesters with polyethylene glycol |
| P–96–0965 | 07/24/02 | 06/11/02 | (G) Brominated phthalate diol |
| P–98–0476 | 08/08/02 | 07/28/02 | (G) Phenolic modified ester of modified rosin and fatty acid |
| P–98–0801 | 07/30/02 | 02/21/02 | (G) Isocyanate-fuctionalized polyurethane polymer |
| P–98–1117 | 08/20/02 | 08/05/02 | (G) 2-propenoic acid, 2-methyl-, monoester with 1,2-propanediol, polymer with ethenyloxoheteromenocycle and 2-propenoic acid |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: August 30, 2002.

**Sandra R. Wilkins,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 02–23087 Filed 9–10–02; 8:45 am]

**BILLING CODE 6560–50–S**

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the 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 September 12, 2002, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Jeanette C. Brinkley, Acting Secretary to

the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed. 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*

- August 1, 2002 (Open)
- August 20, 2002 (Closed)

*B. Reports*

- FCS Building Association's Quarterly Report
- Corporate Approvals
- 2002 Farm Bill—Implications for the Farm Credit System
- Conditions and Trends in the Denver Field Office Portfolio

*C. New Business*

- Equal Employment Opportunity Programs and Diversity—Revision to Policy Statement 62
- Approval of the October 2002 Unified Agenda/Regulatory Performance Plan for FY 2003
- Capital Adequacy Technical Amendments—Draft Proposed Rule
- Young, Beginning and Small Farmers—Advance Notice of Proposed Rulemaking

**Closed***

- Regulatory Enforcement Issue
- OSMO Report

Dated: September 9, 2002.

**Jeanette C. Brinkley,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 02–23195 Filed 9–9–02; 11:42 am]

**BILLING CODE 6705–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting, Open Commission Meeting; Thursday, September 12, 2002

September 5, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 12, 2002, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

| Item No. | Bureau | Subject |
|---|---|---|
| 1 | Media | *Title:* 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996. *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning its media ownership rules pursuant to Section 202(h) of the Telecommunications Act of 1996. |
| 2 | Consumer & Governmental Affairs | *Title:* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CC Docket No. 92–90). *Summary:* The Commission will consider a Notice of Proposed Rulemaking and Memorandum Opinion and Order concerning possible revisions to the rules on unsolicited advertising over the telephone and facsimile machine and the possible establishment of a national do-not-call list. |

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.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. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–23194 Filed 9–9–02; 11:42 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

### Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

*Name:* Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

*Time and Date:* 12 p.m.–8 p.m., October 22, 2002.

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

*Place:* YWCA of Oak Ridge, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 482–9922.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

*Purpose:* This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

*Matters to be Discussed:* The agenda includes a discussion of the public health assessment, updates from the Public Health Assessment, Agenda, Communications and Outreach, Guidelines and Procedures, and Health Needs Assessment work groups. Agenda items are subject to change as priorities dictate.

*For More Information Contact:* La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 5, 2002.

**John Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–23058 Filed 9–10–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* State Plan for Foster Care, Independent Living Services and Adoption Assistance under Title IV–E of the Social Security Act.

*OMB No.:* 0980–0141.

*Description:* A State plan is required by sections 471 and 477(b)(2), part IV–E of the Social Security Act (the Act) for each public child welfare agency requesting Federal funding for foster care, independent living services and adoption assistance under the Act. The State plan is a comprehensive narrative description of the nature and scope of a State's programs and provides assurances the programs will be administered in conformity with the specific requirement stipulated in title IV–E. The plan must include all applicable State statutory, regulatory, or policy references and citation for each requirement as well as supporting documentation. A State may use the pre-print format prepared by the Children's Bureau of the Administration for Children and Families or a different format, on the condition that the format used includes all of the title IV–E State plan requirements of the law.

*Respondents:* State and Territorial Agencies (State Agencies) administering or supervising the administration of the title IV–E program.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Numer of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Title IV–E State Plan | 12 | 1 | 15 | 180 |

*Estimated Total Annual Burden Hours:* 180.

An initial State plan is submitted by a State Agency for approval to participate in the title IV–E program. Plan amendments are submitted whenever necessary to reflect changes in State law, policy or program operation. The Children's Bureau experience is that a State Agency will amend a plan once every four years and that about 12 agencies will amend their plans annually.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: September 4, 2002

**Robert Sargis,**

*Report Clearance Officer.*

[FR Doc. 02–23038 Filed 9–10–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Program Exclusions: August 2002

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of August 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

| Subject, City, State | Effective date |
|---|---|
| **PROGRAM-RELATED CONVICTIONS** | |
| A & H LEE PHARMACY, INC .. BROOKLYN, NY | 09/19/2002 |
| AKOPYAN, LEVON ..... ELOY, AZ | 09/19/2002 |
| ALEXANDER, STEPHANIE ..... FLORENCE, SC | 09/19/2002 |
| AMIN, ALBERT ..... LONG BEACH, CA | 09/19/2002 |
| AMIN, ABDULLAH ..... WOODSIDE, NY | 09/19/2002 |
| ASKARI, NEVRON S ..... MONROE, GA | 09/19/2002 |
| AUSTIN, CYNTHIA DENISE .... OPA LOCKA, FL | 09/19/2002 |
| AZIZ-DURRANI, MUMLIKAT .... JERSEY CITY, NJ | 09/19/2002 |
| BRANDT, MARK W ..... COLUMBUS, OH | 09/19/2002 |
| BRENT, JANETTE L ..... NEWARK, OH | 09/19/2002 |
| BRIDGES, PATRICE MARIE ... DETROIT, MI | 09/19/2002 |
| BROWN, SHELLENA ..... MIAMI, FL | 09/19/2002 |
| BURBY, ROBYNNE J ..... HOULTON, ME | 09/19/2002 |
| CABRERA, ERIC ..... PHILADELPHIA, PA | 09/19/2002 |
| CAMPO CARE, INC ..... MIAMI, FL | 09/19/2002 |
| CANTA, LENARD ..... N HOLLYWOOD, CA | 09/19/2002 |
| CHUDRY, RAZA ..... LEWISBURG, PA | 09/19/2002 |
| DE ARMAS, JUAN ..... COLEMAN, FL | 09/19/2002 |
| DR WALTZ DENTURE SERVIC, PPLC ..... BEAVERTON, MI | 09/19/2002 |
| DRABKIN, MARINA ..... W HOLLYWOOD, CA | 09/19/2002 |
| EHMEN, ROGER ..... OXFORD, WI | 09/19/2002 |
| EKBATANI, SHAHRIAR ..... ORLANDO, FL | 09/19/2002 |
| ELLIOTT, CHRISTIAN B ..... BUTNER, NC | 09/19/2002 |
| ELLIS, CATHY C ..... HAZLEHURST, MS | 09/19/2002 |
| EPSTEIN, EDWARD M ..... N WOODMERE, NY | 09/19/2002 |
| ESPIN, DIEGO RAFAEL ..... MIAMI, FL | 09/19/2002 |
| ESTACO, EDGAR DAMAS ..... MIAMI, FL | 09/19/2002 |
| FARHADI, TOURADJ ..... LONG BEACH, CA | 09/19/2002 |
| FINCH, EDWIN C ..... PAXINOS, PA | 09/19/2002 |
| FORD, FELICIA L ..... MAGNOLIA, AR | 09/19/2002 |
| FOSS, LEONARD FRED ..... BETHEL PARK, PA | 09/19/2002 |
| FRIEDMAN, LAWRENCE ..... EGLIN AFB, FL | 09/19/2002 |
| GIBSON, SHEENA TASHI ..... TUCSON, AZ | 09/19/2002 |
| GILLESPIE, TAMMY JO ..... DANBURY, CT | 09/19/2002 |
| GOMEZ, RAUL ..... MIAMI, FL | 03/15/2001 |
| GOMEZ, MERCEDES ..... COLEMAN, FL | 03/15/2001 |
| GOMEZ, BARBARA ..... MIAMI, FL | 03/15/2001 |
| GONZALEZ, RAQUEL ..... MIAMI, FL | 09/19/2002 |
| HARDY, YASMA ..... MIAMI, FL | 09/19/2002 |
| HARRIS, WILLIAM R ..... HAMPDEN, ME | 09/19/2002 |
| HASTINGS, JOHN ..... DORADO, PR | 09/19/2002 |
| HEAVY RUNNER, ALICE MARIE ..... GREAT FALLS, MT | 09/19/2002 |
| HIGGINS, LORNA M ..... HOLDEN, ME | 09/19/2002 |
| HIRSCH, NORMAN I ..... ANDERSON TOWNSHIP, OH | 06/19/2002 |
| HISCHER, KATHY JOANN ..... HARRIS, MN | 09/19/2002 |
| HO, JASON ..... RESEDA, CA | 09/19/2002 |
| HOLMES, DANETTE E ..... QUEENS VILLAGE, NY | 09/19/2002 |
| HUNTER, BRIAN J ..... POLAND, OH | 09/19/2002 |
| INDEPENDENT HOMECARE, INC ..... STANDISH, ME | 09/19/2002 |
| IRIZARRY-HERRERA, MILDRED ..... GUAYNABO, PR | 09/19/2002 |
| JACOBSON, CLIFFORD R ..... GENESEO, NY | 09/19/2002 |
| JOHNSON, BRADLEY ..... HOMESTEAD, FL | 09/19/2002 |
| JUISTON, PEGGY A ..... NEWARK, NJ | 09/19/2002 |
| KELLER, MARK B ..... FORREST CITY, AR | 09/19/2002 |
| LAANO, ARCHIE ..... GARDEN CITY, NY | 05/21/2001 |
| LAFAYETTE, MELINDA ..... CHICAGO, IL | 09/19/2002 |
| LAU, LUISA ..... COLEMAN, FL | 03/15/2001 |
| LEE, ROBERT DAVID ..... E ELMHURST, NY | 09/19/2002 |
| LEMENTSYAN, HASMIK ..... VAN NUYS, CA | 09/19/2002 |
| LIMA, RAUL ..... FORREST CITY, AR | 09/19/2002 |
| LOGAN, ASHLEY LYNN ..... BAY CITY, MI | 09/19/2002 |
| MABALAY, DANIEL NONOG ... LA CRESCENTA, CA | 09/19/2002 |
| MADEN, YORKE C ..... MIAMI BEACH, FL | 09/19/2002 |
| MCELENY, DENNIS ..... N SEMINOLE, FL | 12/14/2001 |
| MCGOWEN, BRIDGET A ..... PHILADELPHIA, PA | 09/19/2002 |
| MCINTOSH, DELORES HARRIS ..... SACRAMENTO, CA | 09/19/2002 |
| MEDERO, HEATHER A ..... HIALEAH, FL | 09/19/2002 |
| MEJIA, EDNA LISETTE ..... MIAMI, FL | 09/19/2002 |
| MILLER, SHANNAN ..... WATERTOWN, WI | 09/19/2002 |
| MOHAMED, YAGOUB M ..... WINTON, NC | 09/19/2002 |
| MOLINA, GERARDO ANTONIO GARCIA ..... HORMIGUEROS, PR | 09/19/2002 |
| MONTOYA, RAYMOND ..... GREAT FALLS, MT | 09/19/2002 |
| MOORE, SONIA D ..... MAGNOLIA, AR | 09/19/2002 |
| MORALES, ARLENE ..... NEWARK, NJ | 09/19/2002 |
| MORIN-SMITH, PETER ..... WHITE DEER, PA | 09/19/2002 |
| NADEAU, DONALD M ..... MONTGOMERY, PA | 09/19/2002 |
| NEASLEY, ANITA SHANTA ..... LITTLE ROCK, AR | 09/19/2002 |
| NGUYEN, THE T ..... LARGO, FL | 09/19/2002 |
| OTERO, NANCY ..... MIAMI, FL | 09/19/2002 |
| PARAMORE, SOPHONA ..... MIAMI, FL | 09/19/2002 |
| PEREZ, CARMEN D ..... LANTANA, FL | 09/19/2002 |
| PEREZ, DAYCY ..... MIAMI, FL | 09/19/2002 |
| PERRY, MONICA FAYE ..... DETROIT, MI | 09/19/2002 |
| PIERCE, NICOLE G ..... OAK CREEK, WI | 09/19/2002 |
| RIVERA, OMAR FRANCISCO MIAMI, FL | 09/19/2002 |
| RIVERA, ALICIA ..... MIAMI, FL | 09/19/2002 |
| ROBLETO, ORLANDO ..... MIAMI, FL | 09/19/2002 |
| RODGERS, LINDA M ..... DETROIT, MI | 09/19/2002 |
| SANTANA, ELDA Y ..... MIAMI, FL | 09/19/2002 |
| SENG, MEALEDEY ..... LAKEWOOD, CA | 09/19/2002 |
| STARKS, SHANA L ..... | 09/19/2002 |

| Subject, City, State | Effective date |
|---|---|
| MILWAUKEE, WI | |
| STUCKEY, INITHA VALARIE .. FORT COLLINS, CO | 09/19/2002 |
| TAIBI, LISA J ..... DANBURY, CT | 09/19/2002 |
| TAYLOR, CLAUDIA ..... MORENCI, AZ | 09/19/2002 |
| THORNE, CASSANDRA ..... LITHONIA, GA | 09/19/2002 |
| TREMMEL, ROBERT ..... WESTBURY, NY | 09/19/2002 |
| TRIMMIER, EDWARD P ..... PAWLEYS ISLAND, SC | 09/19/2002 |
| TUSHAJ-DURAN, LINDA ..... RONKONKOMA, NY | 09/19/2002 |
| WILLIAMS, RUTH ERMA ..... TIGARD, OR | 09/19/2002 |
| WOLF, WALTER ..... BROOKLYN, NY | 09/19/2002 |
| YAGOUB, MOHAMMED A ..... WINTON, NC | 09/19/2002 |
| YERMIAN, DAVID ARDESHIRE ..... BEVERLY HILLS, CA | 09/19/2002 |
| **FELONY CONVICTION FOR HEALTH CARE FRAUD** | |
| ARITA, ETHEL ANN ..... PRESCOTT, WI | 09/19/2002 |
| ARNOLD, WILLIAM J JR ..... DEARBORN, MI | 09/19/2002 |
| BARNETT, CHARLES F ..... POTTSVILLE, PA | 09/19/2002 |
| BEHMANSHAH, YASMIN ..... DANBURY, CT | 09/19/2002 |
| BENTON, REGIS A SR ..... GRAND BLANC, MI | 09/19/2002 |
| COHEN, ROBERT G ..... MATAWAN, NJ | 09/19/2002 |
| CURCIO, VINCENT ..... SMITHTOWN, NY | 09/19/2002 |
| CUSTER, CLINTON CHARLES WRAY, CO | 09/19/2002 |
| FARIS, MATTHEW ..... FLUSHING, MI | 09/19/2002 |
| GRAPPIN, BRIAN S ..... FLUSHING, MI | 09/19/2002 |
| KAPLAN, MICHAEL ..... MANALAPAN, NJ | 09/19/2002 |
| LABRUNA, VINCENT A ..... AYER, MA | 09/19/2002 |
| LAFONTAINE, SONIA ..... BROOKLYN, NY | 09/19/2002 |
| POOLE, PAMELA B ..... MARIANNA, FL | 09/19/2002 |
| PUCCI, JOSEPH P ..... MONMOUTH BEACH, NJ | 09/19/2002 |
| RISH, BENITO ..... SCARSDALE, NY | 09/19/2002 |
| ROGINA, KAREN ALTHEA ..... DUBLIN, CA | 09/19/2002 |
| SANDERS, KATHY JO ..... BROOKS, KY | 09/19/2002 |
| SHERIF, GRIGORY ..... SAN DIEGO, CA | 09/19/2002 |
| SHULGA, VLADISLAV ..... SHERMAN OAKS, CA | 09/19/2002 |
| SILVINO, DINNALYNN ..... SAIPAN, MP, | 09/19/2002 |
| STANTON, DORIS R ..... EPPING, NH | 09/19/2002 |
| WHITMORE, SHARON T ..... NEWARK, NJ | 09/19/2002 |
| **FELONY CONTROL SUBSTANCE CONVICTION** | |
| APPELGATE, FRANK J ..... SUFFERN, NY | 09/19/2002 |
| BAUCOM, LUCRETIA KAY ..... SHENANDOAH, IA | 09/19/2002 |
| BHATTACHARJEE, DULAL ..... STROUDSBURG, PA | 09/19/2002 |
| BRETT, REBECCA JONES ..... SURFSIDE BEACH, SC | 09/19/2002 |
| BRYANT, JACQUELINE ..... CHARLOTTSVILLE, VA | 09/19/2002 |
| CHRISTIAN, TRINI RENIA ..... DENVER, CO | 09/19/2002 |
| COLE, DANIELLE RUTH ..... ALEXANDRIA, VA | 09/19/2002 |
| CSINCSAK, LARA L ..... LORAIN, OH | 09/19/2002 |
| DOSHI, ANISH B ..... SHELBY TWNSHP, MI | 09/19/2002 |
| FISHER, JEFFREY L ..... LAKEWOOD, OH | 09/19/2002 |
| HALL, SUSAN ELAINE ..... INDIANAPOLIS, IN | 09/23/2002 |
| JACKSON, DIANE ..... KENNER, LA | 09/19/2002 |
| JACKSON, SCOTT R ..... LEWISBURG, PA | 09/19/2002 |
| LAMBERT, DENNY RAY ..... LEBANON, VA | 09/19/2002 |
| LILLY, JOHN F II ..... CHILLICOTHE, OH | 09/19/2002 |
| MELDER, KEVIN ..... SACRAMENTO, CA | 09/19/2002 |
| MORRIS, KRISTA ANNORE STACEY ..... HAZARD, KY | 09/19/2002 |
| NEUMANN, SHERYL M ..... BALLWIN, MO | 09/19/2002 |
| ROJAS VILLEGAS, CESAR H HIGHLAND HGTS, OH | 09/19/2002 |
| SNOOK, RAE GRENINGER .... WILLIAMSPORT, PA | 09/19/2002 |
| SOFFA, JEFFREY H ..... FARMINGTON HILLS, MI | 09/19/2002 |
| STEPHENS, YOLANDA SHANTAYE ..... DECATUR, GA | 09/19/2002 |
| WOOD, DIRK G ..... SPRINGFIELD, OH | 09/19/2002 |
| **PATIENT ABUSE/NEGLECT CONVICTIONS** | |
| ALEXANDER, VALESCIA MONIQUE ..... JACKSON, MS | 09/19/2002 |
| ASHOKAN, ANNAMALAI ..... MONTEREY, CA | 09/19/2002 |
| BACHAROWSKI, PAUL ..... MASSILLON, OH | 09/19/2002 |
| BENNETT-WILLIAMSON, KATHLEEN ..... TRENTON, NJ | 09/19/2002 |
| BERENS, DALLAS W ..... HURON, SD | 09/19/2002 |
| BETZ, BONNIE ..... AFTON, OK | 09/19/2002 |
| BISKIND, JOHN ISRAEL ..... BUCKEYE, AZ | 09/19/2002 |
| BLACK TUCKER, ESSIE ..... DUMAS, AR | 09/19/2002 |
| BOULWARE, CYNTHIA LYNN ARDMORE, OK | 09/19/2002 |
| BRICE, GLENN R ..... NORTHFIELD, VT | 09/19/2002 |
| BROWN, HOWARD A ..... W WARWICK, RI | 09/19/2002 |
| BUZEK, DANIELLE S ..... CANAL FULTON, OH | 09/19/2002 |
| CALDERON, MANUEL ARTURO ..... COLORADO SPRNGS, CO | 09/19/2002 |
| CASEY, KATINA ALICE ..... W JORDAN, UT | 09/19/2002 |
| CONRADY, CHRISTINA L ..... MASSILLON, OH | 09/19/2002 |
| DAVIS, GWENDOLYN MARIE LAWTON, OK | 09/19/2002 |
| FAY, NICOLE ..... KENTON, OH | 09/23/2002 |
| GAINEY, BARBARA ..... GREENVILLE, SC | 09/19/2002 |
| GARCIA, MARIO JOSE ..... SAN ANTONIO, TX | 09/19/2002 |
| GARY, JERALDINE WILLIAMS CLINTON, SC | 09/19/2002 |
| IRBY, VIRGINIA ..... PONTOTOC, MS | 09/19/2002 |
| JOHNSON-WOODS, LINDA .... DETROIT, MI | 09/19/2002 |
| LARKIN, SHIRLEY QUINN ..... GREENVILLE, MS | 09/19/2002 |
| LEMIRE, PATSY A ..... FRANKLIN, NH | 09/19/2002 |
| MCMILLAN, GREGORY ..... RIVERSIDE, CA | 09/19/2002 |
| NEILL, RICHARD BLAND ..... PANAMA, OK | 09/19/2002 |
| OGUNDELE, GBENGO BEN-SON ..... LAUREL, MD | 09/19/2002 |
| PEGUES, TIFFANY L ..... OXFORD, MS | 09/19/2002 |
| PERKINS, MARGARETE R ..... BASTROP, TX | 09/19/2002 |
| PESCE, CHARLENE L ..... STEUBENVILLE, OH | 09/19/2002 |
| PESINA, DAVID ..... GLENNVILLE, GA | 09/19/2002 |
| POWELL, NICHEIA ..... BALTIMORE, MD | 09/19/2002 |
| REESE, SANDRA D ..... DELAND, FL | 09/19/2002 |
| SANTIFER, GLENN E ..... LOUANN, AR | 09/19/2002 |
| SPENCER, FREDERICK ..... PACIFIC, MO | 09/19/2002 |
| STONE, LINDA K ..... ENID, OK | 09/19/2002 |
| STUART, CAROL ..... SCOTTSDALE, AZ | 09/19/2002 |
| TERRY, TREVEKIA D ..... SOMERVILLE, TN | 09/19/2002 |
| TYLER, DOLLIE M ..... VINITA, OK | 09/19/2002 |
| **CONVICTION FOR HEALTH CARE FRAUD** | |
| BORTZ, SANDRA E ..... KENNEBUNK, ME | 09/19/2002 |
| BROWN, MARGARET ..... BATON ROUGE, LA | 09/19/2002 |
| MEALY, HEATHER LEAK ..... | 09/19/2002 |

| Subject, City, State | Effective date |
|---|---|
| GUM SPRINGS, VA | |
| **CONTROLLED SUBSTANCE CONVICTIONS** | |
| FISHBAIN, DAVID ..... NEW HYDE PARK, NY | 09/19/2002 |
| FOGARTY, MAUREEN ANN ... VEVAY, IN | 09/19/2002 |
| **LICENSE REVOCATION/SUSPENSION/ SURRENDERED** | |
| ABBOTT, NANCY E ..... W NEWTON, MA | 09/19/2002 |
| BARTON, SUSAN KAY ..... CHANDLER, AZ | 09/19/2002 |
| BELDEN, ALLAN D ..... NEW LONDON, WI | 09/19/2002 |
| BOLIN, CHRISTY L ..... NEW HAVEN, IL | 09/19/2002 |
| BORNHOLDT, HAE SUK ..... MCAFEE, NJ | 09/19/2002 |
| BOWAN-CLARDY, LISA ..... PAYSON, AZ | 09/19/2002 |
| BRACKEMYRE, PHILIP JEFF-ERY ..... GREENVILLE, MI | 09/19/2002 |
| BRADFORD, BRETT HAROLD PORT CHARLOTTE, FL | 09/19/2002 |
| BRANDENBURG, SUSAN M WESLEY ..... CHICAGO, IL | 09/19/2002 |
| BRINGLEY, PATRICE R ..... PASADENA, MD | 09/19/2002 |
| BROADY, CHERYL A ..... VILLA GROVE, IL | 09/19/2002 |
| BROWN, ERIC M ..... N PROVIDENCE, RI | 09/19/2002 |
| BROWN, LORI EVERHART ..... ALLENTOWN, PA | 09/19/2002 |
| BROWN, SANDRA M ..... MILTON, MA | 09/19/2002 |
| BRUNZELL, JAMIE LANE ..... COLORADO SPRNGS, CO | 09/19/2002 |
| BUNIEWICZ, VALERIE M ..... MILLBURN, NJ | 09/19/2002 |
| BURROW, NORMA MARIE SALAMONE ..... BIRMINGHAM, AL | 09/19/2002 |
| CARR, MICHAEL P ..... BOSTON, MA | 09/19/2002 |
| CAZALAS, MICHAEL AN-THONY ..... CORPUS CHRISTI, TX | 09/19/2002 |
| CONE, ROBERT ROY ..... TIJUANA, CA | 09/19/2002 |
| CRISSINGER, THERESA D .... LOCK HAVEN, PA | 09/19/2002 |
| CUNNINGHAM, MICHAEL DOUGLAS ..... GLEN SPEY, NY | 09/19/2002 |
| DANIELS, SUSAN M ..... WHITE RIVER JUNCTION, VT | 09/19/2002 |
| DE LA BARRE, WANDA L ..... AMHERST, MA | 09/19/2002 |
| DELROSARIO, PAMELA G ..... ADDISON, IL | 09/19/2002 |
| DEMONTERICE, ANU ..... COTATI, CA | 09/19/2002 |
| DESANTIS, NANCY J ..... GLENDALE, NY | 09/19/2002 |
| DONLIN, MICHAEL THOMAS JR ..... PROLE, IA | 09/19/2002 |
| DOWSETT, KATHRYN HOHMAN ..... DANVILLE, PA | 09/19/2002 |
| DROUIN, MICHELLE MARIE ... SCHENECTADY, NY | 09/19/2002 |
| DUFFY, JAMES L ..... SOMERS, NY | 09/19/2002 |
| EDWARDS, JENNY L ..... TEMPE, AZ | 09/19/2002 |
| EIDSON, WILLIAM ERIC ..... BIRMINGHAM, AL | 09/19/2002 |
| EISENBAND, NANCY W ..... BALTIMORE, MD | 09/19/2002 |
| EISNAUGLE, EDMUND BARRY ..... NILES, OH | 09/19/2002 |
| EPPEL, DIETER H ..... AUBURN, NY | 09/19/2002 |
| FERNANDEZ, ROGELIO OSCAR ..... FRESH MEADOWS, NY | 09/19/2002 |
| FILLINGIM, JACQUELINE ..... PLEASANTON, TX | 09/19/2002 |
| FINE, JAMES LEE ..... WALTHMAN, MA | 09/19/2002 |
| GABLE, TODD E ..... WARWICK, RI | 09/19/2002 |
| GARLIT, NANCY LYNN ..... NAPPANEE, IN | 09/19/2002 |
| GEAN, JAMES TIMOTHY ..... MADISON HGTS, MI | 09/19/2002 |
| GENSHEIMER, MAUREEN E .. WALL, NJ | 09/19/2002 |
| GONSE, RICHARD WAYNE .... MINNEAPOLIS, MN | 09/19/2002 |
| GRAUERHOLZ, JOHN E ..... LEESBURG, VA | 09/19/2002 |
| GREEN, LAKEISHA DANYELLE ..... CHICAGO, IL | 09/19/2002 |
| GRISELL, DEANNA MAR-GARET ..... ST PAUL, MN | 09/19/2002 |
| GRUZESKI, LINDA S ..... ROBERTSVILLE, MO | 09/19/2002 |
| HALVORSEN-GUARDINO, AN-DREA LEE ..... SAN FRANCISCO, CA | 09/19/2002 |
| HAMPTON, MONA LEE ..... HUGHES SPRINGS, TX | 09/19/2002 |
| HANCOCK, BONNIE ..... FRESNO, CA | 09/19/2002 |
| HARRIS, DAWN MARIE ..... THOUSAND OAKS, CA | 09/19/2002 |
| HATFIELD, GAIL ..... PHILADELPHIA, PA | 09/19/2002 |
| HINOJOSA, RICHARD ..... AUSTIN, TX | 09/19/2002 |
| HOLT, TRACIE LEE ..... PHOENIX, AZ | 09/19/2002 |
| HOPKINS, ELIZABETH BEN-NETT ..... ENID, OK | 09/19/2002 |
| HORSEHERDER, EMILY J ..... PHOENIX, AZ | 09/19/2002 |
| HORTON, JOEY D ..... CRYSTAL SPRINGS, MS | 09/19/2002 |
| HUNTEMAN, DENISE M ..... GREELEY, CO | 09/19/2002 |
| HUTCHINSON, SHEILA ..... GAINESVILLE, GA | 09/19/2002 |
| JACQUES, CAROLE A ..... GILFORD, NH | 09/19/2002 |
| JAFFE, CAROLYN B ..... GREEN LANE, PA | 09/19/2002 |
| JENKS, JANET W ..... CONOVER, NC | 09/19/2002 |
| JENSEN, LISA GAYLE ..... HUFFMAN, TX | 09/19/2002 |
| JENSEN, INGE LAURA ..... SHERMAN, TX | 09/19/2002 |
| JONES, LISA M ..... SANTA ROSA, CA | 09/19/2002 |
| KELLAR, SABRINA MARIE ..... SAINT HELENA, CA | 09/19/2002 |
| KELLY, JAN VINCENT ..... NORMAN, OK | 09/19/2002 |
| KENNEDY, SHARON L ..... MECHANICSVILLE, VA | 09/19/2002 |
| KEYSER, GARY R ..... LAVEEN, AZ | 09/19/2002 |
| KLEPPER, JEFFREY BEN ..... CHILDRESS, TX | 09/19/2002 |
| KNAPP, ERIC ..... YUCAIPA, CA | 09/19/2002 |
| KONTRA, SHARON ANN ..... NEWBURGH, IN | 09/19/2002 |
| KREUGER, LORI KRISTEN ..... PITTSBURGH, PA | 09/19/2002 |
| LACKO-HELM, MICHELLE A ... SAN JUAN CAPISTRANO, CA | 09/19/2002 |
| LANOUE, MARTHA L ..... NAUGATUCK, CT | 09/19/2002 |
| LARGE, BEVERLY THOMP-SON ..... RANDLEMAN, NC | 09/19/2002 |
| LARRIVEE, POYANI T ..... SOMERSET, MA | 09/19/2002 |
| LEE, KELLY JEAN ..... HASKELL, OK | 09/19/2002 |
| LEH, TAMI ..... POTTSTOWN, PA | 09/19/2002 |
| LEMIRE, KRISTA E ..... CUMBERLAND, RI | 09/19/2002 |
| LINGLE, JERRY CLIFTON ..... FT LAUDERDALE, FL | 09/19/2002 |
| LITTLE, BELINDA BRANDT .... LANSING, KS | 09/19/2002 |
| LOPEZ, CHARLENE R ..... COTTONWOOD, AZ | 09/19/2002 |
| LYLE, PHILLIP W ..... LOUISVILLE, KY | 09/19/2002 |
| MADRUGA, RODNEY MARK .. ATASCADERO, CA | 09/19/2002 |
| MALONE, MARY LOU ..... WILLITS, CA | 09/19/2002 |
| MARKS, CLIFFORD S ..... SAN DIEGO, CA | 09/19/2002 |
| MARTIER, DEBORAH GRAHAM ..... FAIRLESS HILLS, PA | 09/19/2002 |
| MARTINEZ, SYLVIA ANN ..... KINGSVILLE, TX | 09/19/2002 |
| MATTER, SCARLET LENARE SAN ANTONIO, TX | 09/19/2002 |
| MAYBIE, ROBERT G JR ..... PALM HARBOR, FL | 09/19/2002 |
| MCLAIN, PATRICK GENE ..... MERIDIAN, MS | 09/19/2002 |
| MENDOZA, FREDERICK ..... WEWAHITCHKA, FL | 09/19/2002 |
| MILLER, MAUREEN E ..... | 09/19/2002 |

| Subject, City, State | Effective date |
|---|---|
| BELLINGHAM, MA | |
| MILLS, JOE D ..... NEWPORT, NC | 09/19/2002 |
| MOE, GAIL CHRISTINE ..... LOCKEFORD, CA | 09/19/2002 |
| MOJICA, JO ANN ..... LAMESA, TX | 09/19/2002 |
| MOORE, JANIS C ..... LEXINGTON, SC | 09/19/2002 |
| MORGAN, BRIAN DANIEL ..... DANSVILLE, NY | 09/19/2002 |
| MORRIS, ROBERT LEE ..... OKMULGEE, OK | 09/19/2002 |
| MULHERN, SCOTT P ..... WORCESTER, MA | 09/19/2002 |
| MULLER, ALFRED ..... CHEVY CHASE, MD | 09/19/2002 |
| NICHOLLS, CRAIG DUNCAN .. KAYSVILLE, UT | 09/19/2002 |
| NICHOLS, POPPY LEE ..... NEWPORT BEACH, CA | 09/19/2002 |
| NOBLE, MICHAEL BRENT ..... N RICHLAND HILLS, TX | 09/19/2002 |
| NOVAK, MARK H ..... SYRACUSE, NY | 09/19/2002 |
| OPALINSKI, LINDA A ..... GENEVA, IL | 09/19/2002 |
| OTTE, ELIZABETH FRANDSEN ..... OREM, UT | 09/19/2002 |
| PAUL, LYONEL ..... UNIONDALE, NY | 09/19/2002 |
| PAYE, TENNEH D ..... PROVIDENCE, RI | 09/19/2002 |
| PAYNE, SHERIE L ..... JOHNSON CITY, TN | 09/19/2002 |
| PECK, ROBBIN L ..... GOLDEN VALLEY, AZ | 09/19/2002 |
| PHARES, ALYSSA A ..... DAYTON, NJ | 09/19/2002 |
| PHILLIPS, JODI ANN ..... NEW ALEXANDRIA, PA | 09/19/2002 |
| PIERCE, JOHNNY DOUGLAS MEMPHIS, TN | 09/19/2002 |
| PLASKETT, MARIBETH ..... MARTINEZ, CA | 09/19/2002 |
| POOLE, JOSEPH PHILLIP ..... SEATTLE, WA | 09/19/2002 |
| POOR, KAREN ..... CLEMMONS, NC | 09/19/2002 |
| PORTER, KIMBERLY ..... MESA, AZ | 09/19/2002 |
| POSEY, RICHARD ..... MURPHY, TX | 09/19/2002 |
| PRINGLE, JANICE LEE ..... SONORA, CA | 09/19/2002 |
| RADAKER, AMBER ..... GLASSPORT, PA | 09/19/2002 |
| RANDALL, KATHLEEN M ..... DES MOINES, IA | 09/19/2002 |
| RAY, JAMES NORRIS ..... FLINT, MI | 09/19/2002 |
| REED, JULIE ANNE DUDLEY FLAT ROCK, IN | 09/19/2002 |
| RICE, BARBARA JOYCE ..... MAGNOLIA, TX | 09/19/2002 |
| RICHARDS, SHERRY L SCHLOSS ..... LEXINGTON, KY | 09/19/2002 |
| RINGEL, DAVID R ..... LOUISVILLE, KY | 09/19/2002 |
| ROEDER, ROBERT ..... E AMHERST, NY | 09/19/2002 |
| SARAYBA, ALBERTO ..... COLONIAL HGTS, VA | 09/19/2002 |
| SCHLESSELMAN, HEIDI JO ... DEEP RIVER, IA | 09/19/2002 |
| SCHOULTZ, JENNIFER SUSANNE ..... LITTLE ROCK, AR | 09/19/2002 |
| SEARCEY, VICKY C ..... TOLEDO, OH | 09/19/2002 |
| SHAHRESTANI, SHAHRIAR ... ANAHEIM, CA | 09/19/2002 |
| SHEEHY, DIANNE M ..... LAWRENCE, MA | 09/19/2002 |
| SILVERLIGHT, SARAH LYNN FT LAUDERDALE, FL | 09/19/2002 |
| SKVASIK, BARBARA SUE DAVIS ..... DOTHAN, AL | 09/19/2002 |
| SLATER, KATHRYN ANN ..... SAN MARCOS, CA | 09/19/2002 |
| SMITH, TONEY O ..... TUCSON, AZ | 09/19/2002 |
| SMITH, BENNETT J ..... HUDSON, MA | 09/19/2002 |
| SMITH, MAUREEN ..... KEENE, NH | 09/19/2002 |
| SORRELS, THOMAS ..... MEMPHIS, TN | 09/19/2002 |
| STOKES, PAMELA ..... EVANSVILLE, IN | 09/19/2002 |
| STRATTON, JOHN P ..... FITCHBURG, MA | 09/19/2002 |
| SULLIVAN, MELONIE DAWN .. PARAGOULD, AR | 09/19/2002 |
| SWINDELL, PAULA J ..... CENTRALIA, IL | 09/19/2002 |
| TARASEVICH, LISA ..... NATIONAL PARK, NJ | 09/19/2002 |
| THEDE, NORMAN D ..... CLARKDALE, AZ | 09/19/2002 |
| THIBODEAU, DIANA M ..... SIDNEY, ME | 09/19/2002 |
| THOMAS, DAVID PAUL ..... ST DAVID, AZ | 09/19/2002 |
| THOMAS, CYNTHIA CHARLENE ..... INDIANAPOLIS, IN | 09/19/2002 |
| TRAVERS, REBECCA ANN .... QUINLAN, TX | 09/19/2002 |
| TUASON, RHONDA L. ..... BALTIMORE, MD | 09/19/2002 |
| VILLAMIZAR, ALFONSO ..... INGLEWOOD, CA | 09/19/2002 |
| WALL, TANYA JEAN ..... MONTICELLO, IL | 09/19/2002 |
| WATWOOD, LINDA JEAN ..... REMLAP, AL | 09/19/2002 |
| WELDEN, DARREL R ..... FLORENCE, SC | 09/19/2002 |
| WESTRUM, CYNTHIA ANN .... HUNT, TX | 09/19/2002 |
| WHITT, PHOEBE RENEE ..... OXFORD, AL | 09/19/2002 |
| WIEBERDINK, KIP EDWARD .. GARDEN GROVE, CA | 09/19/2002 |
| WILLIAMS, BARBARA ANN DEESE ..... MOBILE, AL | 09/19/2002 |
| WILLIAMS, STACY ANN ..... LAKE ELSINORE, CA | 09/19/2002 |
| WORLEY, DOROTHY ..... PHOENIX, AZ | 09/19/2002 |
| YANDO, GAIL ROSE ..... POINT RICHMOND, CA | 09/19/2002 |
| YARGO, BRIDGETTE ..... PASS CHRISTIAN, MS | 09/19/2002 |
| YAZDGERDI, DARYOUSH ..... VACAVILLE, CA | 09/19/2002 |

**FEDERAL/STATE EXCLUSION/ SUSPENSION**

| | |
|---|---|
| BLAS, MANUEL PIEDAD ..... OAK BROOK, IL | 09/19/2002 |
| JOSEPH, ALEYAMMA P ..... PRINCETON JUNCTION, NJ | 09/19/2002 |
| SIMONDS, SHARON Q ..... CUMBERLAND CTR, ME | 09/19/2002 |
| WEST WINDSOR TENDER CARE ..... PRINCETON JUNCTION, NJ | 09/19/2002 |

**FRAUD/KICKBACKS**

| | |
|---|---|
| FEDERGREEN, WARREN ROSS ..... JENSEN BEACH, FL | 05/17/2002 |
| KIMMELL, JAMES E ..... FISHERS, IN | 05/13/2002 |
| MAZZELLA, BARBARA ..... COLEMAN, FL. | 04/18/2000 |
| PRIORITY OXYGEN & MEDICAL EQPT ..... ST PETERSBURG, FL. | 12/14/2001 |

**OWNED/CONTROLLED BY CONVICTED ENTITIES**

| | |
|---|---|
| BARBARA A MAZZELLA, M D, P A ..... CORAL SPRINGS, FL | 09/19/2002 |
| BILLING G SYSTEMS, INC ..... MIAMI, FL | 09/19/2002 |
| CINDY DRUGS, INC ..... HICKSVILLE, NY | 09/19/2002 |
| CITY MEDICAL SUPPLY, INC N HOLLYWOOD, CA | 09/19/2002 |
| CLOVER PHARMACY, INC ..... PALM HARBOR, FL | 09/19/2002 |
| CSE, INC ..... ORLANDO, FL | 09/19/2002 |
| ELITE MEDICAL DISTRIBUTORS INC ..... PALM HARBOR, FL | 09/19/2002 |
| FL COMMUNITY CARE CTRS, INC ..... ORLANDO, FL | 09/19/2002 |
| HEALTHCON INTERNATIONAL, INC ..... MIAMI, FL | 09/19/2002 |
| INTEGRATED MEDICAL NETWORKS ..... ORLANDO, FL | 09/19/2002 |
| L B M & ASSOCIATES, CORP MIAMI, FL | 09/19/2002 |
| MERCEDES GOMEZ, INC ..... COLEMAN, FL | 09/19/2002 |
| NEW AGE UNLIMITED SVCS, INC ..... MIAMI, FL | 09/19/2002 |
| NORTH & SOUTH SUPPLY SERVICES ..... MIAMI, FL | 09/19/2002 |
| PALMETTO MEDICAL SUPPLY, CORP ..... MIAMI, FL | 09/19/2002 |
| PSL COMMUNITY CARE CTR, INC ..... | 09/19/2002 |

| Subject, City, State | Effective date |
|---|---|
| ORLANDO, FL | |
| SAFETY DRUGS INC ..... BROOKLYN, NY | 09/19/2002 |
| ST PETER'S MEDICAL SUPPLY, INC ..... PHILADELPHIA, PA | 09/19/2002 |
| 1ST REHABILITATION OF PORT ST ..... ORLANDO, FL | 09/19/2002 |
| **DEFAULT ON HEAL LOAN** | |
| ALSTON-DAVIS, DIEDRA A .... PINE FORGE, PA | 08/20/2002 |
| BOULIS, MARKELL D ..... PRESTO, PA | 09/19/2002 |
| VELARDE, DIEGO F ..... BENSENVILLE, IL | 08/20/2002 |

Dated: September 3, 2002.

**Calvin Anderson, Jr.,**

*Director, Health Care Administrative Sanctions, Office of Inspector General.*

[FR Doc. 02–23033 Filed 9–10–02; 8:45 am]

**BILLING CODE 4150–04–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2003 Funding Opportunities

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of funding availability for an Evaluation Technical Assistance Center.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for a cooperative agreement for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, Cooperative Agreement for an Evaluation Technical Assistance Center (SM 03–002), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

| Activity | Application deadline | Est. funds FY 2003 | Est. number of awards | Project period (years) |
|---|---|---|---|---|
| Cooperative Agreement for Evaluation Technical Assistance Center. | Oct. 22, 2002 ..... | $800,000 | 1 | 3 |

The actual amount available for the award may vary depending on unanticipated program requirements and actual SAMHSA appropriations. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of an Evaluation Technical Assistance Center cooperative agreement. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund the cooperative agreement. This program is authorized under Section 1948(a) of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

*General Instructions:* Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Mental Health Services Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Telephone: 1–800–789–2647.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on ''Grant Opportunities''). When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

*Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) is accepting applications for a fiscal year (FY) 2003 cooperative agreement to provide technical assistance to States and the mental health community regarding how to conduct high quality evaluations of programs and service systems, and how to interpret and use the results of evaluation and mental health services research to improve the planning, development, and operation of adult services provided under the Community Mental Health Services (CMHS) Block Grant program.

*Eligibility:* All public or private domestic nonprofit entities, including faith-based organizations, can apply.

*Availability of Funds:* It is estimated that up to $800,000 will be available for the award (direct plus indirect costs) each year. Actual funding levels will depend on the availability of funds and the applicant's budget justification. Annual continuation awards will depend on the availability of funds and progress achieved.

*Period of Support:* The award should be requested for a project period of 3 years.

**Criteria for Review and Funding**

*General Review Criteria:* Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

*Award Criteria for Scored Applications:* Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic

activity may be included in the application guidance materials.

*Catalog of Federal Domestic Assistance Number:* 93.238.

*Program Contact:* For questions concerning program issues, contact: Crystal R. Blyler, Ph.D., Social Science Analyst, CMHS/SAMHSA, 5600 Fishers Lane, RM 11C–22, Rockville, MD 20857, (301) 443–3653, E-Mail: *cblyler@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

*Public Health System Reporting Requirements:* The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

*PHS Non-use of Tobacco Policy Statement:* The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

*Executive Order 12372:* Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857. The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: September 5, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02–23009 Filed 9–10–02; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–097–1220–MA]**

### Notice of Emergency Closure of Public Land to Certain Uses in Elmore County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice, emergency closure.

**SUMMARY:** Notice is served that 988 acres of public land is closed to the use of motorized vehicles north of the Pasadena Valley Road. The public land is located approximately two (2) miles east of Glenns Ferry, Idaho, known as the Paradise or Pasadena Off-Highway Vehicle (OHV) area (north end). This closure will be in effect beginning on August 1, 2002, and will expire on August 1, 2004. During this closure period, public consultation will be implemented and a process for completing a management plan for the area will be developed. A supplemental rule could be implemented for permanent closure of the area. OHV use includes all types of motor vehicles except for those authorized for fire fighting, law enforcement, and administrative operations or other activities authorized by the BLM.

The issues that have been occurring during the past three years have primarily been related to safety concerns involving OHV's crossing and traveling on the Pasadena Valley Road. This safety issue has consumed a considerable amount of County, State, and BLM law enforcement staff time in assuring public safety along the road. The Elmore County Sheriff's Department has requested that this area be closed. Complaints, verbal and written, from the local residents have been received on a regular basis pertaining to safety, noise levels and degradation of the slopes where hill climbing takes place.

This emergency closure is necessary for public safety and to protect public land and adjacent private property. Closure signs will be posted at main entry points and trails in the area. Maps of the closure area and more detailed information are on file at the Jarbidge Field Office.

**FOR FURTHER INFORMATION CONTACT:** Eddie Guerrero, Field Manager or Max Yingst, Outdoor Recreation Planner, BLM, Jarbidge Field Office, 2620 Kimberly Road, Twin Falls, ID, 83301–7975 or call (208) 736–2350.

**SUPPLEMENTARY INFORMATION:** This order affects public lands in Elmore County, Idaho thus described:

**Boise Meridian**

T.5S., R.10E.,
Secs. 25, 26, 27;
T.5S., R. 11E.,
Secs. 30, 31

This closure will not affect vehicle traffic on Pasadena Valley Road, Coblantz Road, Thompson Hill Road, and Black Mesa Road. This closure does not affect the OHV site south of the Pasadena Valley Road or in the Rosevear Gulch area.

Authority for this action is contained in Title 43, Code of Federal Regulations, Subpart 8341, Section 2 (43 CFR 8341.2) and Subpart 8364, Section 1 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to citation or

arrest and a fine up to $1,000.00 or imprisonment not to exceed 12 months, or both. Such violations may also be subject to the enhanced fines provided for by Title 18 U.S.C. 3571.

**Edward Guerrero,**

*Field Manager.*

[FR Doc. 02–23043 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–025–1232–EA; Special Recreation Permit # NV–023–02–25]**

### Notice of Temporary Closure of Public Lands: Pershing, Washoe & Humboldt Counties, NV

**AGENCY:** Bureau of Land Management, Winnemucca Field Office, Nevada, Interior.

**ACTION:** Notice to the public of temporary closures on public lands administered by the Bureau of Land Management, Winnemucca Field Office, Nevada.

**SUMMARY:** Notice is hereby given that certain lands will be temporarily closed to public use in and around the Civilian Space Exploration Team (CSXT) rocket launch site, located in Pershing, Washoe and Humboldt counties, Nevada, from 0700 to 0930 hours, September 17th–September 20th inclusive, and September 23rd, 2002. These closures are made in the interest of public safety at and around the location of an amateur high-altitude rocket launch site. This event is expected to attract approximately 50 participants. The lands involved are located northeast of Gerlach, Nevada in the Mount Diablo Meridian.

*The following Public Lands are closed to public use:* Public land areas north of the Union Pacific Railroad tracks, and east of State Highway 34 and County Road 200, and west of the Pahute Peak and Black Rock Desert wilderness boundaries within the following legally described areas are included in the closure:

T33.5N, R24E sec. 25–28, 32–36; T33N R24E secs., 1–5, 8–22, 23, 27–30; T33N, R25E sec. 2,3,4,9; T34N, R24E sec. 1–3, 10–15, 21–27, 34–36; T34N, R25E sec.1–4, 9–16, 21–28, 33–36; T34N, R26E sec. 1–24, 28–33; T34N, R27E sec. 1–18; T35.5N, R25E sec. 27–34; T35.5N, R26E sec. 25–36; T35N, R24E sec. 6,13, 22–27, 34–36; T35N, R25E sec. 1–4,9–16, 21–28, 33–36; All of T35N, R26E; All of T35N R27E; T36N R23.5E sec. 1; T36N, R24E sec. 5, 6, 8, 17, 30; T36N, R25E sec. 1–5, 8–18, 21–36; All of T36N, R26E; T36N, R27E sec. 4–9, 16–21, 28–33; T37N, R23.5E sec. 36; T37N, R24E sec. 11, 14, 23, 24, 30; T37N, R25E sec. 7, 22–27, 34–36; T37N, R26E sec. 19–36; T37N, R27E sec. 19–21, 28–33; T38N, R23E sec. 22.

To ensure public safety these lands will be closed to public use from 0700 to 0930 hours during the CSXT permit period, with the exception of BLM personnel, law enforcement, emergency medical services, and CSXT staff as designated by the BLM authorized officer. A map showing these temporary closures, restrictions and prohibitions is available from the following BLM office: BLM–Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445–2921.

The map may also be viewed on the Winnemucca Field Office Web site at: *www.nv.blm.gov/winnemucca*.

**DATES:** Closure to public use from 0700 to 0930 hours, September 17th–20th inclusive and September 23rd, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dave Lefevre, National Conservation Area Outdoor Recreation Planner, Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445, telephone: (775) 623–1770.

**Authority:** 43 CFR 8364.1.

*Penalty:* Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

**Terry A. Reed,**

*Field Manager.*

[FR Doc. 02–23046 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–030–02–1220–DE–241A]**

### Notice of Temporary Closure of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure of public lands.

**SUMMARY:** Certain lands in the Grand Staircase-Escalante National Monument are being temporarily closed to rock climbing activities to protect active peregrine falcon nesting sites. Closures may occur annually during nesting season.

**SUPPLEMENTARY INFORMATION:** Under the provisions of 43 CFR part 8364 and the Grand Staircase-Escalante National Monument Management Plan, Decisions CLMB–1 and CLMB 2, notice is hereby given of a temporary closure of portions of public lands to rock climbing activities within Grand Staircase-Escalante National Monument. The present closure area includes: the Long Canyon portion of the Burr Trail, and the Escalante River upstream from the Highway 12 bridge; all lands within a one mile radius of any active peregrine falcon nest(s). The closure shall be in effect from March 1 to August 31, 2002 and each subsequent year that active nest sites are identified. The closure includes all forms of rock climbing including free climbing, bouldering and climbing using ropes and hardware. Closure notices identifying the area(s) closed and dates of closure will be posted at the identified locations when active nests are identified. Should additional active peregrine falcon or other birds of prey nest sites be identified, similar temporary closures would be implemented.

**FOR FURTHER INFORMATION CONTACT:** Bill Falvey, Wildlife Biologist, GSENM, at 435–826–5613 or *bill_falvey@blm.gov*.

Dated: July 29, 2002.

**David B. Hunsaker,**

*Acting Monument Manager.*

[FR Doc. 02–23045 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–080–1430–EU; Serial No. NMNM 106766]**

### Notice of Intent To Prepare a Plan Amendment/Environmental Assessment to the Carlsbad Resource Management Plan for Possible Disposal of Public Land

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA) for possible disposal of public land in Eddy & Lea County, NM.

**SUMMARY:** The Bureau of Land Management (BLM), Carlsbad Field Office, is initiating the preparation of an RMPA, which will include an EA for the possible exchange of up to 6,215.22 acres of BLM-administered public land in Eddy and Lea Counties in southeastern New Mexico for up to 2,389.78 acres of privately owned land in Eddy County. The exchange will be for like values as determined by appraisal. The offered land is located in:

| | Acres |
|---|---|
| T. 23 S., R. 28 E., NMPM | |
| Sec. 11: S2NE, S2SW, SE ... | 320.00 |
| Sec. 12: S2N2, N2S2, S2SW | 400.00 |
| Sec. 13: NW, N2SW, SESW, SE ..... | 440.00 |
| Sec. 14: N2N2 ..... | 160.00 |
| Sec. 24: E2NE ..... | 80.00 |
| T. 23 S., R. 29 E., NPMP | |
| Sec. 18: Lots 3, 4, SESW ..... | 116.12 |
| Sec. 19: Lots 1–4 inc., SWNE, E2W2, SE ..... | 513.66 |
| Sec. 30: E2, NENW ..... | 360.00 |
| Total ..... | 2,389.78 |

The selected land is located in:

| | Acres |
|---|---|
| T. 21 S., R. 29 E., NMPM | |
| Sec. 01: S2 ..... | 320.00 |
| Sec. 11: N2NE, SWNE, SE .. | 280.00 |
| Sec. 12: All ..... | 640.00 |
| Sec. 13: NE ..... | 160.00 |
| Sec. 14: SWNE ..... | 40.00 |
| T. 20 S., R. 30 E., NMPM | |
| Sec. 04: S2N2, W2SW, NESE ..... | 280.00 |
| Sec. 05: Lots 1–4 inc., S2N2, N2S2, SESW, S2SE ..... | 599.68 |
| Sec. 08: ALL ..... | 640.00 |
| Sec. 09: N2N2 ..... | 160.00 |
| T. 21 S., R. 31 E., NMPM | |
| Sec. 03: Lots 3, 4, 5, 6, 11, 12, 13, 14, SW ..... | 484.68 |
| Sec. 04: Lots 1–16 ..... | 648.96 |
| Sec. 05: Lots 1, 2, 7, 8, 9, 10, 15, 16, SE ..... | 484.47 |
| Sec. 09: N2 ..... | 320.00 |
| Sec. 10: NW ..... | 160.00 |
| T. 20 S., R. 32 E., NMPM | |
| Sec. 07: Lot 4, SESW, S2SE | 159.43 |
| Sec. 08: S2SW ..... | 80.00 |
| Sec. 17: W2 ..... | 320.00 |
| Sec. 18: W2NW, NWSW, S2S2 ..... | 837.43 |
| Total ..... | 6,215.22 |

The RMPA will allow for exchange of the land if that is the alternative chosen by the BLM New Mexico State Director. The public is invited to participate in the scoping process to identify issues and planning criteria to be considered in the development of the RMPA/EA. The BLM will maintain a mailing list of parties and persons interested in being kept informed about the RMPA/EA.

**DATES:** Comments related to this action will be accepted on or before October 28, 2002.

**ADDRESSES:** Comments should be sent to Bobbe Young, Lead Realty Specialist, 620 E. Greene, Carlsbad, NM 88220.

**FOR FURTHER INFORMATION CONTACT:** Mary Jo Rugwell, Assistant Field Manager at (505) 234–5907 or Bobbe Young at (505) 234–5963.

**SUPPLEMENTARY INFORMATION:** Mississippi Potash, Inc., has requested to exchange lands they own around the Pecos River for BLM managed public lands surrounding mine sites. The public lands adjacent to the mine sites have mine tailings and other industrial waste located on them and the land near the Pecos River is riparian habitat and native rangeland. The public land was identified for retention in Federal ownership in the Carlsbad RMP completed in 1988. In order to consider this exchange of the land, the RMP must be amended. An interdisciplinary team of BLM resource specialists including realty, recreation, cultural, minerals, and hazardous materials specialists will prepare the RMPA/EA. Other specialists will provide additional technical support as needed.

Dated: July 15, 2002.

**Richard A. Whitley,**

*Acting State Director.*

[FR Doc. 02–23049 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–180–5700–EU; CACA–42966]**

### Notice of Realty Action

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; Non-competitive sale of public lands, Tuolomne County, California.

**SUMMARY:** The public lands identified below have been examined and found suitable for disposal pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750–51; 43 U.S.C. 1713, and 90 Stat. 2757–58, 43 U.S.C. 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), at not less than appraised market value. The potential buyer of the parcel will make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface.

**Mount Diablo Meridian**

T. 1 South, R. 16 East,
Section 30, Lots 24, 25
Mount Diablo Meridian, Tuolumne, California
Containing 1.86 acres more or less.

The purpose of the proposed sale is to dispose of a parcel of public land that is difficult and uneconomic to manage as part of the public lands of the United States. It is also proposed for sale in order to resolve a trespass of the Big Oak Flat Baptist Church. The proposed sale is consistent with the Folsom Field Office Sierra Planning Area Management Framework Plan (July 1988), and the public interest will be served by offering the parcel for sale. The parcel will be offered for non-competitive sale to Big Oak Flat Baptist Church, the adjacent landowner.

Pursuant to the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), the proceeds from the sale will be deposited into a Federal Land Disposal Account and used to acquire non-federal land within the State of California. The money will be used to purchase lands for the BLM, National Park Service, Forest Service, or Fish and Wildlife Service.

Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will reserve the following: Reservation for ditches and canals.

**DATES:** For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments pertaining to this action. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

**ADDRESS:** Written comments concerning the proposed sale should be sent to the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California 95630.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the land sale, including relevant planning and environmental documentation, may be obtained from the Folsom Field Office at the above address. Telephone calls may be directed to Jodi Swaggerty at (916) 985–4474.

**SUPPLEMENTARY INFORMATION:** Objections to the sale will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever

occurs first. Pursuant to the application to convey the mineral estate, the mineral interests of the United States are segregated by this notice from appropriation under the public land laws, including the mining laws for a period of two years from the date of filing the application.

**D.K. Swickard,**

*Folsom Field Office Manager.*

[FR Doc. 02–23050 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–050–1430–ES; N–51437]**

### Notice of Realty Action Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Segregation terminated, recreation and public purposes lease/conveyance.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada was segregated for recreational or public purposes on February 12, 1993 under serial number N–56734. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land as an addition to the Clark County Gardens Park.

**Mount Diablo Meridian, Nevada**

T. 21 S., R. 60 E.,
Sec. 15, E½SE¼SW¼SW¼,
approximately 5.0 acres.

The park is located at Buffalo Drive and Flamingo Road. The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for telephone line purposes which have been granted to Central Telephone Company by Permit No. N–55679 under the act of October 21, 1976 (090 Stat 2776, 43 U.S.C. 1761).

3. Those rights for roadway purposes which have been granted to Clark County by Permit No. N–59691 under the act of October 21, 1976(090 Stat. 2776, 43 U.S.C. 1761).

Detailed information concerning these actions is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada or by calling (702) 515–5088.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the land to the Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a park. 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.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for a park. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/conveyance until after the classification becomes effective.

Dated: August 10, 2002.

**Sharon DiPinto,**

*Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.*

[FR Doc. 02–23041 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–050–1430–EU; WYW–151993]**

### Notice of Realty Action; Proposed Direct Sale of Public Land Parcel in Fremont County, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) has determined that the following described public land is suitable for direct sale to the State of Wyoming, State Parks and Cultural Resources Division pursuant to sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, (43 U.S.C. 1713, 1719), and the Federal Land Transaction Facilitation Act of 2000, Pub. L. No. 106–248, July 25, 2000. The land will not be offered for sale, at less than fair market value, and will not be sold until at least 60 days after the date of this notice.

**Sixth Principal Meridian**

T. 29 N., R. 100 W.,
Sec. 20, lot 16.
The above lands aggregate 10.27 acres.

**FOR FURTHER INFORMATION CONTACT:** Jack Kelly, Field Manager, Lander Field Office, Bureau of Land Management, 1335 Main Street, P.O. Box 589, Lander, Wyoming 82520, or contact Bill Bartlett at (307) 332–8401, or by e-ail at *Bill_Bartlett@blm.gov.*

**SUPPLEMENTARY INFORMATION:** The State of Wyoming, State Parks and Cultural Resources wants to purchase the 10 acres of public land which includes an abandoned railroad fill across Willow Creek. They intend to use the land and railroad fill in a flood protection plan to protect their investment in the restored historic structures in the South Pass City State Historic Site.

The publication of this Notice of Realty Action in the **Federal Register** shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as

filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of a conveyance document, 270 days from the date of publication of this Notice, or when a cancellation Notice is published, whichever occurs first.

This sale is consistent with Bureau of Land Management policies and the Lander Resource Management Plan (RMP). There will be no reduction of grazing privileges because the land to be sold consists primarily of a railroad fill and culvert on Willow Creek. In accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, the described lands are hereby classified for disposal by sale. The conveyance, when completed, will be subject to the following terms, conditions and reservations:

1. All valid existing rights documented on the official public land records at the time of patent issuance.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

*Classification Comments:* Interested parties may submit comments regarding the classification of the land as suitable for disposal through sale.

*Application Comments:* For a period of 45 days from the date of this notice, interested parties may submit comments to the Field Manager, BLM Lander Field Office, P.O. Box 589, Lander, Wyoming 82520. Any adverse comments will be evaluated 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**.

Dated: August 2, 2002.

**Jack Kelly,**

*Field Manager.*

[FR Doc. 02–23039 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–076–2822–JL–G414]**

### Notice of Closure to Off-Highway Vehicle and Recreation Use

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** With the publication of this notice, all existing roads and trails on certain lands administered by the Bureau of Land Management (BLM) Shoshone Field Office are closed to off-highway vehicle use. These lands are also closed to camping, horseback riding and other recreational activities. The closure will remain in effect until October 1, 2003, or until such time as the authorized officer of the Shoshone Field Office determines the closure may be lifted. The closure is in accordance with 43 CFR 9268.3(d)(1). The BLM may authorize use.

This closure is a direct result of the Willow Creek Fire, which burned this area in September 2001, and of the subsequent rehabilitation efforts of the BLM. The closure will promote the reestablishment of vegetation on this site and improve the potential for recovery of wildlife habitat. The closure will also reduce the potential for erosion and noxious weed invasion.

**SUPPLEMENTARY INFORMATION:** The area of closure and impoundment affected by this notice is the burned portion of BLM lands (approximately 7233 acres more or less), specifically described wholly or partially:

**Boise Meridian**

T. 1 N., R. 16 E.,
Sec. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 14, 18, 19, 20, 21, 22, 23, 26, 27, 28, 31, 35; and
T. 2 N., R. 16 E.,
Sec. 25, 26, 32, 33, 34, and 35.

Detailed maps of the area closed to OHV and recreational use are available at the Shoshone Field Office at the address below.

**FOR FURTHER INFORMATION CONTACT:** The BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

Dated: July 9, 2002.

**Bill Baker,**

*Shoshone Field Manager.*

[FR Doc. 02–23044 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–952–02–1050–BJ]**

### Notice of Filing of Plats of Survey; NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

**Indian Meridian, Oklahoma**

T. 7 N., R. 15 W., approved July 23, 2002, for Group 62 OK;
T. 25 N., R. 24 E., approved July 29, 2002, for Group 72 OK;
T. 9 N., R. 9 E., approved July 31, 2002, for Group 90 OK;
T. 27 N., R. 24 E., approved August 5, 2002, for Group 92 OK;
T. 13 N., R. 24 W., approved July 23, 2002, for Group 87 OK;

**New Mexico Principal Meridian, New Mexico**

T. 18 S., R. 14 E., approved July 15, 2002, for Group 939 NM;
T. 9 S., R. 13 E., approved August 5, 2002, for Group 975 NM;

**Supplemental Plat**

T. 12 S., R. 4 W., approved August 20, 2002, NM;

**Protraction Diagrams for**

T. 16 N., R. 3 E., approved July 22, 2002, NM;
T. 18 N., R. 11 E., approved July 22, 2002, NM;
T. 19 N., R. 13 E., approved August 6, 2002, NM;
T. 18 N., R. 13 E., approved August 8, 2002, NM;
T. 20 N., R. 13 E., approved August 22, 2002, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: September 5, 2002.

**Steve Beyerlein,**

*Acting Chief Cadastral Surveyor for New Mexico.*

[FR Doc. 02–23059 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–930–1430–ET; N–75879]**

### Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw a 208.72 acres of public land from surface entry and mining for a period of 20 years to protect pubic health and safety from land contaminated by previous mining and milling operations. This notice closes the land from surface entry and mining for up to 2 years while various studies and analyses are made to make a final decision on the withdrawal application.

**DATES:** Comments and requests for a meeting should be received on or before December 10, 2002.

**ADDRESSES:** Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520–0006.

**FOR FURTHER INFORMATION CONTACT:** Dennis J. Samuelson, BLM Nevada State Office, 775–861–6532.

**SUPPLEMENTARY INFORMATION:** On August 9, 2002, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

**Mount Diablo Meridian**

T 21 N., R. 23 E., Sec. 32, lots 9, 10, 14, 15, and 16.

The area described contains 208.72 acres in Lander County.

The purpose of the proposed withdrawal is to protect the public health and safety as well as to prevent the filing of mining and mill site claims which would interfere with the reclamation of the Olinghouse Mine site. The Olinghouse Mine was the site of mining and milling operations for many years. The area contains two open pits, haul roads, heap leach pad, buildings, and ponds that can be hazardous to the public. The Bureau of Land Management intends to reclaim the site. A withdrawal would preclude the filing of mining and mill site claims while the site is being reclaimed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

Dated: August 14, 2002.

**Jim Stobaugh,**

*Lands Team Lead.*

[FR Doc. 02–23042 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–030–1430–ET; NMNM 106227]**

### Notice of Proposed Withdrawal; New Mexico

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice.

**SUMMARY:** The BLM proposes to withdraw 712 acres of Federal mineral estate within the Red Rock Wildlife Area from location and entry under the United States mining laws for 20 years to protect the breeding and rearing habitat of the State-listed endangered desert bighorn sheep (*Ovis Mexicana*). This notice segregates the Federal mineral estate within the described lands for up to 2 years from location and entry under the United States mining laws.

**DATES:** Comments should be received on or before December 10, 2002.

**ADDRESSES:** Comments should be sent to the Las Cruces Field Office Manager, BLM, 1800 Marquess, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Phil Rhinehart, Realty Specialist at the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005, or at 505–525–4300.

**SUPPLEMENTARY INFORMATION:** On July 2, 2002, a petition was approved allowing the BLM to file an application to withdraw the Federal mineral estate on the following described lands from location and entry under the United States mining laws, subject to valid existing rights:

**New Mexico Principal Meridian**

T. 18 S., R. 18 W.,
Sec. 9, lots 1 to 4, inclusive, S½NE¼SW¼, S½NW¼SE¼, and SE¼SE¼;
Sec. 15, NW¼NW¼ and W½SW¼;
Sec. 16, lots 1 to 5, inclusive, and NW¼SE¼;
Sec. 21, NE¼NE¼, W½NE¼, and W½NW¼;
Sec. 22, NW¼NW¼.

The areas described aggregate approximately 712 acres in Grant County. All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Las Cruces Field Office Manager.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Las Cruces Field Office Manager, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: July 24, 2002.

**Amy L. Lueders,**

*Las Cruces Field Manager.*

[FR Doc. 02–23048 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–VC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–ET; HAG–0259; WAOR–57423]**

### Proposed Withdrawal and Opportunity for Public Meeting; Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 646.40 acres of National Forest System land, lying within the Colville National Forest, to protect the unique characteristics, sensitive fauna, hydrology, and the research values of the Halliday Fen Research Natural Area. This notice closes the land for up to 2 years from location and entry under the United States mining laws.

**EFFECTIVE DATE:** Comments and requests for a public meeting must be received by December 11, 2002.

**ADDRESSES:** Comments and meeting requests should be sent to the Forest Supervisor, Colville National Forest, Federal Building, 7665 South Main, Colville, Washington 99114.

**FOR FURTHER INFORMATION CONTACT:** Diana Hsieh, Realty Specialist, Colville National Forest, 509–684–7129, or Charles R. Roy, BLM Oregon/Washington State Office, 503–808–6189.

**SUPPLEMENTARY INFORMATION:** On May 23, 2002, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994), but not the mineral leasing laws, subject to valid existing rights:

**Willamette Meridian**

Colville National Forest

T. 40 N., R. 44 E.,
Sec. 31, W½NE¼, SE¼NE¼, SE¼NW¼, E½SW¼, NW¼SE¼.

The portions of the following land as more particularly identified and described by metes and bounds in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Colville National Forest Office, Colville, Washington:

T. 39 N., R. 43 E.,
Sec. 1, NE¼NE¼.
T. 40 N., R. 43 E.,
Sec. 36, SE¼SE¼.
T. 39 N., R. 44 E.,
Sec. 6, NW¼NE¼, N½NW¼, SW¼NW¼.
T. 40 N., R. 44 E.,
Sec. 30, NW¼SE¼, SE¼SW¼, S½SE¼;
Sec. 31, lots 2, 3, 4, NE¼NE¼, NE¼NW¼, NE¼SE¼, S½SW¼;
Sec. 32, W½NW¼ and W¼SW¼.

The areas described aggregate approximately 646.40 acres in Pend Oreille County.

The purpose of the proposed withdrawal is to protect the unique characteristics, sensitive fauna, hydrology, and the research values of the Halliday Fen Research Natural Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The withdrawal application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Dated: June 7, 2002.

**Robert D. DeViney Jr.,**

*Chief, Branch of Realty and Records Services.*

[FR Doc. 02–23040 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Environmental Assessment for Proposal To Construct Odor Treatment Units for the Potomac Interceptor Sewer and Improvements to a Parking Area and Two New Comfort Stations for the C&O Canal National Historical Park

**AGENCY:** National Park Service, Interior.

**ACTION:** Availability of the Environmental Assessment for the proposal to construct odor treatment units for the Potomac Interceptor sewer and improvements to a parking area and two new comfort stations for the C&O Canal National Historical Park.

**SUMMARY:** Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the availability of an Environmental Assessment for the construction of four odor treatment units for the Potomac Interceptor (PI) sewer and improvements to a parking area and two new comfort stations for the C&O Canal National Historical Park (CHOH). In public use areas along the CHOH and the Clara Barton Parkway (which is administered by the George Washington Memorial Parkway (GWMP)), odorous air is intermittently exhausted from the PI sewer due to several dynamic hydraulic changes in the PI. Sewer odors emitted from the PI have resulted in the completion of an odor study, the implementation of interim odor controls, and the development of the long-term odor abatement program for several areas of the PI. This Environmental Assessment examines several alternatives for implementing four odor control facilities to control nuisance odors along the CHOH and the Clara Barton Parkway, as well as to indicate environmental impacts of the proposed construction of two comfort stations in CHOH access areas, and to improve the parking area at the Anglers Inn C&O Canal access area. The National Park Service is soliciting comments on this Environmental Assessment. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act (NEPA).

**DATES:** The Environmental Assessment will remain available for public comment on or before October 11, 2002. Written comments should be received no later than this date. A public meeting will be scheduled at the Glen Echo Community Center during the public comment period to provide responses to

public concerns in an open forum setting.

**ADDRESSES:** Comments on this Environmental Assessment should be submitted in writing to: Mr. Douglas Faris, Superintendent, C&O Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland, 21740. The Environmental Assessment will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the Great Falls Tavern, Great Falls Maryland; Georgetown Visitors Center, Washington, DC; CHOH Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, MD; Great Falls Park Visitor Center, Great Falls Virginia; Clara Barton House, Glen Echo, MD; GWMP Headquarters, Turkey Run Park, McLean, VA; and at the following libraries; Little Falls Library, Bethesda, MD; Potomac Library, Potomac, MD; Palisades Library, Washington, DC; Dolley Madison Library, McLean, VA; Great Falls Library, Great Falls, VA; Fairfax City Regional Library, Fairfax, VA; Sterling Library, Sterling, VA; and Eastern Loudoun Library, Sterling, VA. The Environmental Assessment will also be made available in electronic format for downloading at the project Web site, *http://www.potomacinterceptor.com/whatsnew.html.*

**SUPPLEMENTARY INFORMATION:** The National Park Service proposes to permit the District of Columbia Water and Sewer Authority to construct four odor treatment units along the CHOH and the Clara Barton Parkway, and to construct two new comfort stations for the CHOH at Fletchers Boathouse (Site 1995) and at the Anglers Inn C&O Canal access area (Site 27). In addition, the CHOH plans to provide improvements to the parking areas at the Anglers Inn C&O Canal access area (Site 27). The objectives of the proposed actions include:

- Providing long-term control of odors in specific areas of the PI by a practical, reliable and effective means;
- Maintaining the integrity of the reinforced concrete sewer pipes by minimizing interference with the design function of the PI vent structures and PI sewer airflow dynamics thereby limiting the formation of corrosive conditions;
- Protect the public health with the adequate conveyance of wastewater in the PI system to the Blue Plains Advanced Wastewater Treatment Plant, by maintaining the satisfactory condition of the PI for many decades to come;
- Providing safe vehicular access to the Site 27 parking area, and to improve the restroom facilities currently located at Site 27 and 1995 for the benefit of CHOH visitors.

All interested individuals, agencies, and organizations are urged to provide comments on the Environmental Assessment. The National Park Service, in making a final decision regarding this matter, will consider all comments received by the public comment period closing date.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Faris, (301) 714–2201.

**Douglas D. Faris,**

*Superintendent, C&O Canal National Historical Park.*

[FR Doc. 02–23011 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Decision Record and Finding of No Significant Impact (FONSI) for the Proposal To Reconstruct the Entrance Station at Great Falls Park, VA

**AGENCY:** National Park Service, Interior.

**ACTION:** Availability of the decision record and FONSI for the proposal to reconstruct the entrance station at Great Falls Park, Virginia.

**SUMMARY:** Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the availability of the decision record and FONSI for the reconstruction of the entrance station at Great Falls Park, a unit of the George Washington Memorial Parkway (GWMP). The decision record and FONSI identifies Alternative C as the preferred and environmentally preferred alternative in the Environmental Assessment for the Great Falls Entrance Station Reconstruction. Under this alternative, the current one-story entrance station occupying approximately 100 square feet will be replaced by a one-story tall facility of approximately 240 square feet. The new entrance station will be constructed to meet all accessibility standards and include a restroom facility within the building for NPS employees who work in the entrance station. Traffic flow management patterns and procedures are expected to improve through an additional inbound lane located to the west of the new entrance station.

**DATES:** The Environmental Assessment, upon which the FONSI was made, was available for public comment from April 11–May 11, 2002. Two comments were received, both in favor of the identified preferred alternative.

**ADDRESSES:** The decision record and FONSI will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Brazinski (703) 289–2541.

**SUPPLEMENTARY INFORMATION:** The decision record and FONSI completes the Environmental Assessment process.

**Audrey F. Calhoun,**

*Superintendent, George Washington Memorial Parkway.*

[FR Doc. 02–23012 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Draft Rehabilitation of the Going-to-the-Sun Road, Environmental Impact Statement, Glacier National Park, a Portion of Waterton-Glacier International Peace Park, Montana

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Availability of draft environmental impact statement for rehabilitation of the Going-to-the-Sun Road for Glacier National Park.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of a draft Environmental Impact Statement for the Rehabilitation of the Going-to-the-Sun Road for Glacier National Park, a portion of Waterton-Glacier International Peace Park, Montana.

**DATES:** The National Park Service will accept comment from the public on the Draft Environmental Impact Statement for 70 days after publication of this notice. Public meetings will be announced during the public review period.

**ADDRESSES:** Copies of the DEIS are available for public review and comment in the Project Management Office, Glacier National Park, West Glacier, Montana 59936, and at the locations listed below. It is also available on the park's web site at *http://www.nps.gov/glac* as a pdf file. An Executive Summary is also available on the web site or upon request.

Project Management Office, Glacier National Park, West Glacier, Montana 59936.

Planning and Environmental Quality, Intermountain Support Office—

Denver. National Park Service, 12795 W. Alameda Parkway, Lakewood, Colorado 80228.
Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Street NW., Washington, DC 20240.
Bozeman Public Library, 220 East Lamme, Bozeman, Montana 59715.
Browning Public Library, Post Office Box 550, Browning, Montana 59417.
Butte County Library, 226 West Broadway, Butte, Montana 59701.
Cardston Public Library, 25 3rd Avenue West, Cardston, Alberta, Canada T0K 0K0.
Choteau Public Library, 17 North Main Avenue, Choteau, MT 59422.
Columbia Falls Branch Library, 120 6th Street West, Columbia Falls, Montana 59912.
Cut Bank Library, 21 1st Avenue SE, Cut Bank, Montana 59427.
Flathead County Library, 247 1st Avenue East, Kalispell, Montana 59901.
Glacier National Park Library, Headquarters Building, West Glacier, Montana 59936.
Great Falls Public Library, 301 2nd Avenue North, Great Falls, Montana 59401.
Lethbridge Public Library, 810—5 Avenue South, Lethbridge, Alberta, Canada, T1J 4C4.
Lewis & Clark Library, 120 South Last Chance Gulch Street, Helena, Montana 59624.
Missoula Public Library, 301 East Main, Missoula, Montana 59802.
Parmly Billings Library, 501 North Broadway, Billings, Montana 59101.
Pincher Creek Municipal Library, 895 Main Street, Pincher Creek, Alberta, Canada T0K 1W0.
Waterton Lakes National Park, Park Administration Building, 215 Mount View Road, Alberta, Canada T0K 2M0.
Whitefish Branch Library, 9 Spokane Avenue, Whitefish, Montana 59937.

**FOR FURTHER INFORMATION CONTACT:** Mary Riddle, Glacier National Park, 406–888–7898.

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Project Management Office, Glacier National Park, West Glacier, Montana 59936. You may also comment via e-mail to: *glac_project_public_comment@nps.gov*. Please submit e-mail comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: GTSR EIS'' 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 (Dayna Hudson, 406–888–7972). Finally, you may hand-deliver comments to Glacier National Park, Headquarters, Going-to-the-Sun Road, West Glacier, Montana. Our practice is to make comments, including names and home addresses of respondents available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 29, 2002.

**Karen P. Wade,**

*Director, Intermountain Region, National Park Service.*

[FR Doc. 02–23015 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Lake Clark National Park Subsistence Resource Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Announcement of Subsistence Resource Commission meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Lake Clark National Park Subsistence Resource Commission will be held on, Thursday, September 26, 2002, and Friday, September 27, 2002, at the National Park Service hangar in Port Alsworth, Alaska. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. The purpose of the meeting will be to continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues.

The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review Commission Purpose and Status of Membership.
5. Review and Adopt Agenda.
6. Review and adopt minutes from last meeting.
7. Superintendent's Report.
8. Update—Review Federal Subsistence Board Actions on Wildlife Proposals.
9. Update—Review Federal Subsistence Board Actions on Fisheries Proposals.
10. Public and agency comments.
11. Set time and place of next SRC meeting.
12. Adjournment.

**DATES:** The meeting will begin at 10 a.m. on Thursday, September 26, 2002, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Friday, September 27, 2002, and adjourn at approximately 3 p.m. The meeting will adjourn earlier if the agenda items are completed.

**LOCATION:** The meeting will be held at the National Park Service hangar in Port Alsworth, Alaska, telephone (907) 781–2216. Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

**FOR FURTHER INFORMATION CONTACT:** Persons who want further information concerning the meeting may contact Superintendent Deb Liggett at (907) 271–3751 or Mary McBurney, Subsistence Manager at (907) 257–2633.

**SUPPLEMENTARY INFORMATION:** The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operation in accordance with the provisions of the Federal Advisory Committees Act.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Lake Clark National Park and Preserve, P.O. Box 4230, University Drive #311, Anchorage, AK 99508.

**Robert L. Arnberger,**

*Regional Director, National Park Service, Alaska Region.*

[FR Doc. 02–23013 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 17, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by September 26, 2002.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**IDAHO**

**Canyon County**

Caldwell Residential Historic District, Roughly bounded by Cleveland Blvd., Everett St., S. Twelfth Ave., and S. Twentieth Ave., Caldwell, 02001055

**NEW JERSEY**

**Warren County**

Allamuchy Freight House, Rte 612, Allamuchy, 02001056

**OHIO**

**Hamilton County**

Union Baptist Cemetery, 4933 Cleves Warsaw Pike, Cincinnati, 02001057

**Huron County**

Miller-Bissell Farmstead, 581 OH 60, New London, 02001058

**TEXAS**

**Bexar County**

Friedrich Complex, 1617 E. Commerce St., San Antonio, 02001059

Merchants Ice and Cold Storage Company, 1305 E. Houston St., San Antonio, 02001060

Uhl, Gustav, House and Store, 721 Avenue E, San Antonio, 02001061

**Crockett County**

Carson, Ira and Wilma, House, 1103 Avenue C, Ozona, 02001062

**Harris County**

Benjamin Apartments, 1218 Webster St., Houston, 02001063

[FR Doc. 02–23014 Filed 9–10–02; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of California State University, Long Beach, Long Beach, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of California State University, Long Beach, Long Beach, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by California State University, Long Beach professional staff in consultation with representatives of the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Gabrielino/Tongva Tribe (a nonfederally recognized Indian group); and Juaneno/Acjachemen Tribe (a nonfederally recognized Indian group).

In 1952-1953, human remains representing a minimum of 20 individuals were removed from site CA-LAn-270, one mile north of the California State University campus, Los Angeles County, Long Beach, CA, by California State University, Long Beach staff and students under the direction of Ethel E. Ewing. No known individuals were identified. The 4,141 associated funerary objects include sandstone and steatite bowls; mortars and pestles; a steatite effigy fragment; steatite and sandstone pipes; drilled stone slabs; chipped stone projectile points; stone knives; crescentics and other stone tools; bone artifacts including whistles and tubes; fragments of turtle shell and deer antlers, including a deer antler harpoon section; Tizon Brown pottery sherds; shell beads, ornaments, rings, pendants, and fish hooks; an abalone shell plugged with asphaltum; red ochre; and charcoal.

Based on stylistic characteristics of the material culture excavated from the site, occupation of CA-LAn-270 is dated to the Late period, circa A.D. 1000-1520. Historical and oral historical information indicates that CA-LAn-270 is located in the traditional territory of the Gabrielino/Tongva Tribe. The language of the Gabrielino/Tongva Tribe is in the same language family, Takic, as the federally recognized Pechanga Band of the Luiseno Mission Indians of the Pechanga Reservation, California, and the nonfederally recognized Juaneno/Acjachemen Tribe. Spiritual traditions, language similarities, and burial practices, as established both by ethnographic records and oral historical information, indicate that close cultural similarities exist between the Gabrielino/Tongva Tribe; Juano/Acjachemen Tribe; and Pechanga Band of the Luiseno Mission Indians of the Pechanga Reservation, California.

Based on the above-mentioned information, officials of California State University, Long Beach have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 20 individuals of Native American ancestry. Officials of California State University, Long Beach also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 4,141 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of California State University, Long Beach have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pechanga Band of the Luiseno Mission Indians of the Pechanga Reservation, California.

This notice has been sent to officials of the Gabrielino/Tongva Tribe (a nonfederally recognized Indian group); Juaneno Acjachemen Tribe (a non-federally recognized Indian group); Luiseno Intertribal NAGPRA Coalition; La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, California; Pechanga Band of the Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; San Luis Rey Band of Luiseno Indians (a nonfederally recognized Indian group); and Soboba

Band of Luiseno Mission Indians of the Soboba Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Keith Ian Polakoff, Associate Vice President for Academic Affairs, California State University, Long Beach, Long Beach, CA 90840-0118, telephone (562) 985-4128 before October 11, 2002. Repatriation of the human remains and associated funerary objects to the Luiseno Intertribal NAGPRA Coalition, representing the Pechanga Band of the Luiseno Mission Indians of the Pechanga Reservation, California may begin after that date if no additional claimants come forward.

Dated: August 6, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23024 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains in the Possession of the U.S. Department of Justice, Federal Bureau of Investigation (FBI), Louisville, KY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of Native American human remains in the possession of the U.S. Department of Justice, Federal Bureau of Investigation (FBI), Louisville, KY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Louisville Staff Archaeologist Philip J. DiBlasi in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahama; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; and Shawnee Tribe, Oklahoma.

On January 27, 1999, a human cranium was recovered by FBI agents from Sean Adam Long. These human remains were purchased from Mr. Long by FBI agents acting in an undercover capacity. On February 18, 1999, a search warrant was executed at Mr. Long's home near Madisonville, KY. Additional human remains were recovered by FBI agents during the search. The human remains consist of two human crania and two human teeth. One associated funerary object was also recovered during the search. Osteological assessment of the human remains recovered on January 27 and February 18, 1999, indicate that they represent five individuals of Native American ancestry. No known individuals were identified.

In an interview with agents on February 18, 1999, Mr. Long stated that he purchased one cranium in Grayville, IL. Though Mr. Long later recanted this statement, the FBI believes Mr. Long's original statement to be true. Grayville is located in Edwards County, IL, and is surrounded by numerous well-known Mississippian period (AD 1250-1700) archeological sites. Archeological and historical evidence indicates that the Mississippian period population living in the area of Grayville, IL is ancestral to the present-day Peoria Tribe of Indians of Oklahoma.

A label on the interior of the box in which a second cranium was recovered reads ''Crib Mound.'' Crib Mound is a well-known Hopewell period (200 B.C.-A.D. 500) site located in Spencer County, IN. Crib Mound has been the target of looters for decades and is now nearly destroyed. Archeological and historical evidence indicates that the Hopewell period population that lived at Crib Mound is ancestral to the present-day Peoria Tribe of Indians of Oklahoma.

The determination of cultural affiliation for the remains of the three other individuals and one associated funerary object is included in a separate Federal Register notice.

On March 7, 2001, Sean Adam Long pleaded guilty in U.S. District Court in Owensboro, KY to three counts of illegal trafficking in Native American human remains [18 U.S.C. 1170 (a)] and one count of knowingly making a materially false, fictitious, or fraudulent statement or representation [18 U.S.C. 1001]. A single count of trafficking in interstate or foreign commerce in archaeological resources the excavation, removal, sale, purchase, exchange, transportation or receipt of which was wrongful under State or local law [16 U.S.C. 470ee (c)] was dismissed in return for Mr. Long's plea to making a false statement to FBI agents.

Based on the above-mentioned information, FBI officials determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. FBI officials determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Peoria Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; and Shawnee Tribe, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Randy Ream, Assistant United States Attorney, 510 West Broadway, 10th Floor, Louisville, KY 40202, phone (502) 582-5911, before October 11, 2002. Repatriation of the human remains and associated funerary object to the Peoria Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 1, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23025 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council, Bemidji, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native

American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Minnesota Indian Affairs Council professional staff in consultation with representatives of the Crow Tribe of Montana.

Prior to 1920, human remains representing two individuals were removed from an unknown site in the Big Horn Valley, MT. Robert Somerville donated the human remains to the Minnesota Historical Society in 1920. Accession records indicate that the human remains were removed from ''an Indian cemetery in the Big Horn Valley.'' No known individuals were identified. No associated funerary objects are present. In 1987, these human remains were transferred to the Minnesota Indian Affairs Council pursuant to provisions of Minnesota statute 307.08.

Other donations from Mr. Somerville to the Minnesota Historical Society indicate that these human remains may have been collected in the vicinity of St. Xavier Mission, MT. The St. Xavier Mission ministered to the Crow Indians and is believed to have had an adjacent cemetery. St. Xavier Mission is located within the aboriginal territory of the Crow Indians as determined by the Unites States Indian Claims Commission.

Based on the above-mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Crow Tribe of Montana.

This notice has been sent to officials of the Crow Tribe of Montana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact James L. (Jim) Jones Jr., Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Avenue, Bemidji, MN 56601, telephone (218) 755-3182, before October 11, 2002. Repatriation of these human remains to the Crow Tribe of Montana may begin after that date if no additional claimants come forward.

Dated: August 13, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23016 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council, Bemidji, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Minnesota Indian Affairs Council professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Taos, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1929-1930, human remains representing 47 individuals were removed from the Warm Springs site and Cameron Creek site, Grant County, NM, during an archeological excavation conducted by the University of Minnesota and the Minnesota Art Institute. No known individuals were identified. Ceramic vessels found associated with these human remains indicate they were interred between A.D. 1000 and 1150.

In 1929, human remains representing 64 individuals were removed from the Galaz site, Grant County, NM, during an archeological excavation under the direction of A. (Albert) E. Jenks of the University of Minnesota. No known individuals were identified. Ceramic vessels found associated with these human remains indicate they were interred between A.D. 1000 and 1150.

In 1930, human remains representing 24 individuals were removed from the Galaz site, Grant County, NM, during an archeological excavation under the direction of L.A. Wilford of the University of Minnesota. No known individuals were identified. Ceramic vessels found associated with these human remains indicate they were interred between A.D. 1000 and 1150.

In 1931, human remains representing 51 individuals were removed from the Galaz site and Hot Springs site, Grant County, NM, during an archeological excavation under the direction of A. (Albert) E. Jenks of the University of Minnesota. No known individuals were identified. Ceramic vessels found associated with these human remains indicate they were interred between A.D. 1000 and 1150.

In 1987, the human remains removed from the Warm Springs site, Cameron Creek site, Galaz site, and Hot Springs site were transferred to the Minnesota Indian Affairs Council pursuant to provisions of Minnesota statute 307.08. The funerary objects originally associated with the human remains from the Warm Springs site, Cameron Creek site, Galaz site, and Hot Springs site are currently in the possession of the Frederick R. Weisman Art Museum, University of Minnesota, Minneapolis, MN.

The Warm Springs site, Cameron Creek site, Galaz site, and Hot Springs site are believed to have been occupied between A.D. 1000 and 1150 by a group known in the archeological literature as the Mimbres tradition. Archeological evidence, including ceramics, art styles, and architecture, indicates that the Mimbres tradition was a local variant of the Mogollon culture, which was found across a broad area of Arizona and New Mexico. Oral tradition indicates a cultural affiliation between the Mimbres tradition and several present-day puebloan groups, including the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Taos, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Based on the above-mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains described above represent the physical remains of 186 individuals of Native American ancestry. Officials of the Minnesota

Indian Affairs Council also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Taos, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Taos, New Mexico; Zuni Tribe of the Zuni Reservation, New Mexico; and Frederick R. Weisman Art Museum. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact James L. (Jim) Jones Jr., Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Avenue, Bemidji, MN 56601, telephone (218) 755-3182, before October 11, 2002. Repatriation of these human remains to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Taos, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: August 12, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23017 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate a Cultural Item in the Possession of the Museum of Northern Arizona, Flagstaff, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Museum of Northern Arizona, Flagstaff, AZ, that meets the definition of ''sacred objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a ceramic jar that originally had a hide stretched over the open end to make a drum. The hide is possibly from a deer or antelope.

The Museum of Northern Arizona acquired the drum at an unknown date. In 1961, the drum was located in the museum collection and cataloged (accession number 2254, catalog number E2375). The accession and catalog records indicate that the drum is of Navajo origin. In 2002, the drum was dismantled according to traditional Navajo practice.

Consultation with representatives of the Navajo Nation, Arizona, New Mexico & Utah indicate that this type of ceramic drum is used exclusively for the practice of the Ana'íji (Enemy Way) ceremony. Specific sacred songs and prayers are associated with the construction and use of this type of ceramic drum. The Ana'íji ceremony is performed for an individual to regain strength, harmony, and balance from a physical or mental illness. A specific Navajo traditional religious leader has indicated he needs this ceramic drum for the practice of the Ana'íji ceremony by present day adherents.

Based on the above-mentioned information, officials of the Museum of Northern Arizona have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Museum of Northern Arizona also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this cultural item and the Navajo Nation, Arizona, New Mexico & Utah.

This notice has been sent to officials of the Navajo Nation, Arizona, New Mexico & Utah. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Elaine Hughes, Repatriation Coordinator, Museum of Northern Arizona, 3101 North Fort Valley Road, Flagstaff, AZ 86001, telephone (928) 774-5211, extension 228, before October 11, 2002. Repatriation of this cultural item to the Navajo Nation, Arizona, New Mexico & Utah may begin after that date if no additional claimants come forward.

Dated: August 12, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23019 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA, and in the Control of the U.S. Department of the Interior, Bureau of Land Management, California State Office, Sacramento, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA and in the control of the U.S. Department of the Interior, Bureau of Land Management, California State Office, Sacramento, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum professional staff in consultation with representatives of the Department of the Interior, Bureau of Land Management, California State Office; Battle Mountain Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timbi-Sha Shoshone Band of California; Elko Band of the Te-Moak

Tribes of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; South Fork Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

In 1946-54, human remains representing at least two individuals were removed during excavations at the Rose Spring site (CA-Iny-372), Inyo County, CA, by Mr. and Mrs. Harry S. Riddle and Francis Riddle. These human remains were donated to the Phoebe A. Hearst Museum by Mr. and Mrs. Riddle in 1956. No known individuals were identified. The one associated funerary object is a projectile point.

Stylistic attributes of the projectile point, a Desert-Side Notched Point, date the burials to post-A.D. 1300. Based on the geographic location of the burials, and the date of occupation, these human remains are determined to be most likely affiliated with the Battle Mountain Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timbi-Sha Shoshone Band of California; Elko Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; South Fork Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Based on the above-mentioned information, officials of the Phoebe A. Hearst Museum of Anthropology and the Bureau of Land Management, California State Office, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least two individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology and the Bureau of Land Management, California State Office, also have determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe Hearst Museum of Anthropology and Bureau of Land Management, California State Office, have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary object and the Battle Mountain Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timbi-Sha Shoshone Band of California; Elko Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; South Fork Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

This notice has been sent to officials of the Battle Mountain Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timbi-Sha Shoshone Band of California; Elko Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; South Fork Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642-6096, before October 11, 2002. Repatriation of the human remains and associated funerary objects to the Battle Mountain Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timbi-Sha Shoshone Band of California; Elko Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of

the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; South Fork Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribes of Western Shoshone Indians of Nevada; and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada may begin after that date if no additional claimants come forward.

Dated: August 13, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23018 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the South Carolina Institute of Archaeology and Anthropology, Columbia, SC, and in the Control of the U.S. Department of the Interior, Fish and Wildlife Service, Savannah Coastal Refuges, Savannah, GA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the South Carolina Institute of Archaeology and Anthropology, Columbia, SC, and in the control of the U.S. Department of the Interior, Fish and Wildlife Service, Savannah Coastal Refuges, Savannah, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by the South Carolina Institute of Archaeology and Anthropology staff on behalf of the Fish and Wildlife Service, Savannah Coastal Refuges, in consultation with representatives of the Santee Sioux Tribe of the Santee Reservation of Nebraska.

In 1973, human remains representing a minimum of one individual were removed during legally authorized excavations conducted by Leland G. Ferguson at the Santee Indian Mound/Fort Watson Site (38CR1), Clarendon County, SC, within Santee National Wildlife Refuge boundaries. No known individual was identified. No associated funerary objects are present.

In 1973, human remains representing a minimum of 26 individuals were removed during excavations conducted by Leland G. Ferguson at the Scott's Lake Bluff Site (38CR35), Clarendon County, SC, within Santee National Wildlife Refuge boundaries. No known individuals were identified. The 36 associated funerary objects are 6 Caraway Triangular points, 1 granite celt, 1 polished celt, 11 shell beads, 8 quartz pebbles, 2 plain ceramic cover bowls, 2 Complicated Stamped ceramic urns, and miscellaneous clay, lithic, and pigment fragments.

Based on the archaeological evidence, the human remains and associated funerary objects listed above date to the Mississippian period (A.D. 1200-1600). Based upon ethnohistorical accounts, the Santee occupied an area in South Carolina along the river that bears their name. After their defeat by the English colonists and their ally, the Cusabo in the early 18th century, many of the Santee and the Congaree were transported to the West Indies as slaves or incorporated into the Catawba Indian Nation. However, legends of the Santee Sioux Tribe of the Santee Reservation of Nebraska state that ''a drought occurred many years ago that caused the tribe to separate with one group remaining in South Carolina and the other moving west to find better hunting grounds.''

Based upon the above-mentioned information, officials of the Savannah Coastal Refuges, Fish and Wildlife Service and the South Carolina Institute of Archaeology and Anthropology have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 27 individuals of Native American ancestry. Officials of the Savannah Coastal Refuges, Fish and Wildlife Service and the South Carolina Institute of Archaeology and Anthropology have also determined that, pursuant to 43 CFR 10.2(d)(2), the 36 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Savannah Coastal Refuges, Fish and Wildlife Service and the South Carolina Institute of Archaeology and Anthropology have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Santee Sioux Tribe of the Santee Reservation of Nebraska.

This notice has been sent to officials of the Catawba Indian Nation, Eastern Band of Cherokee Indians of North Carolina, and Santee Sioux Tribe of the Santee Reservation of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and cultural items should contact Richard S. Kanaski, Office of the Regional Archaeologist, Savannah Coastal Refuges, 1000 Business Center Drive - Suite 10, Savannah, GA 31405, (912) 652-4415, extension 113, before October 11, 2002. Repatriation of these human remains and cultural items to the Santee Sioux Tribe of the Santee Reservation of Nebraska may begin after the above date if no additional claimants come forward.

Dated: July 23, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23023 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains in the Possession of the Tongass National Forest, USDA Forest Service, Ketchikan, AK

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of Tongass National Forest, USDA Forest Service, Ketchikan, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National

Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by USDA Forest Service professional staff in consultation with representatives of the Cape Fox Corporation, representing the Saanya Kwaan Tlingit for the purposes of repatriation; Organized Village of Saxman; Sealaska Corporation; and Central Council of Tlingit & Haida Indian Tribes.

On August 13, 1981, human remains representing one individual were recovered by a USDA Forest Service employee from the beach in front of the Indian Point Village site, Revillagigedo Island, AK. The human remains, consisting of a single femur, were transferred to the USDA Forest Service area archeologist the next day. No associated funerary objects are present.

Morphometric analysis indicates the remains are from a Native American male. Ethnographic information indicates that Indian Point Village was settled by two families representing the Eagle and Killer-Whale clans within the traditional territory of the Saanya Kwaan Tlingit. Charlie Sehayett, also called Naha Charlie, Chief of the Eagle clan, is known to have been buried at the Indian Point Village site. The cemetery at Indian Point Village was vandalized prior to 1981. The Cape Fox Corporation has presented a claim for these remains on behalf of the lineal descendants of Charlie Sehayett and the Saanya Kwaan Tlingit.

Based on the above-mentioned information, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual on Native American ancestry. Officials of the USDA Forest Service also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these human remains and the Cape Fox Corporation, representing the Saanya Kwaan Tlingit.

This notice has been sent to officials of the Cape Fox Corporation, Organized Village of Saxman, Sealaska Corporation, and Central Council of Tlingit & Haida Indian Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Tom Puchlerz, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, AK 99901, telephone (907) 225-3101, before October 11, 2002. Repatriation of the human remains to the Cape Fox Corporation, representing the Saanya Kwaan Tlingit, may begin after that date if no additional claimants come forward.

Dated: August 12, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23021 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate a Cultural Item in the Possession of the University of Northern Colorado, Greeley, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the University of Northern Colorado, Greeley, CO, that meets the definition of ''object of cultural patrimony'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item consists of a memorial pole, approximately 20 feet in height, bearing the Brown bear crest known as Kaats'Eeti Gaas' (memorial pole of Kaats'). The crest depicts a man named Kaats' who married a bear. The memorial pole was standing alongside the Xoots Hit (Brown Bear house) at Angoon, AK, in 1908. The memorial pole was removed from Angoon by unknown parties and, in 1914, was donated to the University of Northern Colorado by Andrew Thompson, United States Commissioner of Education in Alaska. The pole was adopted as the University of Northern Colorado's ''school mascot'' that same year.

Consultation with representatives of the Central Council of Tlingit and Haida Indian Tribes indicates that at the time of its removal from Angoon, the memorial pole was considered the communal property of the Teikweidi of the Zooszidaa Kwaan, the Brown Bear clan of Angoon, AK, and could not have been alienated, appropriated, or conveyed by any individual.

Based on the above-mentioned information, officials of the University of Northern Colorado have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the University of Northern Colorado also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this cultural item and the Central Council of Tlingit and Haida Indians Tribes, representing the Teikweidi of the Zooszidaa Kwaan.

This notice has been sent to officials of the Central Council of Tlingit and Haida Indians Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this cultural item should contact Ronald J. Lambden, general counsel, University of Northern Colorado, Carter Hall-room 4000, Campus Box 59, Greeley, CO 80639, telephone (970) 351-2399, before October 11, 2002. Repatriation of this cultural item to the Central Council of Tlingit and Haida Indian Tribes, on behalf of the Xooszidaa Kwaan Teikweidi, may begin after that date if no additional claimants come forward.

Dated: August 12, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23022 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation ACT (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and

associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Comanche Indian Tribe, Oklahoma.

At an unknown date, human remains representing one individual were removed from an unknown location by A.E. Carothers. Carothers then donated these human remains to the Academy of Natural Sciences, Philadelphia, PA, and in 1997, these human remains were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on accession information that refers to these human remains as a ''Comanche chief.''

Based on the above-mentioned information, officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that, pursuant to 43 CFR 10.2 (d) (1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum of Archaeology and Anthropology also have determined that pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Comanche Indian Tribe, Oklahoma.

This notice has been sent to officials of the Comanche Indian Tribe, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104-6324, telephone (215) 898-4051, fax (215) 898-0657, before October 11, 2002. Repatriation of the human remains to the Comanche Indian Tribe, Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 8, 2002

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–23020 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–70–S**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–745 (Review)]**

## Steel Concrete Reinforcing Bar From Turkey

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of a full five-year review concerning the antidumping duty order on steel concrete reinforcing bars from Turkey.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on steel concrete reinforcing bars from Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** September 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

**SUPPLEMENTARY INFORMATION:**

### Background

On June 4, 2002, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (67 FR 40965, June 14, 2002). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

*Participation in the review and public service list.* Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.* The prehearing staff report in the review will be placed in the nonpublic record on November 22, 2002, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.* The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on December 12, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 2, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 4, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public

hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

*Written submissions*. Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 3, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is December 19, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before December 19, 2002. On January 31, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 4, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 4, 2002.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 02–23032 Filed 9–10–02; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Extension of Existing Collection; Comment Request

**ACTION:** 30-day notice of information collection under review; Guarantee of Payment; Form I–510.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 23, 2002 at 67 FR 19774, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 11, 2002. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Washington, DC 20503. Comments may be submitted to OMB via facsimile to 202–395–6974. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Guarantee of Payment.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–510. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Section 253 of the Immigration and Nationality Act (INA) provides that the master or agent of a vessel or aircraft shall guarantee payment incurred for an alien crewman who arrived in the United States and is afflicted with any disease or illness mentioned in section 255 of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at five minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: September 4, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–23010 Filed 9–10–02; 8:45 am]

**BILLING CODE 4410–10–M**

## NATIONAL COUNCIL ON DISABILITY

### Cultural Diversity Advisory Committee Meeting (Teleconference)

*Time and Date:* 3 p.m. EST, December 3, 2002.

*Place:* National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

*Agency:* National Council on Disability (NCD).

*Status:* All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

*Agenda:* Roll call, announcements, reports, new business, adjournment.

*Contact Person for More Information:* Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

*Cultural Diversity Advisory Committee Mission:* The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: September 5, 2002.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 02–23070 Filed 9–10–02; 8:45 am]

**BILLING CODE 6820–MA–P**

## NATIONAL COUNCIL ON DISABILITY

### Youth Advisory Committee Meeting (Teleconference)

*Time and Date:* 12 p.m., EDT, October 23, 2002.

*Place:* National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

*Agency:* National Council on Disability (NCD).

*Status:* All parts of this meeting will be open to the public. Those interested in participating in the meeting (teleconference) call should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

*Agenda:* Roll call, announcements, reports, new business, adjournment.

*Contact Person for More Information:* Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

*Youth Advisory Committee Mission:* The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: September 5, 2002.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 02–23069 Filed 9–10–02; 8:45 am]

**BILLING CODE 6820–MA–P**

## NATIONAL SCIENCE FOUNDATION

### Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of NSF–NASA—National Astronomy and Astrophysics Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* NSF–NASA National Astronomy and Astrophysics Advisory Committee (#13883).

*Purpose:* Advise the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA) on selected issues within the field of astronomy and astrophysics that is of mutual interest and concern to the two agencies.

*Responsible NSF Official:* G. Wayne Van Citters, Division Director, Division of Astronomical, National Science Foundation, 4201 Wilson Boulevard, Suite 405, Arlington, VA 22230. Telephone: 703/292–8200.

Dated: September 5, 2002.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02–23052 Filed 9–10–02; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–266 and 50–301]**

### Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–24 and DPR–27 issued to the Nuclear Management Company, LLC (the licensee), for operation of the Point Beach Nuclear Plant, Units 1 and 2, located in the Town of Two Creeks, Manitowoc County, Wisconsin.

The proposed amendments would increase the licensed reactor core power level by 1.4 percent from 1518.5 MWt to 1540 MWt.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The comprehensive analytical efforts performed to support the proposed change included a review of the FSAR [Final Safety Analysis Report] Chapter 14 Accident Analysis, the Nuclear Steam Supply System (NSSS) systems and components, Electrical Equipment, and Balance of Plant Systems. There are no changes as a result of the MUR power uprate to the design or operation of the plant that could affect system, component or accident mitigative functions. All systems and components will function as designed and the applicable performance requirements

have been evaluated and found to be acceptable.

The reduction in power measurement uncertainty allows for most of the safety analyses to continue to be used without modification. This is because the safety analyses were performed or evaluated at either 1650 MWt or 102 percent of 1518.5 MWt. This supports a core power level of 1540 MWt with a measurement uncertainty of 0.6 percent. Radiological consequences of Chapter 14 accidents were assessed previously using uprated cores and continue to be bounding. The FSAR Chapter 14 analyses continue to demonstrate compliance with the relevant accident analyses acceptance criteria. Therefore, there is no significant increase in the consequences of any accident previously evaluated.

The primary loop components (reactor vessel, reactor internals, control rod drive mechanisms, loop piping and supports, reactor coolant pump, steam generators, and pressurizer) were evaluated at 1650 MWt and continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, there is no significant increase in the probability of a structural failure of these components.

All of the NSSS systems will continue to perform their intended design functions during normal and accident conditions. The auxiliary systems and components continue to comply with the applicable structural limits and will continue to perform their intended functions. The NSSS/Balance of Plant (BOP) interface systems were evaluated and will continue to perform their intended design functions. Plant electrical equipment was also evaluated and will continue to perform their intended functions. No equipment modifications to these systems are planned for this change. Therefore, there is no significant increase in the probability of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. All systems, structures and components previously required for the mitigation of an event remain capable of fulfilling their intended design function at the uprated power level. The proposed change has no adverse effects on any safety-related systems or component and does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

Operation at the 1540 MWt core power does not involve a significant reduction in the margin of safety. Most of the current accident analyses and system and component analyses had been previously performed at uprated core powers that exceed the [measurement uncertainty recapture] MUR uprated core power. Evaluations have been performed for analyses that were done at nominal core power and have been found acceptable for the MUR power uprate. Analyses of the primary fission product barriers at uprated core powers have concluded that all relevant design basis criteria remain satisfied in regard to integrity and compliance with the regulatory acceptance criteria. As appropriate, all evaluations have been either reviewed and approved by the NRC or are in compliance with applicable regulatory review guidance and standards. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. 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.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 11, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 30, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of September, 2002.

For the Nuclear Regulatory Commission.

**John G. Lamb,**

*Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–23092 Filed 9–10–02; 8:45 am]

**BILLING CODE 7590–01–P**

## PRESIDIO TRUST

### The Presidio of San Francisco, California; Notice of Adoption of the Presidio Trust Management Plan and Availability of the Record of Decision

**AGENCY:** The Presidio Trust.

**ACTION:** The Presidio Trust Board of Directors (Board) has adopted the ''Presidio Trust Management Plan, Land Use Policies for Area B of The Presidio of San Francisco'' (PTMP) from among six plan alternatives and one variant as the plan that will guide the Presidio Trust's (Trust's) future management and implementation of projects within the area of The Presidio of San Francisco (Presidio) under the Trust's jurisdiction (Area B). The selection and basis for the Trust's decision is set forth in a Record of Decision (ROD) for the PTMP Final Environmental Impact Statement (Final EIS).

The Board made the decision set forth in the ROD after more than two years of planning and environmental review by the Trust in compliance with the decision-making requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the NEPA's implementing regulations promulgated by the Council on Environmental Quality (40 CFR 1500–1508), and the Trust's supplemental implementing regulations

at 36 CFR part 1010. The Final EIS is a programmatic document, and supplements the 1994 Final General Management Plan Amendment Environmental Impact Statement for the Presidio. Based upon a thorough analysis of the PTMP Final EIS alternatives and their potential environmental consequences, consideration of all public and agency comments received during the NEPA process, and in consideration of the mandates of the Trust Act (16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097), as amended, and the entire agency record, the Board selected the PTMP, analyzed in the Final EIS as the Final Plan Alternative and fully set forth in the separate PTMP document, as the Trust's management plan. The Board approved and adopted the PTMP by unanimous vote on August 22, 2002, and authorized the Trust's Executive Director to execute the ROD memorializing the Board's decision. The ROD was signed on August 27, 2002.

**CONTENTS:** The ROD documents the decision and rationale for adopting the PTMP (identified during project scoping and review of draft documents under the name Presidio Trust Implementation Plan or PTIP). The ROD also provides background about the Trust and the planning effort, and describes the alternatives considered, public involvement, agency consultation, mitigating measures developed to avoid or minimize environmental impacts of the selected alternative, and use of the Final EIS in subsequent decision making. As required by the NEPA, it identifies the environmentally preferable alternative, and sets forth an evaluation of alternatives and the reasons for adopting the Final Plan Alternative. A report addressing public input received during the period following release of the PTMP and the accompanying Final EIS is also attached to the ROD.

**DATES:** The Trust initiated a public planning and environmental review process pursuant to the NEPA on June 30, 2000, developed alternative plan options and issued a Draft Plan and Draft EIS on July 25, 2001, invited public participation and considered public comment, and issued a proposed Final Plan, Final EIS, and responses to public comments on May 24, 2002. The 30-day minimum ''no-action'' period required by the NEPA expired on June 23, 2002, and the Trust signed the PTMP ROD, making it immediately effective, on August 27, 2002.

*Materials Available to the Public:* The approved ROD is available by calling or writing the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415/561–5414. The ROD is available electronically on the Trust's website (*http://www.presidiotrust.gov*). The ROD may also be reviewed in the Trust's library at the above address.

**FOR FURTHER INFORMATION CONTACT:** John Pelka, NEPA Compliance Manager, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415/561–5414.

Dated: September 4, 2002.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 02–23060 Filed 9–10–02; 8:45 am]

**BILLING CODE 4310–4R–P**

## DEPARTMENT OF VETERANS AFFAIRS

### National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will meet at the Hyatt Dulles, 2300 Dulles Corner Boulevard, Herndon, VA 20171, on Thursday, September 26, 2002, from 8:30 a.m. to 4 p.m. The meeting is open to the public. The purpose of the Council is to provide external advice and review for VA's research mission.

The meeting will begin with opening remarks and an overview by the Council Chairman. The Council will receive informational briefings on the VA Cooperative Studies Program; the Cooperative Studies Program DNA Bank; the VA Research, Education and Clinical Centers; and the VA research portfolio.

Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Karen Scott, Department of Veterans Affairs, Office of Research and Development (12C2), 801 I Street, NW., Washington, DC, at (202) 565–8381.

Dated: August 30, 2002.

By Direction of the Secretary.

**Nora E. Egan,**

*Committee Management Officer.*

[FR Doc. 02–23064 Filed 9–10–02; 8:45 am]

**BILLING CODE 8320–01–M**

## DEPARTMENT OF VETERANS AFFAIRS

### Research and Development Cooperative Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Research and Development, Cooperative Studies Evaluation Committee will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202, on October 3, 2002. The session is scheduled to begin at 8 a.m. and end at 5 p.m. The three new studies submitted for review are: Intensive vs Conventional Renal Support in Acute Renal Failure, Perioperative B—Adrenergic Receptor Blockage in Patients Undergoing Major Noncardiac Surgery, Anabolic Steroid Therapy on Pressure Ulcer Healing in Persons with SCI. In addition to the three new studies there will be one resubmission: Diiodothyroproprionic Acid, a Thyroid Analog to Treat Heart Failure and one progress review: Clinical Outcomes Utilizing Revascularization and Aggressive Drug Evaluation.

The Committee advises the Chief Research and Development Officer through the Director of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details of proposed research.

The meeting will be open to the public from 8 a.m. to 8:30 a.m. to discuss general status of the program. Those who plan to attend should contact Ms. Denise Shorter, Coordinator, Department of Veterans Affairs, Washington, DC at (202) 565–7016.

The meeting will be closed from 8:30 a.m. to 5 p.m. This portion of the meeting involves consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by sections 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During the closed session of the meeting, discussions and recommendations will address qualifications of study personnel, critiques of research proposals, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy.

By Direction of the Secretary.

Dated: August 30, 2002.

**Nora E. Egan,**

*Committee Management Officer.*

[FR Doc. 02–23065 Filed 9–10–02; 8:45 am]

**BILLING CODE 8320–01–M**

# Corrections

**Federal Register**

Vol. 67, No. 176

Wednesday, September 11, 2002

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.

## DEPARTMENT OF DEFENSE
## GENERAL SERVICES ADMINISTRATION
## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 52

**[FAC 2001-09; FAR Case 2001-012; Item V]**

**RIN 9000-AJ22**

### Federal Acquisition Regulation; Payments Under Fixed-Price Construction Contracts

*Correction*

In rule document 02–21871 beginning on page 56124 in the issue of Friday August 30, 2002, make the following correction:

### PART 52—[CORRECTED]

On page 56126, in the first column, in the seventh line from the bottom, the section heading should read ''**52.232–5 Payments Under Fixed-Price Construction Contracts**''.

[FR Doc. C2–21871 Filed 9–10–02; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–0053]**

### Determining Hospital Procedures for Opened-But-Unused, Single-Use Medical Devices; Request for Comments and Information

*Correction*

In notice document 02–21891 beginning on page 55269 in the issue of Wednesday, August 28, 2002 make the following correction:

On page 55270, in the first column, in the sixth full paragraph, in the fifth and sixth lines, ''[insert date 90 days after date of publication in the **Federal Register**]'' should read '' November 26, 2002''.

[FR Doc. C2–21891 Filed 9–10–02; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Parts 42, 46, 47, 48, 56, 57, and 77

**RIN 1219-AA47**

### Hazard Communication (HazCom)

*Correction*

In rule document 02–15396 beginning on page 42314 in the issue of June 21, 2002, make the following corrections:

1. On page 42320, in footnote 3, ''The Small Business Regulation Enforcement Fairness Act of 1996 (SBREFA)'' should read ''The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)''.

2. On page 42320, in footnote 4, ''The unfunded Mandates from Act of 1995'' should read ''The Unfunded Mandates Reform Act of 1995''.

3. On page 42349, in the first column in the 6th paragraph in the 10th line ''ACGIH TLV''' should read ''ACGIH TLV®''.

4. On page 42375, in the table, under the heading ''Mine type'', the third line, ''Coal Mine'' should read ''Coal Contractor''.

**§47.11 [Corrected]**

5. On page 42383, §47.11, in Table 47.11—DEFINITIONS, under the first column ''Term'', at ''Health hazard'', and under the second column ''Definition for purposes of HazCom'', in the second line, ''*Health* hazard'' should read ''*Health hazard*''.

**§47.32 [Corrected]**

6. On page 42385, § 47.32(c)(2), ''Informing other operators about''' should read ''Informing other operators about—''.

**§47.52 [Corrected]**

7. On page 42386, §47.52, in Table 47.52—CONTENTS OF MSDS, under column ''Category'', at ''(3) Physical'' and under column ''Requirements, descriptions, and exceptions'', the fifth and sixth lines, the entry is corrected to read ''The physical hazards of the chemical including the potential for fire, explosion, and reactivity''.

**§47.92 [Corrected]**

8. On page 42388, §47.92, in Table 47.92—HAZARDOUS CHEMICALS EXEMPT FROM LABELING, under the heading ''Conditions for exemption'', in the eighth line, ''§47.21, Identifying hazardous chemicals'' should read § 47.21—Identifying hazardous chemicals.

[FR Doc. C2–15396 Filed X–XX–02; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 172

**[Docket No. RSPA–98–3971 (HM–226)]**

**RIN 2137–AD13**

### Hazardous Materials: Revision to Standards for Infectious Substances

*Correction*

In rule document 02–20118 beginning on page 53118 in the issue of Wednesday, August 14, 2002 make the following correction:

**§172.101 [Corrected]**

On page 53134, in the table, §172.101.—Hazardous Materials Table, under the heading ''Special provisions'', the second and third lines from the bottom should read ''A81, A82''.

[FR Doc. C2–20118 Filed 9–10–02; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

Wednesday,
September 11, 2002

# Part II

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover; Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AH96**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the northern Great Plains breeding population of the piping plover (*Charadrius melodus*), pursuant to the Endangered Species Act of 1973, as amended. The designation includes 19 critical habitat units containing prairie alkali wetlands, inland and reservoir lakes, totaling approximately 183,422 acres (ac) (74,228.4 hectares (ha)) and portions of 4 rivers totaling approximately 1,207.5 river miles (rm) (1,943.3 kilometers (km)) in the States of Minnesota, Montana, Nebraska, North Dakota, and South Dakota.

Critical habitat includes prairie alkali wetlands and surrounding shoreline, including 200 feet (ft) (61 meters (m)) of uplands above the high water mark; river channels and associated sandbars, and islands; reservoirs and their sparsely vegetated shorelines, peninsulas, and islands; and inland lakes and their sparsely vegetated shorelines and peninsulas. Section 7 of the Endangered Species Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. As required by section 4 of the Endangered Species Act, we considered economic and other relevant impacts before making a final decision on what areas to designate as critical habitat.

**DATES:** This designation becomes effective on October 11, 2002.

**ADDRESSES:** The complete administrative record for this rule, including comments and materials received, as well as the supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the South Dakota Ecological Services Field Office, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, SD 57501.

**FOR FURTHER INFORMATION CONTACT:** Nell McPhillips, at the above address (telephone 605–224–8693, extension 32; facsimile 605–224–9974).

**SUPPLEMENTARY INFORMATION:**

### Background

*Description*

The piping plover (*Charadrius melodus*) is a small (approximately 6.7 to 7.1 inches (17 to 18 centimeters) long and 1.5 to 2.2 ounces (43 to 63 grams) in weight (Haig 1992)), migratory member of the shorebird family (*Charadriidae*). It is one of six species of belted plovers in North America. During the breeding season adults have single black bands across both the forehead and breast, orange legs and bill, and pale tan upper parts and are white below. The adults lose the black bands and their bill becomes grayish-black during the winter. The plumage of juveniles is similar to that of wintering adults.

*Geographic Range*

The breeding range of the piping plover extends throughout the northern Great Plains, the Great Lakes, and the Atlantic Coast in the United States and Canada. Three breeding populations of piping plovers have been described—the northern Great Plains, Great Lakes population, and Atlantic Coast populations.

Great Lakes piping plovers formerly nested throughout much of the Great Lakes region in the north-central United States and in south-central Canada, but currently nest only in northern Michigan and at two sites in northern Wisconsin. On the Atlantic Coast, piping plovers nest from Newfoundland, southeastern Quebec, and New Brunswick to North Carolina. Sixty-eight percent of all Atlantic nesting pairs breed in Massachusetts, New York, New Jersey, and Virginia (Service 1999).

The northern Great Plains population's breeding range includes southern Alberta, southern Saskatchewan, and southern Manitoba, south to eastern Montana, North Dakota, South Dakota, southeastern Colorado, Iowa, Nebraska, and east to Lake of the Woods in north-central Minnesota. Most of the United States' pairs are in the Dakotas, Nebraska, and Montana (Service 1994). Fewer birds nest in Minnesota, Iowa, and Colorado, with occasional nesting in Oklahoma and Kansas. This rule refers only to the United States' portion of the northern Great Plains population.

Historic data on the distribution of northern Great Plains piping plovers are scarce, with regular surveying efforts beginning after 1980. More recent breeding records exist for most North Dakota counties (Service and North Dakota Game and Fish Department 1997); Lake of the Woods County, in Minnesota (Service 2000b); counties along the Missouri River, as well as Codington, Day, and Miner Counties in South Dakota (South Dakota Ornithologists' Union 1991); and counties along the Missouri, Loup, Niobrara, Elkhorn, and Platte Rivers in Nebraska (Ridgeway 1874, Moser 1942, Heinemann 1944, Ducey 1983, Dinan *et al.* 1993, Nebraska Game and Parks Commission 1995, Nebraska Game and Parks Commission 2001). Plovers were first reported in Montana in 1967 in Phillips County and were observed in Sheridan and Valley Counties during the 1970s (Carlson and Skaar 1976). Nesting was first observed in Colorado in 1949 and a few reports of non-nesting birds occurred during the 1950s and 1960s (Bailey and Niedrich 1965), but there are no reports of nesting between 1949 and 1989 (Colorado Department of Natural Resources 1994). In Iowa, nesting plovers were observed in Pottawattamie and Harrison Counties during the 1940s, 1950s, and 1960s (Stiles 1940, Brown 1971). Incidental records exist for Wyoming, as well as Eddy County, New Mexico, in 1964 (Bailey and Niedrich 1965). A record is reported for Douglas County, Kansas in 1909. (Ridgeway 1919).

The current breeding range of the northern Great Plains population is similar to the previous records, with the following exceptions—piping plovers have not been reported in Wyoming or New Mexico since their initial records, and since 1996, Kansas has reported nesting activity along the Kansas River due to newly available habitat after scouring flows in 1993 (Busby *et al.* 1997). Additionally, in 1987 and 1988 piping plovers nested at Optima Reservoir, Oklahoma (these are the only known nesting records for Oklahoma) (Boyd 1991). In North Dakota, plovers nest at various prairie alkali wetlands in Benson, Burke, Burleigh, Divide, Eddy, Emmons, Kidder, Logan, McHenry, McIntosh, McLean, Mountrail, Pierce, Renville, Sheridan, Stutsman, Ward, and Williams Counties, as well as sandbars and reservoir shorelines along the Missouri River (Service and North Dakota Game and Fish Department 1997, K. Kreil, Service, pers. comm.). South Dakota nesting has generally been limited to the Missouri River, primarily below the Gavins Point and Fort Randall Dams and on Lake Oahe (C.D. Kruse, U.S. Army Corps of Engineers, pers.

comm.). Occasionally plovers have nested on Lake Sharpe (Missouri River), and have additionally been sighted on Lake Francis Case (Missouri River) during the nesting season but nesting has not been documented. In Colorado, nesting has been observed on various reservoirs of the Arkansas River during the 1990s (Plissner and Haig 1997, Nelson unpubl. report). In Montana, plovers currently nest along the Missouri River, on Duck Creek Bay, Bear Creek Bay, Skunk Coulee, and the Big Dry Creek Arm of Fort Peck Reservoir, and alkali wetlands and reservoirs in Phillips and Sheridan Counties (G. Pavelka, U.S. Army Corps of Engineers, pers. comm., H. Pac, Montana Fish, Wildlife, and Parks, pers. comm.).

In Nebraska, piping plovers can still be found on sandbars along the Niobrara, Loup, and Platte Rivers, but habitat has been reduced on the Platte River. Before Kingsley Dam became fully operational in 1941, Platte River sandbar habitat dynamics had already been affected by upstream impoundments and diversions (Peake *et al.* 1985). By 1938, 30 percent of the in channel habitats were woody vegetated increasing to 57 percent in 1957 and close to 70 percent in 1983 (Peake *et al.* 1985). Williams (1978) found channel widths also changed from wide-open channels to multiple narrow channels and attributed these changes to flow reductions from upstream dams and water withdrawals. These changes have resulted in degraded piping plover nesting habitat on the Central Platte with better conditions occurring on the Lower Platte (Ziewitz *et al.* 1992). Along the central reach of the Platte, this loss of habitat has resulted in most plovers nesting on sand and gravel mining spoil piles (Sidle and Kirsch 1993). However, since 1982 the Platte River Whooping Crane Maintenance Trust, Inc., has been reclaiming river habitat (sandbar restoration) on their property and on areas owned by the National Audubon Society, The Nature Conservancy, and numerous individual landowners (Platte River Whooping Crane Maintenance Trust 2002). Most nesting on the Platte River currently occurs on the lower Platte, where encroachment is least advanced (Ziewitz *et al.* 1992). Lake McConaughy in Nebraska also supports nesting plovers on its sandy beaches (Peyton and Matteson 1999). In Iowa, Missouri River habitat has been lost due to channelization below Sioux City, leaving piping plovers to nest on industrial fly ash ponds in Woodbury and Pottawattamie Counties (D. Howell, Iowa Dept. of Natural Resources, pers. comm.). Plovers continue to nest in low numbers at Lake of the Woods, Minnesota (Minnesota Department of Natural Resources 1999).

*Population Status*

Historical piping plover population trend data are generally nonexistent. However, Audubon and Wilson described plovers as a common resident of the Atlantic coast during the 1800s (Bent 1929). On September 21, 1804, the Lewis and Clark expedition was present in the area of present day Lake Sharpe on the Missouri River, where William Clark wrote, ''* * * we observed an immense number of plover of Different kind Collecting and taking their flight southerly * * '' (Moulton 1987). By 1900, the piping plover had been greatly reduced by over-harvesting. With the Federal protection of the Migratory Bird Treaty Act, the plover recovered by the 1920s and was reported as common (Bent 1929). Since then, plover populations again declined throughout most of their range and have been extirpated from many States. Breeding surveys in the early 1980s reported 2,137 to 2,684 adult plovers in the northern Great Plains/Prairie region, 28 adults in the Great Lakes region, and 1,370 to 1,435 adults along the Atlantic Coast (Haig and Oring 1985). In 1991 the first International Piping Plover Census was carried out, with 2,032 adult piping plovers observed in the United States' portion of the northern Great Plains (Haig and Plissner 1993). In 1996, during the second International Census, 1,599 adult piping plovers were observed in the same area (Plissner and Haig 1997; numbers revised S. Haig pers. comm. 2002); a reduction of just more than 21 percent from 1991. Part of this reduction was likely an artifact of increased numbers of piping plovers nesting in Canada in 1996, due to high water levels in the United States (Plissner and Haig 1997). In 2001, during the third International Census, 1,981 adult piping plovers were observed in the same area (S. Haig pers. comm. 2002). Between 1991 and 2001 there was a reduction of 2.5 percent in the U.S. northern Great Plains population. Between 1996 and 2001 there was a 23.9 percent increase in the population. Again the fluctuations in numbers between 1996 and 2001 appear to reflect a relationship with the birds in prairie Canada, but this time the relationship was inverse. Prairie Canada birds may have temporarily dispersed to recent unusually good habitat conditions in the United States northern Great Plains—particularly on the Missouri River.

Current estimates of piping plover survival rates are limited. Root *et al.* (1992) estimated a mean annual survival rate of 0.664 for adults in the northern Great Plains population from 1984 to 1990 using recapture and re-sighting data from plovers in North Dakota. Larson *et al.* (2000) reevaluated survival from this study, including some additional years of banding and resights. The new mean local annual survival rate was 0.737 for adults (Larson *et al.* 2000). Most plover mortality was thought to occur during migration or on wintering grounds (Root *et al.* 1992); however, a recent study on Padre Island, Texas, showed overwintering survival can be very high (Drake 1999).

Ryan *et al.* (1993) developed a random population growth model using empirical, demographic data, which showed the northern Great Plains plover population was declining 7 percent annually. They also used the simulation model to predict reproductive and survival rates necessary to stabilize and increase the population. Ryan *et al.* (1993) stated that if adult (0.66) and immature (0.60) survival rates were held constant, a 31 percent increase, from 0.86 to 1.13 chicks fledged per pair, was needed to stabilize the population. Annual population increases of 1 and 2 percent required 1.16 and 1.19 chicks per pair, respectively. Such growth would result in the northern Great Plains population reaching the level needed for recovery and delisting from the Endangered Species Act in 53 and 30 years respectively. One- and 5-year delays in the initiation of 1 percent population growth caused 13- and 67-year delays respectively in reaching recovery. Model (Ryan *et al.* 1993) results suggested that the northern Great Plains population is declining substantially. However, using more recent survival estimates (Larson *et al.* (2000)) in the random population growth model has shown that the feasibility of recovering the northern Great Plains population may be more likely than previously determined (Ryan *et al.* 1993, Plissner and Haig 2000). Larson (Larson, University of Missouri-Columbia pers. comm.) recommends based on his research (Larson *et al.* 2000) that reproductive rates 1.25 fledglings per pair per year is now necessary to stabilize the population.

A population viability model, developed by Plissner and Haig (2000), used the metapopulation viability analysis package, VORTEX. Plissner and Haig (2000) found in the northern Great Plains and Great Lakes populations, if the adult and immature survival rates were held constant, it would require a 36 percent higher mean fecundity, or an increase from 1.25 to 1.7 chicks fledged per pair, to reach a significant

probability of persisting for the next 100 years.

*Ecology*

Piping plover breeding habitat consists of open, sparsely vegetated areas with alkali or unconsolidated substrates. Piping plovers primarily breed in four habitat types in the northern Great Plains—alkali lakes and wetlands, inland lakes (Lake of the Woods), reservoirs, and rivers. Based on the first two International Piping Plover Censuses, most breeding occurs along alkali lakes and wetlands, with 59.6 percent and 78 percent of breeding adults observed on those sites in 1991 (Haig and Plissner 1993) and 1996 (Plissner and Haig 1997), respectively. However, that percentage dropped to 34 percent in the 2001 International Census (S. Haig pers.com. 2002). For these alkali lakes and wetlands, nesting sites are generally wide, gravelly, salt-encrusted beaches with minimal vegetation (Prindiville, Gaines and Ryan 1988).

Piping plovers use barren to sparsely vegetated islands, beaches, and peninsulas at inland lake habitats (Nordstrom and Ryan 1996), such as Lake of the Woods, Minnesota. Sandbars and reservoir shorelines with similar features are the preferred nesting habitats of piping plovers along riverine systems (Schwalbach 1988, Kruse 1993). In 1991, approximately 38 percent of the population was observed on reservoirs, river shores, and sandbars. In 1996, 15.1 percent was observed at those areas; this was a high-water year and much of the habitat along rivers was inundated, likely forcing birds to nest elsewhere. These data suggest that habitat use by piping plovers is dynamic and that the habitat necessary to support the northern Great Plains population is diverse.

Although the preference of piping plovers for open areas has been repeatedly noted in the literature, quantitative data on habitat characteristics, evidence of habitat selection, and information on the relative quality of inland habitats remain scarce. A survey of the research literature suggests that this lack of quantitative and qualitative data is a result of the dynamic nature of the habitat, climate, and hydrologic cycles of the northern Great Plains. Several studies have suggested that beach width may affect habitat use by piping plovers breeding on inland lakes. Whyte (1985) recorded minimum nest-to-water distances of 131.2 ft (40 m) in Saskatchewan and suggested that beaches less than 65.6 to 98.4 ft wide (20 to 30 m wide) were not likely to be used by piping plovers. However, in Alberta, Weseloh and Weseloh (1983) calculated a mean beach width of only 38.4 ft (11.7 m) at nest sites. However, they noted that these seemed to be the widest beaches available. Prindiville, Gaines, and Ryan (1988) reported mean beach width to be larger in occupied territories ($\bar{x}$ = 108.3 ft (33 m)) than in unoccupied sites ($\bar{x}$ = 44.6 ft (13.6 m)) in North Dakota. It is important to note that piping plovers in the Great Lakes region have nested on beaches much narrower than those reported by the above authors; therefore, narrower beaches may still provide suitable nesting habitat and primary constituent elements (L. Wemmer, pers. comm.). The amount and distribution of beach vegetation affect piping plover habitat selection and reproductive success. Prindiville, Gaines, and Ryan (1988) found no difference in vegetative cover between territories ($\bar{x}$ = 3.4 percent) and unoccupied sites ($\bar{x}$ = 3.8 percent). However, vegetation was more clumped in territories than in unoccupied sites. Furthermore, territories in which nests were successful had either less vegetation or more clumped vegetation than territories with unsuccessful nests (Prindiville 1986).

Substrate composition also may affect habitat selection by piping plovers and influence nest success. Cairns (1977) found 31 of 38 nests in Nova Scotia on mixed sand and gravel and stated that those nests were less conspicuous than those on sand alone. Whyte (1985) reported that piping plovers were more likely to establish nests on gravel than was expected by chance alone. In North Dakota, gravel was generally more evenly distributed and in greater concentration on piping plover territories than at unoccupied sites (Prindiville 1986).

Piping plovers nesting on the Missouri, Platte, Niobrara, Loup Rivers, and other rivers, use reservoir shorelines and large dry, barren sandbars in wide, open channel beds. Along these rivers, plovers often nest near endangered interior least terns (*Sterna antillarum*). Vegetative cover on nesting islands is usually less than 25 percent (Ziewitz *et al.* 1992). Twenty-eight Platte River sandbars, occupied by nesting piping plovers, averaged 938 ft (286 m) in length and 180 ft (55 m) in width (Faanes 1983). Vegetative cover on those sandbars averaged 25.4 percent. Armbruster (1986) estimated the optimum range for vegetative cover on nesting habitat from 0–10 percent, and Schwalbach (1988) found that 89 percent of the plovers nested in areas of less than 5 percent vegetative cover. On the Missouri River, Schwalbach (1988) found that the average vegetation height ranged from 2 to 11 in (6 to 29 cm) and the majority of the plovers (63 percent) nested in areas where vegetation was less than 4 in (10 cm).

Average elevation of nests (least terns and piping plovers) above river level ranges from 7.4 in (19 cm) below Gavins Point Dam to 12 in (30 cm) below Garrison Dam (Schwalbach 1988, Dirks 1990). Schwalbach (1988) and Ziewitz *et al.* (1992) suggested that birds select a higher nest site, away from the water's edge, when available. For nesting, piping plovers evidently seek habitats with wide horizontal visibility, protection from terrestrial predators, isolation from human disturbance, low likelihood of inundation, and nearby feeding habitat.

Open, wet, sandy areas provide feeding habitat for plovers on river systems and throughout most of the species' nesting range. Piping plovers feed primarily on exposed substrates by pecking for invertebrates at or just below the surface (Cairns 1977, Whyte 1985). In Saskatchewan, Whyte (1985) noted that adults concentrated foraging efforts within 16.4 ft (5 m) of the water's edge. He found broods also fed most often near the shore, but their use of upland beach habitats was greater than that of adults. Cairns (1977) reported that chicks tended to feed on firmer sand at greater distances from the shoreline than adults. At Lake of the Woods, Minnesota, and on Long Island-Chequamegon Point, Wisconsin, adult piping plovers seemed to prefer shoreline or beach pool edges (wet sand) over open beach (dry sand) as feeding sites although time spent foraging at these sites may be influenced by changing habitat conditions and prey availability (Wiens 1986, S. Matteson, Wisconsin Department of Natural Resources, pers. comm.). Studies suggest that forage areas include the nesting island itself, as well as adjacent sandbar flats (Cairns 1977, Whyte 1985, Corn and Armbruster 1993). Spring/fen areas on the peripheries of some alkali lakes also are important feeding sites for plover chicks (Rabenberg *et al.* 1993).

Upland areas surrounding wetlands, such as the spring/fen areas, also have been noted in the scientific literature to be important to maximizing the effective period of time wetlands can provide critical functions (*i.e.*, water quality, flood control, groundwater recharge, nutrient recycling, primary productivity, and wildlife habitat) within the agricultural landscape (Gleason and Eulis 1998). This is particularly important when considering wetlands within the agricultural landscape in the northern

Great Plains. In addition appropriate upland widths are based on several variables, including—existing wetland functions, values, and sensitivity to disturbance; land-use impacts; and desired upland functions (Castelle *et al.* 1992). Critical functions to consider for piping plovers nesting on wetlands in the northern Great Plains include water quality, invertebrate abundance, and the lifespan of the wetland. To maintain water quality and maximize the effective period of time the wetland maintains critical functions, available research suggests upland buffers of 100 to 300 ft (30.5 to 91.4 m) (Castelle *et al.* 1992, Lee *et al.* 1997, Gleason and Eulis 1998, D. Dewald pers. comm. 2000).

Conditions for nesting are highly variable in the Great Plains. Therefore, local population estimates may not always give an accurate description of the population as a whole, and success may depend on the availability of alternative habitat types (Plissner and Haig 1997). In addition to primary nesting habitat types, piping plovers also may use sand pits and ash ponds, which often mimic natural habitats (Service 1988b, Corn and Ambruster 1993, Lackey 1994). These areas are only suitable for a limited period of time after their initial creation, as vegetation encroachment generally reduces habitat quality after a few years (Sidle and Kirsch 1993).

Breeding site fidelity (rate at which adults return to the same breeding sites in subsequent years) for piping plovers ranged from 4.5 percent in two studies combined in South Dakota (Schwalbach 1988, Dirks 1990) to 87.5 percent in Lake of the Woods, Minnesota (Haig and Oring 1987). Wiens (1986) found return patterns to specific breeding sites did not seem to be influenced by previous reproductive success. In Manitoba, Haig and Oring (1988) observed two patterns of return by adults—(1) those that hatched chicks the year before returned to the same breeding site but changed territories, and (2) adults that experienced nest failure the year before generally changed sites. Adults have been known to use breeding sites as far as 339.1 miles (mi) (546 km) apart in consecutive years (Haig 1987). The varying rates of site fidelity reported in these studies suggest that piping plovers need a variety of available nest sites. Sites used in one year may not be used in subsequent years; conversely, sites unoccupied by piping plovers may be used in the future.

Similar observations of chick returns further show the need for many nest areas in the Great Plains. The percentage of observed chicks returning to natal sites has ranged from 4.7 percent in New York (Wilcox 1959) to 1.3 to 50 percent in South Dakota (Schwalbach *et al.* 1993, Niver 2000) and 70 percent at Lake of the Woods, Minnesota (Haig and Oring 1987). Chick dispersal (movement from natal sites to first breeding site) is difficult to characterize and few banding studies have been carried out in the Great Plains. But, long-range dispersal distances (3.1 to 169.5 mi (5 to 273 km)) have been documented in piping plovers (Haig and Oring 1988) and similar distances were observed in two plovers on the Missouri River (R. Niver, Service, and C.D. Kruse, U.S. Army Corps of Engineers, pers. comm.).

The nesting season typically begins in late March to early April when plovers arrive on the breeding grounds. Breeding activities, including courtship flights, nest bowl scraping, territorial interactions, egg laying, incubating, and chick rearing, can be observed throughout the summer. Nests are shallow scrapes and are often lined with shell fragments, pebbles, or small sticks. Typical clutch size is 3 to 4 eggs and incubation lasts 27 to 31 days. Chicks can feed themselves after hatching (*i.e.*, are precocial), and fledge at 18 to 25 days of age (Service 1988b). Fledging success varies by site and year. For example, between 1986 and 1999 along the Missouri River, there were 0.06 to 1.61 fledged chicks/pair (G. Pavelka pers. comm.). Between 1982 and 1987 Haig and Oring (1987) reported fledge ratios between 0.3 to 2.1 or 0.4 to 3.0 fledged chicks/pair, depending on 1987 data, for Lake of the Woods, Minnesota. In the United States Alkali Lake Core region, which includes parts of northwest North Dakota and northeast Montana, annual fledge ratios varied between 0.60 to 1.49 fledged chicks/pair from 1994 to 2000 (J. Knetter, University of Wisconsin-Madison, pers. comm.).

Nest and chick predation, weather, human disturbance, and hydrologic cycles influence fledging success. If nest loss occurs early in the season, piping plovers will often renest. After later nest loss, chick loss, or fledging chicks, plovers begin their southerly migration from mid-July through early September. Piping plovers that breed in the Great Plains generally winter along the Gulf Coast from Mexico to Florida, but some occasionally winter along the southern Atlantic Coast from North Carolina to Florida (Haig and Plissner 1993).

*Previous Federal Actions*

On December 30, 1982, we published a notice of review in the **Federal Register** (47 FR 58454) identifying native vertebrate taxa being considered for addition to the List of Endangered and Threatened Wildlife. We included the piping plover in that review list as a category two species, indicating that we believed the species might warrant listing as threatened or endangered, but that we had insufficient data to support a proposal to list then. Subsequent review of additional data showed that the piping plover warranted listing, and in November 1984 we published a proposal in the **Federal Register** (49 FR 44712) to list the piping plover as endangered in the Great Lakes watershed and as threatened along the Atlantic Coast, the northern Great Plains, and elsewhere in their ranges. The proposed listing was based on the decline of the species and existing threats, including habitat destruction, disturbance by humans and pets, high levels of predation, and contaminants.

After a review of the best scientific data available and all comments received in response to the proposed rule, we published the final rule (50 FR 50726) on December 11, 1985, designating the Great Lakes population (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario) as endangered; and listing piping plovers along the Atlantic coast (Quebec, New foundland, Maritime Provinces, and States from Maine to Florida), and in the northern Great Plains (Iowa, northwestern Minnesota, Montana, Nebraska, North Dakota, South Dakota, Alberta, Manitoba, and Saskatchewan) as threatened. All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. The Service did not designate critical habitat for the species at that time.

After 1986, we formed two recovery teams, the Great Lakes/Northern Great Plains Piping Plover Recovery Team and the Atlantic Coast Piping Plover Recovery Team. In 1988 the Great Lakes and northern Great Plains (Service 1988b) and Atlantic Coast (Service 1988a) Recovery Plans were published. In 1994 the Great Lakes/Northern Great Plains Recovery Team began to revise the Recovery plan for the Great Lakes/ Northern Great Plains populations (Service 1994). The 1994 draft included updated information on the species and was distributed for public comment. Subsequently, we decided that the recovery of these two inland populations would benefit from separate recovery plans. Separate recovery plans for the Great Lakes and northern Great Plains populations are presently under development.

The final listing rule for the piping plover indicated that designation of critical habitat was not determinable.

Thus, designation was deferred. No further action was taken to designate critical habitat for piping plovers. On December 4, 1996, Defenders of Wildlife (Defenders) filed a suit (Defenders of Wildlife and Piping Plover v. Babbitt, Case No. 96CV02965) against the Department of the Interior and the Service over the lack of designation of critical habitat for the Great Lakes population of the piping plover. Defenders filed a similar suit (Defenders of Wildlife and Piping Plover v. Babbitt, Case No. 97CV000777) for the northern Great Plains piping plover population in 1997. During November and December 1999 and January 2000, we began negotiating with Defenders on a schedule for piping plover critical habitat designation. On February 7, 2000, before the settlement negotiations were concluded, the U.S. District Court for the District of Columbia issued an order directing us to publish a proposed critical habitat designation for nesting and wintering areas of the Great Lakes breeding population of the piping plover by June 30, 2000, and for nesting and wintering areas of the northern Great Plains population of the piping plover by May 31, 2001. A subsequent order, after we requested the court to reconsider its original order relating to final critical habitat designation, directed us to complete the critical habitat designations for the Great Lakes population by April 30, 2001, and for the northern Great Plains population by March 15, 2002. For biological and practical reasons, we chose to propose critical habitat for the Great Lakes breeding birds and for all wintering birds in two separate documents; the Great Lakes breeding birds final critical habitat was published on May 7, 2001 (66 FR 22938), and the final rule for wintering habitat was published on July 10, 2001 (66 FR 36038).

On June 12, 2001, we published a proposed determination for the designation of critical habitat for the northern Great Plains breeding population of the piping plover (66 FR 31760). A total of approximately 196,576.5 ac (79,553.1 ha) and 1,338 rm (2,153 km) were proposed as critical habitat for this piping plover population in 75 counties in Minnesota, Montana, North Dakota, South Dakota, and Nebraska. The comment period was open until August 13, 2001. During this 60-day comment period, we held five public meetings (Glasgow, Montana on July 10, 2001; Bismarck, North Dakota on July 12, 2001; Pierre, South Dakota on July 16, 2001; Yankton, South Dakota on July 17, 2001; and Grand Island, Nebraska on July 18, 2001). On July 6, 2001, we published a notice in the **Federal Register** (66 FR 35880) announcing the availability of the draft Environmental Assessment for the proposed determination. On December 28, 2001, we published a notice in the **Federal Register** (66 FR 67165) announcing the reopening of the comment period and a notice of the availability of the draft Economic Analysis on the proposed rule. This comment period was open until January 28, 2002. However, before that reopening the Service's web sites and electronic mail were disconnected in response to a court order in an unrelated lawsuit. In response to comments received during the December-January comment period the Service sought relief from the courts and the court took action extending the time for the final rule. On March 21, 2002, we again published a notice in the **Federal Register** (67 FR 13123) extending the comment period until May 20, 2002.

*Critical Habitat*

Critical habitat is defined in section 3 (5) (A) of the Endangered Species Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Endangered Species Act, on which are found those physical or biological features (I) essential to conserve 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 to conserve 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 Endangered Species Act is no longer necessary. Critical habitat receives protection under section 7 of the Endangered Species Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences with the Service on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Endangered Species Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Endangered Species Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Endangered Species Act for such activities.

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)).

Within the geographic area occupied by the species (or, in this case, a breeding population), we designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to conserve the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species,'' (50 CFR 424.12(e)). Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, procedures, and guidance to ensure decisions made by the Service represent the best scientific and

commercial data available. It requires Service biologists, to the extent consistent with the Endangered Species 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 contained in 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, Tribes, and counties, scientific status surveys and studies, and biological assessments or other unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover 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 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. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in likely-to-jeopardize findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

**Methods**

In determining areas essential to conserve the northern Great Plains breeding population of piping plovers, we used the best scientific and commercial data available. We have reviewed the overall approach to the conservation of the northern Great Plains breeding population of piping plovers undertaken by the local, State, Tribal, and Federal agencies operating within the species' range since its listing in 1986, and the identified steps necessary for recovery outlined in the Great Lakes and Northern Great Plains Piping Plover Recovery Plan (Service 1988b).

We also have reviewed available information that pertains to the habitat requirements of this species, including material received since completion of the recovery plan. The material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; the 1994 Technical/Agency Review Draft Revised Recovery Plan for Piping Plovers Breeding on the Great Lakes and Northern Great Plains (Service 1994); research published in peer-reviewed articles and presented in academic theses and agency reports; annual survey reports; regional Geographic Information System (GIS) coverages; and personal communications with knowledgeable biologists.

*Primary Constituent Elements*

In accordance with section 3(5)(A)(i) of the Endangered Species 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 physical and biological features (primary constituent elements) that are essential to conservation of the species, and that may require special management considerations and protection. These include, but are not limited to—(1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing (or development) of offspring; and (5) habitats protected from disturbance or that are representative of the historic geographical and ecological distributions of a species.

Primary constituent elements for the northern Great Plains population of piping plovers are those habitat components (physical and biological) essential for the biological needs of courtship, nesting, sheltering, brood-rearing, foraging, roosting, intraspecific communication, and migration. The one overriding primary constituent element (biological) that must be present at all sites is the dynamic ecological processes that create and maintain piping plover habitat. Without this biological process the physical components of the primary constituent elements would not be able to develop. These processes develop a mosaic of habitats on the landscape that provide the essential combination of prey, forage, nesting, brooding and chick-rearing areas. The annual, seasonal, daily, and even hourly availability of the habitat patches is dependent on local weather, hydrological conditions and cycles, and geological processes.

The biological primary constituent element, *i.e.*, dynamic ecological processes, creates different physical primary constituent elements on the landscape. These physical primary constituent elements exist on different habitat types found in the northern Great Plains, including mixosaline to hypersaline wetlands (Cowardin *et al.* 1979), rivers, reservoirs, and inland lakes. These habitat types or physical primary constituent elements that sustain the northern Great Plains breeding population of piping plovers are described as follows:

On prairie alkali lakes and wetlands, the physical primary constituent elements include—(1) Shallow, seasonally to permanently flooded, mixosaline to hypersaline wetlands with sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; (2) springs and fens along edges of alkali lakes and wetlands; and (3) adjacent uplands 200 ft (61 m) above the high water mark of the alkali lake or wetland.

On rivers the physical primary constituent elements include—sparsely vegetated channel sandbars, sand and gravel beaches on islands, temporary pools on sandbars and islands, and the interface with the river.

On reservoirs the physical primary constituent elements include—sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, gravel, or shale, and their interface with the water bodies.

On inland lakes (Lake of the Woods) the physical primary constituent elements include—sparsely vegetated and windswept sandy to gravelly islands, beaches, and peninsulas, and their interface with the water body.

It is the interactive nature of the biological primary constituent element or the dynamic ecological processes that create the physical primary constituent elements. On the northern Great Plains, the suitability of beaches, sandbars, shoreline, and flats as piping plover habitat types also is dependent on a dynamic hydrological system of wet-to-dry cycles. Habitat area, abundance and availability of insect foods, brood and nesting cover, and lack of vegetation are all linked to these water cycles. On rivers, one site becomes flooded and erodes away as another is created. More importantly the high flows on rivers create a complex of habitats for feeding, nesting, and brooding (Pavelka 2002 and

Vander Lee *et al.* 2002). This dynamic nature of rivers, as well as flow-management of rivers is important to long-term habitat creation and maintenance for piping plovers. On alkali lakes, the complex of different wetland types is especially important for providing areas for plovers feeding, nesting, and brooding in all years, as site availability cannot be predicted or selected at a given time, due to varying water cycles.

Biologists have noted a relationship appears to exist between availability of breeding habitat and wet-to-dry cycles. For example, in dry years nesting areas on alkali wetlands lacking water may be unsuitable for piping plovers. In subsequent years as the basins refill there is an abundance of habitat. However, when the wet cycle peaks, there may be a lack of exposed shoreline habitats for nesting piping plovers. It is the dynamics of the changing cycles and the fact that these cycles can occur differently across the landscape that provides piping plover habitat over the long term.

Additionally, droughts on the Missouri River can produce more available habitat as reservoir levels drop. However, by the time the nesting season ends, vegetation has encroached on shoreline habitats. Subsequent high water years are necessary for the long-term vegetative maintenance of shoreline habitats.

Continued reduced flows on rivers like the Platte and Missouri Rivers, either due to management or climatic conditions can result in vegetative encroachment on exposed sandbars limiting available piping plover nesting habitat. However, increased flows or high flows during subsequent years provides for the long term maintenance of piping plover nesting habitat by scouring vegetation from sandbars and creating high sandbars.

These cycles are most likely interrelated throughout the northern Great Plains landscape. For example, if Nebraska rivers or alkali wetlands are flooded during the early part of the breeding season, there is some evidence that piping plovers move to other rivers like the Missouri River, to renest. Similarly the abundance of piping plovers using the Missouri River (1988–1997) correlates strongly with alkali wetland piping plover populations during periods of below-average water levels in the riverine system (Licht 2002, in press). Licht (2002 in press) also found that once water levels on the Missouri River reached a certain point the relationship turned negative with river populations decreasing and alkali wetland populations increasing.

Because piping plovers evolved in this dynamic and complex system, and because they are dependent on it for their continued survival and eventual recovery, critical habitat boundaries incorporate natural processes inherent in the system and include sites that might not exhibit all appropriate habitat components in all years but have a documented history of such components over time and maintain the ability to develop and support those components.

Critical habitat for the northern Great Plains breeding population of piping plovers must meet the biological and physical primary constituent element requirements as defined above and are found on areas that—(1) Are currently or recently used for breeding, or (2) were documented to have been occupied historically, or (3) are not specifically documented to have been occupied, but are deemed potential breeding habitat since these areas are part of a riverine system with documented nesting, and are within the historic geographic range, or (4) include habitat complexes, including wetland and adjacent upland areas, essential to the conservation of this species (50 CFR 424.13(d)). The critical habitat designation is effective year-round in order to conserve habitats. Therefore, an area that contains primary constituent elements is considered to be critical habitat even if these elements are temporarily obscured by snow, ice, or other temporary features. Areas found within the critical habitat boundaries that do not conform with the above discussion and the elements of this paragraph are not critical habitat. However, it is important to keep in mind that, because of the nature of the northern Great Plains, some of these designated habitats will not have these components every year but must have them over time to be considered critical habitat.

*Criteria Used To Identify Critical Habitat*

The Recovery Plan for the Great Lakes and Northern Great Plains Piping Plover (Service 1988) and the Technical/Agency Review Draft Revised Recovery Plan for Piping Plovers Breeding on the Great Lakes and Northern Great Plains (1994) identified the specific recovery needs of the northern Great Plains breeding population of the piping plover, and serve as starting points for identifying areas essential to its conservation.

Piping plovers are found in a variety of ecologically and geographically distinct areas within the northern Great Plains. To recover the northern Great Plains breeding population of the piping plover to the point where it can be delisted, it is essential to preserve the population's genetic diversity as well as the habitat on which it persists. The areas identified in the recovery plans as necessary to achieve recovery of the population are generally reflected in this designation.

However, the recovery plans did not include the most recent comprehensive breeding survey data for the northern Great Plains and did not identify all possible areas essential to the survival and recovery of the species. Thus, we identified additional areas in this proposal from surveys conducted throughout the U.S. portion of the northern Great Plains. Data availability varied between States. Data was obtained from surveys conducted in North Dakota from 1987 to 2001, in Montana from 1986 to 2001, in Minnesota from 1982 to 2001, on the Missouri River from 1986 to 2001, in Nebraska from 1986 to 2001, in Kansas from 1996 to 2001, in Colorado from 1990 to 2001, and in Iowa from 1986 to 2001; and from the 1991, 1996, and 2001 International Piping Plover Censuses. We also removed some sites included in the 1994 draft recovery plan due to existing protection from current management practices or plans. Based on the primary constituent elements, we divided the habitat types used by the northern Great Plains breeding population of piping plovers into alkali lakes and wetlands, rivers, reservoirs, and inland lakes. We discuss our inclusions and exclusions of habitat below.

*Alkali Lakes and Wetlands*—We mapped Montana/North Dakota alkali lakes and wetlands where breeding piping plovers have been observed in more than 1 year for the period of survey record (1987–2001 for North Dakota and 1986–2001 for Montana). The survey period encompassed both wet and dry cycles; therefore, the dynamic nature of prairie alkali lakes and wetlands, and the resulting shift in use by piping plovers of different habitat types, is reflected in the mapping. All alkali lakes and wetlands mapped exhibit one or more of the primary constituent elements. We did not include many areas that exhibited all of the primary constituent elements but breeding piping plovers were only observed once or were never observed. Our legal descriptions include all sections in which alkali lakes and wetlands and associated 200-ft (61-m) upland habitat are found.

We had proposed the inclusion of Nelson Reservoir in the proposed rule. Nelson Reservoir, Bureau of

Reclamation (BOR) project, is a 4,559-ac (1845-ha) irrigation reservoir. During the comment period we received comments from the irrigation district and BOR requesting that Nelson Reservoir be withdrawn from the final designation of critical habitat. Both the BOR and the Glasgow Irrigation District recognize the Memorandum of Understanding (MOU) between the Malta and Glasgow Irrigation districts, U.S. Department of the Interior, BOR, the Service, and Bowdoin National Wildlife Refuge that is in place and provides for protecting the piping plover and maintaining Nelson reservoir for its project purpose (irrigation) and recommended that consideration be given to not listing Nelson Reservoir as critical habitat.

We have reviewed the current MOU for Nelson Reservoir between the agencies. We also are aware that each of the signatory agencies has worked toward and implemented management actions that are helping with the recovery of piping plovers in Montana. Many of the necessary recovery actions have been the result of the BOR's implementation of a 1990 biological opinion issued to the BOR on the operation of Nelson Reservoir. The BOR believes that the adaptive management strategies identified in the MOU, along with their current management actions that includes the construction of several islands that they are meeting the conservation and recovery needs of the piping plover on Nelson Reservoir. We concur with the BOR and are not proposing Nelson Reservoir for this designation. Since such management actions provide a benefit to the species, include implementation assurances and are adaptable to future management changes at Nelson Reservoir then this area is removed from the piping plover critical habitat designation.

The North Dakota Army National Guard (NDNG) owns portions of Lake Coe in North Dakota mapped as critical habitat in the proposed rule. The NDNG has completed the Camp Grafton Integrated Natural Resources Management Plan that includes Lake Coe. This plan provides a benefit for piping plovers on Lake Coe; includes implementation assurances and includes an opportunity for adaptive management. Therefore, the Camp Grafton portion of Lake Coe is not in need of special management and at the request of the NDNG, we have excluded the NDNG property on Lake Coe from critical habitat designation.

*Missouri River and Reservoirs*—We mapped the Missouri River from Fort Peck Reservoir, Montana, to Ponca State Park, Nebraska. We identified two riverine reaches (a portion of Fort Peck riverine reach and the reach from Ponca State Park, Nebraska, to Plattsmouth, Nebraska), two reservoir reaches (Lake Sharpe and Lake Francis Case), and a portion of another reservoir (Fort Peck) on the Missouri River that we are not designating as critical habitat, because they did not meet the definition of critical habitat. See discussion to follow.

The Fort Peck riverine reach of the Missouri River from the Fort Peck Dam to the confluence of the Milk River (river mile 1712) is highly degraded and contains few sandbars due to sediments trapped behind the Fort Peck Dam. Sandbar formation begins further downstream due to sediments transported from the Milk River. The upstream section that we have not included does not contain, and is not likely to develop, the primary constituent elements needed for piping plover survival and recovery in the near future.

Although piping plovers have been documented as far south as Plattsmouth, Nebraska, on the Missouri River, very limited habitat currently exists for piping plovers below Ponca State Park, Nebraska. The Missouri River has little sandbar habitat in this reach due to the channelization of the river and bank stabilization projects created to support navigation. We are aware of efforts to restore some backwater areas along this reach that will likely create suitable habitat for the piping plover. We will continue to monitor these areas and may consider proposing them as critical habitat if they obtain the primary constituent elements needed for the piping plover in the future. Along the Iowa reach of the Missouri River, plovers exist on fly ash sites adjacent to the river. Nevertheless, these temporary habitats support few birds (about 0.6 percent) and have poor productivity; therefore, these habitats are not considered essential and do not meet the definition of critical habitat.

Lake Sharpe was not included because this reservoir reach has only supported a few pairs of birds on one beach since listing and, therefore, is not considered essential and does not meet the definition of critical habitat. However, a small peninsula/island within the Lower Brule Sioux Tribe Reservation boundary is considered an area in need of special management. The Tribe and the Service believe this area if managed could help restore piping plovers to this reservation. Although this site is an area in need of special management, we cannot designate this area at this time because it was not in the proposed rule and thus was not subject to public comment. However, this area could be considered in a future amendment to the critical habitat designation.

In Montana, piping plovers have been found on the Dry Arm, Duck Creek Bay, Bear Creek Bay, and Skunk Coulee of Fort Peck Reservoir. We are not proposing the entire Fort Peck Reservoir as plovers have never been reported on the western arm.

Including portions of the Missouri River that may not be occupied at this time is necessary because of the dynamic nature of the river. Sandbar/island habitats migrate up and down the riverine sections of the river resulting in shifts in the location of primary constituent elements. Mainstem reservoir areas also change depending on water level management. Piping plovers opportunistically respond to these shifts from year to year. The entire length of mainstem reservoirs was included though small areas of reservoirs may never contain the primary constituent elements due to high banks and steep slopes. We did not exclude these areas because the court ordered deadlines and staff and budget limitations did not allow the time or funding to undertake the work necessary to provide the appropriate detail and accuracy of such an endeavor. However, Federal actions limited to these areas that do not contain the primary constituent elements would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in or adjacent to critical habitat.

In South Dakota, a 107.5-mi (172.9-km) stretch from Big Bend Dam to Fort Randall on the Missouri River (Lake Francis Case) was included in the proposed rule although nesting piping plovers have not been documented in this reach in recent times. Nesting surveys of this reach had not been conducted since the appearance of sand habitats. Based on comments received and information obtained during the comment period we have decided not to include Lake Francis Case in the designation. The South Dakota Department of Game, Fish, and Parks provided supporting information for the removal of Lake Francis Case from the designation. This information primarily indicated that nesting piping plovers have not been documented in this reach in recent times. We reviewed additional information from the results of the 2001 International Piping Plover Census that found no plovers in this reach despite the new formation of some habitat. We further interviewed Corps of Engineers (Corps) staff concerning the operations of Lake Francis Case and the availability of habitat during the nesting season.

Natural Resource staff at the Corps' Ft. Randall Project office, indicated that while habitat is developing in Lake Francis Case just above the mouth of the White River, the flows on the river do not allow for sufficient exposure time for nesting plovers (C. Wilson, pers. comm.). Based on this information Lake Francis Case apparently does not now provide significant nesting habitat for the piping plover, nor has it in the last 10 years, nor is it likely to in the near future. Based on a review of all of the information reviewed we have removed Lake Francis Case from consideration since there is limited data reported to support designation of critical habitat. If habitat conditions at Lake Francis Case change over time then critical habitat designation can be reassessed.

*Inland Lakes (Lake of the Woods)*—In Minnesota, piping plovers key in on sandy points or spits in large lakes. Although many sandy beach/large lakes exist, piping plovers are attracted to the rare combination of windswept islands or peninsulas with a lack of adjacent tree cover. Incidental observations have never yielded nesting observations on large lakes such as Upper and Lower Red Lakes or Lake Winnibigoshish. Therefore, we have limited our critical habitat designation in Minnesota to three known sites on Lake of the Woods where the species has been observed nesting in more than 1 year. Zippel Bay on Lake of the Woods and Agassiz National Wildlife Refuge were not included because breeding pairs were only observed in 1 out of 20 years at these sites. In addition, habitat conditions have changed since those observations which generally prevent piping plovers from using these areas (K. Haws, pers. comm.).

*Nebraska Rivers*—Portions of the Platte, Niobrara, and Loup Rivers were designated where piping plover nesting has been consistently documented since listing.

Similar to the Missouri River, portions of the Platte River included in the critical habitat designation may not be occupied in a given year, but designation is necessary because of the dynamic nature of the river. Sandbar habitats migrate up and down the rivers resulting in shifts in the location of primary constituent elements. Based on comments received during the comment period the length of the Platte River included in the designation was reduced from the proposed rule.

The Elkhorn River was considered for this rule but was not included because there is limited documented nesting on this river. We do not consider the Elkhorn River to be essential at this time to the conservation and recovery of the northern Great Plains breeding population of the piping plover.

The shoreline along Lake McConaughy, Nebraska, was not included as critical habitat due to the existence of two draft conservation management plans developed by the Central Nebraska Public Power and Irrigation District to satisfy a Federal Energy Regulatory Commission (FERC) relicensing requirement for Project No. 1417. The ''Land and Shoreline Management Plan'' and the ''Management Plan for Least Terns and Piping Plovers Nesting on the Shore of Lake McConaughy'' were developed in coordination and in agreement with the Service and the Nebraska Game and Parks Commission. Both plans are being implemented on an interim basis while awaiting FERC approval. We believe that implementation of these conservation management plans is consistent with piping plover recovery. Therefore, this area is not in need of special management and does not meet the definition of critical habitat. If conservation management plans are in place and meet the following three criteria, then we may exclude these areas from critical habitat. These conservation plans must—(1) Provide a benefit to the species; (2) include implementation assurances; and (3) include features, such as an adaptive management plan, that will assure effectiveness. Therefore, despite the presence of nesting piping plovers at this site, it is eligible for exclusion from critical habitat on the basis of having conservation management plans that specifically address the conservation and recovery of the piping plover. We have been informed that FERC will be finalizing the plans in the near future.

*Sand Pit Nesting Sites*

We have thoroughly reviewed the best available and scientific information available in regard to sandpits. Through the comment period we were provided additional information from the Nebraska Game and Parks Commission and various agencies that manage the sandpit areas. We have concluded that sandpits do not support the primary biological constituent element of dynamic ecological processes. Because sandpits are artificial and temporary in nature, not all of the necessary biological and physical features that are essential to the conservation of the species are present at sandpits. We agree that sandpits have produced piping plovers over the years but it has not been without significant resource actions from managing agencies. Some biologists believe that the sandpits have been successful because of their location adjacent to the Platte River (Corn and Armbruster 1983 and E. Kirsch pers. comm. 2001). ''Birds nesting on sandpits appear to forage on river channel sites as well as on the sandpit shoreline, and occasionally appear to fly up to a mile between the sandpit nest site and the river channel foraging site (Corn and Armbruster 1993). Because sandpits are man-made, the sand environment is machine shifted regularly affecting vegetative growth and soil moisture. Soil moisture at sandpit sites is lower than on river channel sites and declines dramatically from the shoreline edge on sandpits. Corn and Armbruster (1983) found that soil moisture was the key factor in explaining the difference in invertebrate catch rates between rivers and sandpits. They also found invertebrate catch rates and densities are higher on river channel sites than on sandpits and invertebrate catch rates increased more dramatically over the summer on river channel sites than on sandpits. Without the dynamic ecological processes sandpit habitats are only temporary and marginal habitats for piping plovers. Once sandpits are abandoned, they become vegetated and too dense for piping plovers and the physical primary constituent elements are eliminated. Because sandpits do not meet the primary constituent elements and are not likely to meet the primary constituent elements in the future we have excluded them from designation.

Furthermore not all sand and gravel substrates at sand pits can be used by piping plovers. According to Sidle and Kirsch (1993) piping plovers will not nest on sand pits where the sand is steep sloped, near sieves, below slurry runoff, on roads, areas frequently used by heavy equipments, or in small areas covered by dense vegetation. Sidle and Kirsch (1993) further speculate that where sandbar habitat is available that plovers prefer sandbar habitats over sand pits. The percentage of birds using sand pits was slightly lower in 1988 than in other years because much sandbar habitat was available due to extremely low flows from May through late July of that year (Lingle 1993).

In addition to the lack of the primary constituent elements, the nature of sandpits is not conducive to long-term management and recovery of the piping plover. We expect that mining will continue in areas of Nebraska as it has for years. However, eventually the mined areas are abandoned and usually sold for residential development. Usually within 1 and 3 years the abandoned mines re-vegetate and all value for piping plover nesting habitat is lost. Therefore, sandpits do not

provide for piping plover recovery in the long term. This was recognized by the recovery plan as sandpits are not listed as essential habitat.

We do recognize that sand pits have provided alternative nesting areas for piping plovers when other river sites were not available. We further recognize the Tern and Plover Conservation Partnership in the Lower Platte River reach has the sand and gravel mining industry working with conservation groups and researchers to conserve the plovers that choose to nest on their sand pits. However, we have decided that sand pits as nesting areas for the piping plover currently do not meet the definition and requirements of critical habitat.

*Colorado and Kansas Nesting Sites*—Nesting areas on the Kansas River in Kansas were considered for possible inclusion as critical habitat but were not included because currently these sites are not considered essential for reasons discussed below and, therefore, do not meet the requirements of critical habitat. The Kansas River nesting occurred for the first time in 1996 and is suspected to have occurred because of habitat created by historical flood events (1993 and 1995). We believe that a return to more normal flows will eliminate nesting habitat on this river. In 4 years of documented nesting on the Kansas River there was one pair of plovers the first year and never more than four pairs. Additionally, productivity has been very limited. However, the Corps and the Service will be monitoring the Kansas River for piping plovers during the nesting season (Service 2000a). If nesting birds persist on the Kansas River, then we may reevaluate this river's contribution to conservation and recovery of the northern Great Plains breeding population of piping plovers and the need to designate critical habitat in the future.

Six different reservoirs (Neenoshe, Neegrande, Neeskah, John Martin, Adobe Creek, and Verhoeff) in Bent, Otero, and Kiowa Counties, Colorado, have been monitored for 10 years (1990–2000) and have not been able to sustain a stable population. Although there was a high of nine pairs in 1994 and 1995 and only four pairs in 2000, these sites have not contributed significantly to the population. Predation and water level fluctuations are limiting factors affecting reproductive success. The Colorado Division of Wildlife is likely to continue monitoring the nesting plovers on the reservoir sites. In addition, the Colorado Department of Natural Resources approved a recovery plan for both the piping plover and interior least tern in 1994. Therefore, we are not proposing to include these areas in the critical habitat designation because currently we do not consider them essential and, therefore, do not meet the requirements of critical habitat.

*Tribal Land*—Eight Tribes have critical habitat designated within the boundary of their reservations on the Missouri River including—the Assiniboine and Sioux Tribes of Ft. Peck, Montana; the Standing Rock Sioux Tribe, and the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara Tribes) of the Ft. Berthold Reservation in North Dakota; the Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, and Yankton Sioux Tribe in South Dakota; and the Santee Sioux Tribe of Nebraska. Additionally, eight Tribes have land or Tribal trust land on submerged sites or sandbars/islands of the Missouri River. These Tribes include—the Assiniboine and Sioux Tribes of Ft. Peck, Montana; the Standing Rock Sioux Tribe, and the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara Tribes) of the Ft. Berthold Reservation in North Dakota; the Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, and the Yankton Sioux Tribe in South Dakota; and the Santee Sioux Tribe of Nebraska. Indian trust lands are lands held by the United States in trust for either a Tribe or an individual Indian. The Submerged Lands Act, 43 U.S.C. 1301–1356, states that lands beneath navigable water held by the United States for the benefit of any Tribe, band, or of Indians or for individual Indians is excepted from the confirmation and establishment of the States' rights confirmed by 43 U.S.C. 1311. Therefore, the Service recognizes that there are Tribal lands within the areas designated as critical habitat on the Missouri River. These habitats on the Missouri River within the boundary of a Tribe, or held by the Tribe, individual Indian, or held in Trust by the United States with the primary constituent elements, as discussed in the Missouri River sections, are essential to the recovery of the piping plover. Additionally, the Turtle Mountain Tribe has mineral rights to land along the Missouri River in North Dakota that was taken by the Corps for the Missouri River mainstem system. We also coordinated with three additional Tribes with interest in lands on the Missouri River because of past treaties or other issues including the Rosebud Sioux and Oglala Sioux Tribes of South Dakota and the Winnebago Tribe of Nebraska.

The Lower Brule and Crow Creek Tribes also were consulted on the critical habitat designation. These reservation boundaries include areas on Lake Sharpe and Lake Francis Case. Both Reservoirs were excluded from designation. However, a small peninsula/island within the Lower Brule Sioux Tribe Reservation boundary is considered an area in need of special management. The Tribe and the Service believe this area if managed could help restore piping plovers to this reservation. Although this site is an area in need of special management, we cannot designate this area at this time because it was not in the proposed rule and thus was not subject to public comment. However, this area could be considered in a future amendment to the critical habitat designation.

The Ponca Tribe reservation boundary includes critical habitat designated along the Niobrara River, but there are no trust lands within the critical habitat designation.

Piping plovers nest on sandbars and islands of the Assiniboine and Sioux Tribes of Ft. Peck. We believe that these Tribal lands are essential for the conservation of the piping plover and we have designated critical habitat for the piping plover on these lands of the Assiniboine and Sioux Tribes of Ft. Peck. However, the Ft. Peck Tribes have expressed concerns over designation of critical habitat on their lands because—(1) perception of burdens from the designation; (2) their view that it has never been established that the Endangered Species Act applies to Indian Tribes and their natural resources, and (3) their plan to develop a Habitat Conservation Plan (HCP) for species along the Missouri River including the piping plover. The Ft. Peck Tribal land within the high banks of the Missouri River will remain in the critical habitat designation. When the Ft. Peck Tribes have completed a HCP the Service will review the plan for removal of their Tribal lands from the critical habitat designation.

We initiated coordination with all Tribes on this designation under the guidance of the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, which requires us to coordinate with federally recognized Tribes on a Government-to-Government basis.

We understand that some Tribes have concerns for the Service's government to government consultation responsibilities. We acknowledge the Tribes concerns but we believe we have carried out our responsibilities as best as we could under the constraints of limited staff and budgets and as court ordered time frames allowed. With the exception of the Turtle Mountain Tribe,

which we only recently learned has mineral rights along the Missouri River, we have previously corresponded with Tribes by letters to Tribal Chairs and heads of Tribal Game and Fish Agencies on five different occasions and also facsimiles when the proposed rule was published.

Further information and communication have occurred with various Tribal and BOR staffs at meetings to discuss piping plover critical habitat, including the 2001 Native American Fish and Wildlife Society Meeting in Billings, Montana, two Inter-Tribal Great Plains Fish and Wildlife Commission Meetings, and follow-up meetings with Yankton, Lower Brule, Fort Peck, Assiniboine, and Sioux, and Cheyenne River Tribes. Telephone communication also has taken place between Service Field staff and Tribal Game and Fish field staff.

To identify and map areas essential to the conservation of the species, we used the characteristics of essential habitat described above, data on known piping plover locations, and criteria in the recovery plans for reclassification of the species. We then evaluated areas based on survey and research data and the primary constituent elements, including hydrology, influences of ecological processes, and topographic features.

To map areas of critical habitat, we used the Service's National Wetland Inventory (NWI) digitized data and U.S. Geological Survey public land surveys to develop regional GIS coverages; Environmental Systems Research Institute wetland data (where NWI data was unavailable); 1984 digital ortho quarter quads for all Nebraska river reaches, and Statewide and county maps for Nebraska; Central Public Power and Irrigation District Species Protection Zone maps of Lake McConaughy; and data from known piping plover breeding locations. Tribal boundary and Tribal trust information were interpreted and provided to us by the Bureau of Indian Affairs (BIA) Great Plains regional Office. We also solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species.

We could not depend solely on federally owned lands for critical habitat designation as these lands are limited in geographic location, size, and habitat quality within the current range of the northern Great Plains breeding population of the piping plover. In addition to the federally owned lands, we are designating critical habitat on non-Federal public lands and privately owned lands, including land owned by the States of Minnesota, Montana, Nebraska, North Dakota, and South Dakota.

All non-Federal lands designated as critical habitat meet the definition of critical habitat under section 3 of the Endangered Species Act in that they are within the geographical area occupied by the species, are essential to the conservation of the species, and may require special management considerations or protection.

We described critical habitat as Township, Range, and Sections (TRS) for the legal descriptions because these are used and recognized locally. The maps depicted the alkali lakes and wetlands and associated uplands, and showed the TRS boundaries. We also added Universal Transverse Mercator (UTM) coordinates at the center point of each site. Due to court ordered time constraints, budget and staffing constraints, and the use of TRS as our minimum mapping unit, in defining critical habitat boundaries, we were unable to exclude developed areas such as mainstem dam structures, buildings, marinas, boat ramps, bank stabilization and breakwater structures, row cropped or plowed agricultural areas, mines, roads and other lands (*e.g.*, high bank bluffs along Missouri River reservoirs) unlikely to contain primary constituent elements essential for northern Great Plains piping plover conservation. In addition we included the entire length of mainstem reservoirs even though small areas of reservoirs may never contain the primary constituent elements due to high banks and steep slopes. We did not exclude these areas because it would require a minimum of 2 years to collect data necessary to map at that detail and the necessary staffing and funding to complete such an effort. These features will not themselves contain one or more of the primary constituent elements. Federal actions limited to those features, therefore, would not trigger a section 7 consultation, unless they affect species and/or primary constituent elements in adjacent critical habitat.

In summary, in determining areas that are essential to the conservation of the northern Great Plains breeding population of the piping plover, we used the best scientific and commercial information available to us. The critical habitat areas described below constitute our best assessment of areas needed for the species' conservation and recovery.

*Critical Habitat Designation*

At this time, the critical habitat contained within units discussed below constitutes our best evaluation of areas needed to conserve the northern Great Plains breeding population of piping plovers. Critical habitat designations may be subsequently revised if new information becomes available after this final rule is published. A formal proposal and opportunity for public comment would occur before any changes made to this designation, including the addition of any areas as critical habitat.

Table 1 provides a summary of land ownership and approximate acreage or river miles of critical habitat for each State. Critical habitat for the northern Great Plains breeding population of the piping plover includes approximately 183,422 ac (74,228.4 ha) of habitat in Minnesota, Montana, and North Dakota, and approximately 1,207.5 mi (1,943.3 km) of river in Montana, North Dakota, South Dakota, and Nebraska. Table 2 provides land ownership and approximate acreage or river miles of critical habitat for each critical habitat unit. Lands designated as critical habitat are under private, Federal, Tribal, and State ownership. Estimates reflect the total area or river miles within critical habitat unit boundaries, without regard to the presence of primary constituent elements. Therefore, the area included within the designation is less than indicated in Tables 1 and 2.

Lands designated as critical habitat are divided into 19 critical habitat units containing one or more of the primary constituent elements for the northern Great Plains population of piping plovers. A brief description of each piping plover critical habitat unit is provided below and in Table 2.

*Minnesota*

*Unit MN–1, Rocky Point, Pine and Curry Island, and Morris Point*—This unit includes approximately 235.2 ac (95.1 ha) of unique habitat, including sparsely vegetated windswept islands, peninsulas, and sandy points or spits that interface with Lake of the Woods in Lake of the Woods County. Although this unit is small in size, there have been up to 50 plovers found during the breeding season. Numbers have declined since the mid-1980s and there is a continued need for habitat and predator management. This unit represents the most eastern portion of the northern Great Plains population of breeding piping plovers and may be an important link between the Great Lakes and northern Great Plains breeding populations. It is the only remaining breeding site for piping plovers in Minnesota. Approximately 100.4 ac (40.6 ha) are designated within the 697-ac (282.3-hectare) Rocky Point Wildlife Management Area, which is in public ownership, managed by the Minnesota Department of Natural Resources. Rocky

Point is located just east of Arneson on Lake of the Woods. Unit 1 also includes approximately 134.8 ac (54.5 ha) within the Pine and Curry Island Scientific and Natural Area which is in public ownership, managed by the Minnesota Department of Natural Resources. Pine and Curry Island Scientific and Natural Area includes approximately 112.6 ac (45.6 ha) of a sandy barrier island (Pine and Curry Island) and 22.2 ac (8.9 ha) of an adjacent peninsula (Morris Point) located at the mouth of the Rainy River on Lake of the Woods.

*Montana*

*Unit MT–1, Sheridan County*—This unit includes approximately 19,222.9 ac (7,779.4 ha) of 20 alkali lakes and wetlands in Sheridan County, located in the extreme northeast corner of Montana. These alkali lakes and wetlands are characterized as follows—shallow, seasonally to permanently flooded; mixosaline to hypersaline chemistry; sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; 200 ft (61 m) of uplands above the wetlands' high water mark including springs and fens, which provide foraging and protective habitat for piping plovers. Sites included in this unit are occupied by piping plovers. This unit requires special management including increasing reproductive success through predator exclusion devices, such as nest cages and electric fences, and reducing vegetation encroachment on nesting beaches through prescribed burning or grazing. Essential breeding habitat is dispersed throughout this unit which represents the largest portion (approximately 66 percent) of the plovers surveyed in Montana. This unit also links similar habitat in Canada and North Dakota. Approximately 5,571 ac (2,254.5 ha) are in private ownership and 13,651.9 ac (5,524.8 ha) are in public ownership. Of the lands in public ownership, 13,356.8 ac (5,405.4 ha) are in Federal ownership and 295.1 ac (119.4 ha) are in State ownership. Federal lands designated include piping plover populations on Medicine Lake National Wildlife Refuge and several Waterfowl Production Areas, both owned and managed by the Service. State lands designated include land owned and managed by the Montana Department of Natural Resources and Conservation.

*Unit MT–4, Bowdoin National Wildlife Refuge*—This unit encompasses approximately 3,294.5 ac (1,333.2 ha) on Bowdoin National Wildlife Refuge with sparsely vegetated shoreline beaches, peninsulas, and islands composed of sand gravel, or shale that interface with these water bodies. The site is located in east-central Phillips County, approximately 170.8 mi (275 km) west of the North Dakota border and 37.3 mi (60 km) south of Canada. This unit represents the western edge of the northern Great Plains breeding population of the piping plover and requires special management including water level and predator management. Bowdoin National Wildlife Refuge is in public ownership (Federal) and managed by the Service. Lake Bowdoin is an off stream facility receiving water from the Milk River.

*Nebraska*

*Unit NE–1, Platte, Loup, and Niobrara Rivers*—This unit encompasses approximately 440 mi (707.9 km) of river. The river habitat includes sparsely vegetated channel sandbars, sand and gravel beaches on islands within the high bank for nesting, temporary pools on sandbars and islands, and the interface of sand and river where plovers forage. All three of these rivers are occupied by and provide essential habitat for the piping plover.

*Niobrara River*—The Niobrara River is a tributary of the Missouri River, originating in Wyoming and flowing through the northern part of the Nebraska Sandhills region. The portion of the Niobrara included in as Critical Habitat starts at the bridge south of Norton, Nebraska, and extends downstream 120 mi (193 km) to its confluence with the Missouri River. The Niobrara River is one of the most undeveloped rivers in the northern Great Plains and represents one of the last rivers with largely untouched piping plover habitats. The source of water for this river is largely groundwater discharge which helps to provide a year-round base flow with few flood events which are essential to successful plover nesting. Essential nesting habitat is dispersed throughout this unit and this unit represents about 36 percent of Nebraska's plover population. Five miles of the Niobrara are within the Ponca Tribe reservation boundary.

In 1991, Congress designated 76 mi (122.3 km) of the Niobrara River as a ''National Scenic River,'' 50 mi (80.5 km) of which are included in the Critical Habitat designation. The National Scenic River reach ends where Highway 137 crosses the river. The Nature Conservancy owns and manages 9.5 mi (15.3 km) along the Niobrara River that falls within both the National Scenic River reach and the piping plover Critical Habitat. Other ownership and interests are principally private. The primary land use along the Niobrara River is farming (east along the river) and ranching (west along the river).

*Loup River*—The Loup River flows 68 mi (109.4 km) to its confluence with the Platte River near Columbus. Ownership interests within this reach of Critical Habitat are primarily private. Habitat on the Loup River designation is part of the larger Platte River watershed and provides productive habitat for piping plovers. The Loup River is one of the Platte River's principal tributaries.

*Platte River*—The North and Middle Platte Rivers each originate in the Rocky Mountains of Colorado with snow melt, and flow east into Nebraska where they join forming the Platte River near the town of North Platte. The reach included in the piping plover Critical Habitat begins at the Lexington bridge and extends to the Platte's confluence with the Missouri River 252 mi (405.5 km) downstream. About one-fourth of this part of the Platte is already designated as critical habitat for the whooping crane (*Grus americana*), including a 3-mi wide (4.8-km) north-south buffer starting at a western boundary south of Lexington east to south of Shelton. Ownership is primarily private, including 28.5 mi (45.9 km) which is managed as conservation land by The Nature Conservancy, Platte River Whooping Crane Habitat Maintenance Trust, Central Nebraska Public Power and Irrigation District, Nebraska Public Power District, and the National Audubon Society's Lillian Annette Rowe Sanctuary. The State of Nebraska owns 8 mi (12.9 km) along the Platte River, which is primarily under the jurisdiction of the Nebraska Game and Parks Commission. Essential nesting habitat is dispersed throughout this unit.

*North Dakota*

Units 1–10 in North Dakota (described below) include prairie alkali lakes and wetlands. These alkali lakes and wetlands are characterized as follows—shallow; seasonally to permanently flooded; mixosaline to hypersaline chemistry; sandy to gravelly, sparsely vegetated beaches, salt-encrusted mudflats, and/or gravelly salt flats; 200 ft (61 m) of uplands above the wetlands' high water mark, including springs and fens which provide foraging and protective habitat for piping plovers. Sites included in this unit are occupied (determined to have nesting piping plovers in more than 1 year) by piping plovers. This unit requires special management including increasing reproductive success through predator exclusion devices, such as nest cages and electric fences, and reducing

vegetation encroachment on nesting beaches through prescribed burning or grazing.

These essential breeding habitats in North Dakota can support more than 50 percent of the current known population of the northern Great Plains Piping Plover. The proximity of Units 1–10 to the Missouri River provides an important ecological link that may allow birds extra protection from a severe drought that results in dry wetlands basins. As birds experience drought in these units biologists believe birds move to the river. Conversely, birds may move to these units when Missouri River flows are high.

*Unit ND–1*—This unit encompasses approximately 7,456.9 ac (3,017.7 ha) of 13 alkali lakes and wetlands in Divide and Williams Counties, located in the extreme northwestern corner of North Dakota. Approximately 1,765.2 ac (714.3 ha) are in public ownership and 5,691.7 ac (2,303.4 ha) are in private ownership. Of the lands in public ownership 1,337.9 ac (541.4 ha) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 427.2 ac (172.9 ha) are in State ownership. State lands designated include 3.1 ac (1.2 ha) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 424.1 ac (171.6 ha) of school lands owned and managed by the North Dakota Land Department.

*Unit ND–2*—This unit encompasses approximately 20,683.8 ac (8,370.6 ha) of 14 alkali lakes and wetlands in Burke, Renville, and Mountrail Counties, in northwestern North Dakota. Approximately 13,986.5 ac (5,660.2 ha) are in public ownership and 6,697.3 ac (2,710.3 ha) are in private ownership. Of the lands in public ownership, 13,251.8 ac (5,362.9 ha) are in Federal ownership and 734.6 ac (297.3 ha) are in State ownership. Federal lands designated include Lostwood and Upper Souris National Wildlife Refuges and Waterfowl Productions Areas, both owned and managed by the Service. State lands designated include 320.1 ac (129.5 ha) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 414.4 ac (167.7 ha) of school lands owned and managed by the North Dakota Land Department.

*Unit ND–3*—This unit encompasses approximately 2,524.5 ac (1,021.6 ha) of 11 alkali lakes and wetlands in Mountrail and Ward Counties in northwestern North Dakota. Approximately 615.9 ac (249.2 ha) are in public ownership and 1,908.5 ac (772.3 ha) are in private ownership. Of the lands in public ownership, 615.7 ac (249.2 ha) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 0.2 ac (0.08 ha) are in State ownership. State lands designated are owned and managed by the North Dakota Game and Fish Department as a Wildlife Management Area.

*Unit ND–4*—This unit encompasses approximately 5,150.7 ac (2,084.4 ha) of eight alkali lakes and wetlands in McLean County in north-central North Dakota. Approximately 1,292.6 ac (523.1 ha) are in public ownership and 3,858 ac (1,561.3 ha) are in private ownership. Of the lands in public ownership, 752.1 ac (304.3 ha) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 540.5 ac (218.7 ha) are in State ownership. State lands designated include 435.5 ac (176.2 ha) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 104.9 ac (42.4 ha) of school lands owned and managed by the North Dakota Land Department. The John E. Williams Preserve, owned and managed by The Nature Conservancy (private), also is included in this unit.

*Unit ND–5*—This unit encompasses approximately 3,925.6 ac (1,588.7 ha) of 10 alkali lakes and wetlands in McHenry and Sheridan Counties in north-central and central North Dakota. Approximately 406.8 ac (164.6 ha) are in public ownership and 3,518.8 ac (1,424 ha) are in private ownership. All public lands are in Federal ownership with 34.4 ac (13.9 ha) owned and managed by the Service as Waterfowl Production Areas and 372.4 ac (150.7 ha) owned by the BOR and managed by the North Dakota Game and Fish Department as a Wildlife Management Area.

*Unit ND–6*—This unit encompasses approximately 6,075.2 ac (2,458.6 ha) of 11 alkali lakes and wetlands in Benson and Pierce Counties, in northeastern North Dakota. Approximately 767.3 ac (310.5 ha) are in public ownership and 5,307.9 ac (2,148 ha) are in private ownership. Of the lands in public ownership, 724.8 ac (293.3 ha) are in Federal ownership and 42.5 ac (17.2 ha) are in State ownership. State lands designated include 20.7 ac (8.4 ha) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 21.7 ac (8.79 ha) of school lands owned and managed by the North Dakota Land Department.

*Unit ND–7*—This unit encompasses approximately 30,125.7 ac (12,191.7 ha) of nine alkali lakes and wetlands in Burleigh and Kidder Counties, in south-central North Dakota. Approximately 20,012.1 ac (8,089.8 ha) are in public ownership and 10,113.5 ac (4,092.9 ha) are in private ownership. Of the lands in public ownership, 18,113.1 ac (7,330.3 ha) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 1,898.9 ac (768.5 ha) are in State ownership. State lands designated include 1,247.9 ac (505 ha) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 650.9 ac (263.4 ha) of school lands owned and managed by the North Dakota Land Department. Federal lands designated include Long Lake National Wildlife Refuge and Waterfowl Production Areas owned and managed by the Service.

*Unit ND–8*—This unit encompasses approximately 4,056.7 ac (1,641.7 ha) of three alkali lakes and wetlands in Stutsman County, in south-central North Dakota. Approximately 3,593.6 ac (1,454.3 ha) are in public ownership and 463.1 ac (187.4 ha) are in private ownership. Of the lands in public ownership, 3,583.8 ac (1,450.3 ha) are in Federal ownership and 9.7 ac (3.9 ha) are in State ownership. Federal lands designated include Chase Lake and Arrowwood National Wildlife Refuges and Waterfowl Production Areas owned and managed by the Service. State lands designated include 7.9 ac (3.2 ha) of school lands owned and managed by the North Dakota Land Department and 1.8 ac (0.7 ha) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department.

*Unit ND–9*—This unit encompasses approximately 2,658 ac (1,075.6 ha) of six alkali lakes and wetlands in Logan and McIntosh Counties in south-central North Dakota. Approximately 732.5 ac (296.4 ha) are in public ownership and 1,925.5 ac (779.2 ha) are in private ownership. Of the lands in public ownership, 497.7 ac (201.4 ha) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 234.7 ac (95 ha) are in State ownership (Wildlife Management Areas managed by the North Dakota Game and Fish Department.

*Unit ND–10*—This unit encompasses approximately 641.6 ac (259.6 ha) of one alkali lake in Eddy County in northeastern North Dakota. Approximately 6.8 ac (2.7 ha) are in public ownership as a Waterfowl Production Area managed by the Service and 634.7 ac (256.8 ha) are in private ownership.

*Missouri River Units*

*Missouri River Units*—Missouri River units consist of riverine and reservoir (Fort Peck Lake, Lake Sakakawea and Lake Audubon, Lake Oahe, and Lewis and Clark Lake) reaches. All reservoirs

except Lake Audubon are mainstem impoundments, constructed by dams, and regulated by the Corps. Lake Audubon is a sub-impoundment of Lake Sakakawea and is regulated by the BOR through operation of the Snake Creek Pumping Plant. Overall the Missouri River has accounted for up to 31 percent of the northern Great Plains population of piping plovers. All of the units are occupied.

Piping plover habitat within reservoir reaches is composed of shorelines, peninsulas, and islands, below the top of the maximum operating pool and is owned by the Federal government. These reservoir habitats include sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, grave, or shale, and their interface with the water. These reservoir reaches provide habitat for about 42 percent of the piping plovers on the Missouri River.

Piping plover habitat within riverine reaches consists of inter-channel islands and sandbars including their temporary pools and interface with the river. These habitats are sparsely vegetated and consist of sand and gravel substrates. Riverine reaches provide habitat for about 58 percent of the piping plovers on the Missouri River. Ownership of these sites varies by State. In Montana, islands and sandbars are recognized as owned by the State except along the reservation boundaries of the Assiniboine and Sioux Tribes of Fort Peck. The Assiniboine and Sioux Tribes of Fort Peck own land to the mid-channel of the Missouri River adjacent to the Reservation boundary.

In North Dakota and South Dakota, islands and sandbars are recognized as owned by the State. Four Tribes along the Missouri River in North Dakota and South Dakota have critical habitat designated within the boundary of their reservation including the Standing Rock Sioux Tribe, and the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara Tribes) of the Ft. Berthold Reservation, the Cheyenne River Sioux Tribe, and the Yankton Sioux Tribe. Additionally, these Tribes have land or Tribal trust land on submerged sites or sandbars/islands within the critical habitat designation of the Missouri River in North and South Dakota. In Nebraska, islands and sandbars are owned by the adjacent landowner including the Santee Sioux Tribe.

*Montana*

*Unit MT–2*—This unit encompasses approximately 125.4 mi (201.8 km) from just west of Wolf Point, McCone County, Montana, at RM 1712.0 downstream to the Montana/North Dakota border, Richland County, Montana, and McKenzie County, North Dakota, at RM 1586.6. The Missouri River in this unit flows through reservation land of the Assiniboine and Sioux Tribes of Fort Peck (81.7 mi (131.5 km)), State land, and privately owned land.

*Unit MT–3, Fort Peck Reservoir*—This unit encompasses approximately 77,370 ac (31,311 ha) of Fort Peck Reservoir, located entirely within the Charles M. Russell National Wildlife Refuge which is in Federal ownership, managed by the Service.

*North Dakota*

*Unit ND–11, Missouri River*—Approximately 354.6 mi (570.6 km) from the Montana/North Dakota border just west of Williston, McKenzie County, North Dakota, at RM 1586.6 downstream to the North Dakota/South Dakota border in Sioux and Emmons Counties, North Dakota, and Corson and Campbell Counties, South Dakota, at RM 1232.0. Lake Sakakawea, Lake Audubon, and Lake Oahe are included in this unit, along with a free-flowing stretch of the Missouri River from RM 1389 to 1302 (Garrison Reach). The North Dakota Game and Fish Department manages the north half of Audubon Reservoir and the Service manages the south half of Audubon Reservoir. The Missouri River and associated reservoirs in this unit include 6.83 mi (11 km) of shoreline (right and left bank) of trust land and 77 liner rm (123.9 km) within the reservation boundary of the Three Affiliated Tribes of Fort Berthold and 23.22 mi (37.37 km) of shoreline on trust land and 38 linear rm (61.16 km) within the reservation boundary of Standing Rock Sioux Tribe and 20 mi (32.19 km) of shoreline on trust land. A mix of State and privately owned lands also are included in this unit.

*South Dakota*

*Unit SD–1 Missouri River*—Approximately 159.7 mi (257 km) from the North Dakota/South Dakota border northeast of McLaughlin, Corson County, South Dakota, at RM 1232.0 downstream to RM 1072.3, just north of Oahe Dam (Oahe Reservoir). The Missouri River and associated reservoirs in this unit include 3.22 mi (5.18 km) of shoreline (right bank) on trust land and 41 linear mi (65.98 km) within the reservation boundary of the Standing Rock Sioux and 23.44 mi (37.72 km) of shoreline (right bank) on trust land and 77 linear mi (123.92 km) within the reservation boundary of Cheyenne River Sioux Tribe. A mix of State and privately owned lands also are included in this unit.

*Unit SD–2, Missouri River*—Approximately 127.8 mi (204.4 km) from RM 880.0, at Fort Randall Dam, Bon Homme and Charles Mix Counties, South Dakota, downstream to RM 752.2 near Ponca, Dixon County, Nebraska. One mainstem Missouri River reservoir, Lewis and Clark Lake, and two riverine reaches (Fort Randall and Gavins Point) are included in this unit. In addition to the 127.8 mi (204.4 km) that border South Dakota on the left bank there are approximately 7.8 mi (12.4 km) of river bordering South Dakota on the right bank. All islands and sandbars in South Dakota are in State ownership with the exception of 60.36 mi (97.14 km) of shoreline (left bank) on trust land and 34 linear miles (54.72 km) within the reservation boundary of the Yankton Sioux Tribe. Approximately 120 mi (192 km) (right bank) of river border Nebraska. Sandbars and islands in Nebraska (State line extends to mid-channel) belong to the adjacent landowner. Approximately 16 linear mi (25.75 km) (right bank) of river below Ft. Randall Dam are within the boundary of the Santee Sioux Reservation, including 0.05 mi (0.08 km) of shoreline on trust land.

TABLE 1.—CRITICAL HABITAT UNITS FOR THE PIPING PLOVER IN UNITED STATES GREAT PLAINS STATES SUMMARIZED BY FEDERAL, STATE, COUNTY, PRIVATE, AND OTHER OWNERSHIP

[Ownership—linear river miles and acres]
(Percentage within each State)

| | Federal | State | Tribal (Reservation boundary) | Private | Total |
|---|---|---|---|---|---|
| Minnesota | 0 | 235.2 ac (95.2 ha) (100%) | 0 | 0 | 235.2 ac (95.2 ha) |
| Montana | 94,021.4 ac (38,049.2 ha) (94.1%) | 295.1 ac (119.4 ha) (0.3%) | 0 | 5,571.0 ac (2,254.5 ha) (5.6%) | 99,887.5 ac (40,423.1 ha) |
| —Ft. Peck Reservoir (Missouri River) | 77,370.0 ac (31,310.6 ha) | | | | |
| —All other habitat | 16,651.4 ac 6,738.6 ha) | | | | |
| North Dakota | 39,291.2. ac (15,900.95 ha) (47.2%) | 3,888.7 ac (1,573.8 ha) (4.7%) | 0 | 40,119.4 ac (16,236.1 ha) (48.1%) | 83,299.3 ac (33,710.8 ha) |
| Missouri River[1 2] | 460.2 mi (740.6 km) | 307.3 mi (494.6 km) | 503.7 mi[2] (810.6 km) | 0 | 767.5 mi (1,235.2 km) |
| Nebraska | 0 | 13.0 mi (20.9 km) (2.8%) | 5.0 (8.05 km) (0.01%) | 427.0 mi (687.2 km) (97%) | 440.0 mi (708.1 km) |

[1] The Missouri River includes portions of Montana, North Dakota, South Dakota, and Nebraska. Ownership of these sites varies by State. The Federal government owns the reservoir shorelines below the maximum operating pool. In Montana, islands and sandbars are recognized as owned by the State except along the reservation boundaries of the Assiniboine and Sioux Tribes of Fort Peck. The Assiniboine and Sioux Tribes of Fort Peck own land to the mid-channel of the Missouri River adjacent to the Reservation boundary. In North Dakota and South Dakota, islands and sandbars are recognized as owned by the State. However, Tribal trust lands in these States under the Submerged Lands Act (43 U.S.C. 1301–1356) are recognized as held by the United States for benefit of the Tribe In Nebraska, islands and sandbars are owned by the adjacent landowner.

[2] Missouri River uses linear miles and opposite banks can be shared by States or Tribes. The overall total miles of river (767.5) is correct but percentages were not calculated because of the shared linear mileage.

TABLE 2.—LOCATION, OWNERSHIP, AND ESTIMATED LENGTH (OR AREA) OF PIPING PLOVER CRITICAL HABITAT AREAS MAPPED WITHIN THE UNITED STATES GREAT PLAINS

| Unit and Location | County | Land ownership | Est length (mi) or area (ac) |
|---|---|---|---|
| MN–1: | | | |
| Rocky Point | Lake of the Woods | State | 112.6 ac (45.6 ha) |
| Morris Point | | State | 22.2 ac (9.0 ha) |
| Pine & Curry Island | | State | 100.4 ac (40.6 ha) |
| MT–1: | | | |
| Sheridan 1 | Sheridan | State, Private | 734.0 ac (297.0 ha) |
| Sheridan 2 | | Private | 270.9 ac (109.6 ha) |
| Sheridan 3 | | State, Private | 280.9 ac (113.7 ha) |
| Sheridan 4 | | Private | 452.9 ac (183.3 ha) |
| Sheridan 5 | | Private, Federal | 107.1 ac (43.4 ha) |
| Sheridan 6 | | State, Private | 507.1 ac (205.2 ha) |
| Sheridan 7 | | Private, Federal | 100.1 ac (40.5 ha) |
| Sheridan 8 | | State, Private, Federal | 500.2 ac (202.4 ha) |
| Sheridan 9 | | Private, Federal | 88.1 ac (35.7 ha) |
| Sheridan 10 | | State, Private, Federal | 562.1 ac (227.5 ha) |
| Sheridan 11 | | Private | 431.4 ac (174.6 ha) |
| Sheridan 12 | | State, Private | 375.8 ac (152.1 ha) |
| Sheridan 13 | | State, Private, Federal | 1,327.2 ac (537.1 ha) |
| Sheridan 14 | | Private, Federal | 482.7 ac (195.4 ha) |
| Sheridan 15 | | Private | 362.7 ac (146.8 ha) |
| Sheridan 16 | | Federal | 112.1 ac (45.4 ha) |
| Sheridan 17 | | Private, Federal | 565.7 ac (228.9 ha) |
| Sheridan 18 | | State, Federal | 388.9 ac (157.4 ha) |
| Sheridan 19 | | Federal | 151.9 ac (61.5 ha) |
| Sheridan 20 | | Private, Federal | 11,421 ac (4,622 ha) |
| MT–2: | | | |
| Missouri River | McCone, Richland, Roosevelt | State, Tribal | 125.4 mi (201.8 km) |
| MT–3: | | | |
| Fort Peck Reservoir | Garfield, McCone, Valley | Federal | 77,370.0 ac (31,311.0 |
| MT–4: | | | |
| Bowdoin NWR | Phillips | Federal | 3,294.5 ac (1,333.3 ha) |

TABLE 2.—LOCATION, OWNERSHIP, AND ESTIMATED LENGTH (OR AREA) OF PIPING PLOVER CRITICAL HABITAT AREAS MAPPED WITHIN THE UNITED STATES GREAT PLAINS—Continued

| Unit and Location | County | Land ownership | Est length (mi) or area (ac) |
|---|---|---|---|
| ND–1: | | | |
| Divide 1 | Divide | Private | 429.1 ac (173.6 ha) |
| Divide 2 | | Private, Federal | 355.0 ac (143.6 ha) |
| Divide 3 | | Private, Federal | 485.2 ac (196.4 ha) |
| Divide 4 | | Private | 526.7 ac (213.2 ha) |
| Divide 5 | | Private | 421.9 ac (170.7 ha) |
| Divide 6 | | Private, Federal | 1,278.0 ac (517.2 ha) |
| Divide 7 | | Private | 543.1 ac (219.8 ha) |
| Divide 8 | | Private, Federal | 130.1 ac (52.7 ha) |
| Divide 9 | | Private, Federal | 1,028.8 ac (416.3 ha) |
| Divide 10 | | Private | 855.5 ac (346.2 ha) |
| Williams 1 | Williams | Private | 149.0 ac (60.3 ha) |
| Williams 2 | | State, Private | 586.1 ac (237.2 ha) |
| Williams 3 | | Private, Federal | 668.4 ac (270.5 ha) |
| ND–2: | | | |
| Burke 1 | Burke | Private, Federal | 505.6 ac (204.6 ha) |
| Burke 2 | | Private, Federal | 1,017.5 ac (411.8 ha) |
| Burke 3 | | Federal | 61.4 ac (24.8 ha) |
| Mountrail 1 | Mountrail | Private, Federal | 726.2 ac (293.9ha) |
| Mountrail 2 | | State, Private, Federal | 1,633.9 ac (661.2 ha) |
| Mountrail 3 | | Private | 2,829.0 ac (1,144.9 ha) |
| Mountrail 4 | | Private, Federal | 227.1 ac (91.9 ha) |
| Mountrail 5 | | Private, Federal | 475.4 ac (192.4 ha) |
| Mountrail 6 | | State, Private, Federal | 1,122.9 ac (454.4 ha) |
| Mountrail 7 | | State, Private, Federal | 457.5 ac (185.1 ha) |
| Mountrail 8 | | Private, Federal | 362.8 ac (146.8 ha) |
| Mountrail 9 | | Private, Federal | 503.0 ac (203.6 ha) |
| Mountrail 10 | | Private, Federal | 289.2 ac (117.0 ha) |
| Renville 1 | Renville | Federal | 10,472.4 ac (4,238.1 ha) |
| ND–3: | | | |
| Mountrail 11 | Mountrail | Private, Federal | 436.5 ac (176.7 ha) |
| Ward 1 | Ward | Private, Federal | 270.6 ac (109.5 ha) |
| Ward 2 | | Private | 287.1 ac (116.2 ha) |
| Ward 3 | | Private | 69.7 ac (28.2 ha) |
| Ward 4 | | Private | 138.2 ac (55.9 ha) |
| Ward 5 | | State, Private, Federal | 135.5 ac (54.8 ha) |
| Ward 6 | | Private | 446 ac (180.5 ha) |
| Ward 7 | | Private | 56.9 ac (23.0 ha) |
| Ward 8 | | Private, Federal | 235.1 ac (95.2 ha) |
| Ward 9 | | Federal | 134.7 ac (54.5 ha) |
| Ward 10 | | Private, Federal | 314.2 ac (127.2 ha) |
| ND–4: | | | |
| McLean 1 | McClean | Private, Federal | 310.9 ac (125.8 ha) |
| McLean 2 | | Private | 245.2 ac (99.2 ha) |
| McLean 3 | | State, Private, Federal | 542.5 ac (219.5 ha) |
| McLean 4 | | Private, Federal | 476.7 ac (192.9 ha) |
| McLean 5 | | State, Private, Federal | 2,705.2 ac (1,094.8 |
| McLean 6 | | State, Private, Federal | 620 ac (250.9 ha) |
| McLean 7 | | State, Private | 62.1 ac (25.1 ha) |
| McLean 8 | | Private, Federal | 188.3 ac (76.2 ha) |
| ND–5: | | | |
| McHenry 1 | McHenry | Private | 690.9 ac (279.6 ha) |
| McHenry 2 | | Private | 400.0 ac (161.9 ha) |
| McHenry 3 | | Private | 149.5 ac (60.5 ha) |
| McHenry 4 | | Private | 238.8 ac (96.6ha) |
| Sheridan 1 | Sheridan | Private | 488.2 ac (197.6 ha) |
| Sheridan 2 | | Private, Federal | 466.6 ac (188.8 ha) |
| Sheridan 3 | | Private, Federal | 1,119.3 ac (453 ha) |
| Sheridan 4 | | Federal | 231.5 ac (93.7 ha) |
| Sheridan 5 | | Federal | 22.8 ac (9.2 ha) |
| Sheridan 6 | | Federal | 118.1 ac (47.8 ha) |
| ND–6: | | | |
| Benson 1 | Benson | State, Private, Federal | 500.4 ac (202.5 ha) |
| Benson 2 | | Private, Federal | 172.0 ac (69.6 ha) |
| Benson 3 | | Private, Federal | 282.9 ac (114.5 ha) |
| Benson 4 | | State, Private, Federal | 474.5 ac (192.0 ha) |
| Benson 5 | | Private, Federal | 92.9 ac (37.6 ha) |
| Benson 6 | | Private, Federal | 254.5 ac (103.0 ha) |
| Benson 7 | | Private, Federal | 1,899.6 ac (768.7 ha) |
| Pierce 1 | | Private, Federal | 323.9 ac (131.1 ha) |

TABLE 2.—LOCATION, OWNERSHIP, AND ESTIMATED LENGTH (OR AREA) OF PIPING PLOVER CRITICAL HABITAT AREAS MAPPED WITHIN THE UNITED STATES GREAT PLAINS—Continued

| Unit and Location | County | Land ownership | Est length (mi) or area (ac) |
|---|---|---|---|
| Pierce 2 | | Private | 546.5 ac (221.2 ha) |
| Pierce 3 | | Private | 443.2 ac (179.4 ha) |
| Pierce 4 | | Private, Federal | 1,084.9 ac (439.1 ha) |
| ND–7: | | | |
| Burleigh 1 | Burleigh | State, Private, Federal | 1,061 ac (429.4 ha) |
| Burleigh 2 | | Private, Federal | 285.4 ac (115.5 ha) |
| Burleigh 3 | | State, Private, Federal | 2,162.1 ac (875.0 ha) |
| Burleigh 4 | | State, Private | 10,558.7 ac (4273.1 |
| Kidder 1 | Kidder | State, Private | 5,375.1 ac (2,175.3 |
| Kidder 2 | | State, Private, Federal | 629.2 ac (254.6 ha) |
| Kidder 3 | | Private, Federal | 1,251 ac (506.3 ha) |
| Kidder 4 | | Private | 11,44.2 ac (463.1 ha) |
| Kidder 5 | | Private, Federal | 7,658.9 ac (3099.5 ha) |
| ND–8: | | | |
| Stutsman 1 | Stutsman | Federal | 1,117.6 ac (452.3 ha) |
| Stutsman 2 | | Federal | 2,370.2 ac (959.2 ha) |
| Stutsman 3 | | State, Private, Federal | 569 ac (230.3 ha) |
| ND–9: | | | |
| Logan 1 | Logan | Private | 295.1 ac (119.4 ha) |
| Logan 2 | | Private, Federal | 998.6 ac (404.1 ha) |
| Logan 3 | | Private, Federal | 254.4 ac (103.0 ha) |
| Logan 4 | | State, Private | 250.8 ac (101.5 ha) |
| ND–10: | | | |
| McIntosh 1 | McIntosh | Private, Federal | 501.9 ac (203.1 ha) |
| McIntosh 2 | | Private | 357.2 ac (144.5 ha) |
| Eddy 1 | Eddy | Private, Federal | 641.6 ac (259.7 ha) |
| ND–11: | | | |
| Missouri River: | | | |
| Fort Peck Reach | McKenzie, Williams | State | 18.6 mi (29.9 km) |
| Lake Sakakawea & Lake Audubon | Dunn, McKenzie, McLean, Mercer, Mountrial, Williams. | Federal, Tribal | 179.0 mi (288.0 km) |
| —Garrison Reach | Burleigh, Mercer, Morton, Oliver | State | 87.0 mi (140.0 km) |
| —Lake Oahe | Emmons, Morton, Sioux | Federal, Tribal | 70.0 mi (112.6 km) |
| NE–1: | | | |
| Platte River | Buffalo, Butler, Cass, Colfax, Dawson, Dodge, Douglas, Gosper, Hall, Hamilton, Kearney, Merrick, Phelps, Platte, Polk, Sarpy, Saunders. | State, Private | 252.0 mi. (405.5km) |
| Loup River | Howard, Nance, Platte | State, Private | 68.0 mi (109.4 km) |
| Niobrara River | Boyd, Brown, Holt, Keya Paha, Knox, Rock. | State, Private, Tribal[2] | 120.0 mi (193.0 km) |
| SD–1: | | | |
| Missouri River: | | | |
| —Lake Oahe | Campbell, Corson, Dewey, Hughes, Potter, Stanley, Sully, Walworth. | Federal, Tribal,[2] | 159.7 mi (257.0 km) |
| SD–2[1]: | | | |
| Missouri River: | | | |
| —Fort Randall Reach | Bon Homme, Charles Mix, Gregory. | State, Tribal,[2] Private | 36.0 mi (57.9 km) |
| —Lewis and Clark Lake | Bon Homme, Yankton | Federal, Tribal,[2] Private | 32.9 mi (52.9 km) |
| —Gavins Point Reach | Clay, Yankton | State, Private | 58.9 mi (94.8 km) |

[1] Approximately 120.0 mi (193.1 km) of river border Nebraska; of that approximately 87.0 mi (140.0 km) have shared ownership of sandbars and islands with adjacent private landowners in Nebraska (the other 33.0 mi (53.1 km) are Lewis and Clark Lake).
[2] Tribal land details can be found in Unit descriptions.

*Effect of Critical Habitat Designation*

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 and section 10 permits.

However, designation of critical habitat can help focus conservation activities for listed species by identifying areas essential to conserve the species. Designation of critical habitat also alerts the public, as well as land-managing agencies, to the importance of these areas. As a result of critical habitat designation, Federal agencies can prioritize landowner incentive programs such as Conservation Reserve Program enrollment, grassland and wetland easements, and private landowner

agreements that benefit piping plovers. Critical habitat designation also may help States and Tribes in prioritizing their conservation and land-management programs.

*Section 7 Consultation*

Section 7(a)(2) of the Endangered Species Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, Tribes, 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 or activities carried out by a Federal agency.

Section 7(a) of the Endangered Species Act requires Federal agencies, including the Service, 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 Endangered Species Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

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, which are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions 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 or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat. Further, some Federal agencies may have conferenced with us on proposed critical habitat. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect the northern Great Plains breeding population of piping plovers or its critical habitat will require section 7 consultation. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Any activity that results in changes in the hydrology of the unit, including activities associated with drainage activities, flowage control (*e.g.*, changes in releases) and operations, flooding, hydropower, irrigation, sediment transfer changes or removal, construction or maintenance of dams, construction of bridges and marinas, dredging, and bank stabilization;

(2) Any activity that results in development or alteration of the landscape within or immediately adjacent to a hydrologic component of the unit including activities associated with construction for urban and industrial development, roads, marinas, bridges, or bank stabilization; agricultural activities (*e.g.*, plowing adjacent to prairie wetland); off-road vehicle activity; mining; sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded;

(3) Any activity that results in introducing significant amounts of emergent vegetation into the unit;

(4) Any activity that significantly and detrimentally alters water quality in the unit;

(5) Any activity that significantly and detrimentally alters the inputs of sediment and nutrients necessary for the maintenance of geomorphic and biologic processes that ensure appropriately configured and productive systems; and

(6) Any activity that may reduce the value of a site by significantly and detrimentally disturbing plovers from such activities as foraging, brooding, and nesting.

Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or authorized or carried out by a Federal agency do not require section 7 consultation.

Section 4(b)(8) of the Endangered Species 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 adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for the survival and recovery of the northern Great Plains piping plover. Within critical habitat, this pertains only to those areas containing primary constituent elements. We note that such activities also may jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must

first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from likely jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would usually result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the northern Great Plains piping plover is not likely to result in a regulatory burden above that already in place due to the presence of the listed species.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions are not likely to jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulations of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act;

(2) Road and bridge construction and maintenance, right of way designation, and regulation of agricultural activities;

(3) Activities on Federal lands including but not limited to the Corps, the BOR, NPS, and Bureau of Land Management;

(4) Licensing of construction of communication sites by the Federal Communications Commission;

(5) Operations and maintenance of dams by the Corps and the BOR;

(6) Licensing/Relicensing of dams by the Federal Energy and Regulatory Commission;

(7) Funding of activities by the U.S. Environmental Protection Agency, Natural Resource Conservation Service, or any other Federal agency; and

(8) Water development projects by Federal agencies including the BOR, BIA, and other Federal agencies.

All lands designated as critical habitat are within the geographic range of the species. In addition, all sites are considered occupied by the species and are likely to be used by the piping plover whether for foraging, breeding, chick rearing, dispersal, migration, genetic exchange, and sheltering. Thus, we do not anticipate additional regulatory protection will result from critical habitat designation.

This section serves in part as a general guide to clarify activities that may affect or destroy or adversely modify critical habitat. However, specific Federal actions should be reviewed by the action agency. If the agency determines the activity may affect critical habitat, they will consult with us under section 7 of the Endangered Species Act. We will work with the agencies and affected public early in the consultation process to avoid or minimize potential conflicts and, whenever possible, find a solution that protects listed species and their habitat in a manner consistent with the project's intended purpose.

Section 10(a) of the Endangered Species Act authorizes us to issue permits for private actions which result in the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Currently, no approved HCPs cover the northern Great Plains piping plover or its habitat. In the event that HCPs covering the northern Great Plains piping plover are developed in the future within the designated critical habitat, we will work with applicants to ensure the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover, while directing development and habitat modification to nonessential areas of lower habitat value. 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.

During the comment period the South Dakota Department of Game Fish and Parks and the Ft. Peck Assiniboine and Sioux Tribes of Montana expressed an interest in the development of HCPs. We are working with both agencies in the development of these plans. When these plans are completed, the critical habitat designation could be revisited.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent expert opinions from nine persons who are familiar with this species and its habitats, to peer-review the proposed critical habitat designation. Five responded by the end of the comment periods. They provided support for scientific credibility of the proposed rule, valuable information about piping plovers, their habitats, population biology, and ecology, editorial comments, concerns for habitats left out of designation, and editorial comments. These comments are addressed in the following section, and relevant data provided by the reviewers have been incorporated throughout the rule.

**Summary of Comments and Recommendations**

In the June 12, 2001, proposed rule (66 FR 31760), we requested all interested parties to submit comments on the specifics of the proposal including information, policy, and proposed critical habitat boundaries a provided in the proposed rule. The first comment period closed August 13, 2001, allowing for 60 days for review and comment. The comment period was reopened for 30 days, from December 28, 2001, to January 28, 2002 (**Federal Register** 66 FR 67165), to allow for additional comments on the draft Economic Analysis of the proposed critical habitat. However, before that reopening the Service's web sites and electronic mail were disconnected in response to a court order in an unrelated lawsuit. In response to comments received during the December-January comment period the Service sought relief from the courts and the court took action extending the time for the final rule. On March 21, 2002, we again published a notice in the **Federal Register** (67 FR 13123) extending the comment period for another 60 days until May 20, 2002. The total time available for comments totaled 150 days in an 11-month time period.

We contacted all appropriate State and Federal agencies, Tribes, County governments, elected officials, and other interested parties and invited them to comment during all three comment periods. In addition, we invited public comments through the publication of notices in newspapers in Montana, North Dakota, South Dakota, Nebraska, Minnesota, and in a Tribal newspaper, Indian Country Today. In these notices and the proposed rule, we announced the dates and times of five public meetings to be held on the proposed

rule. Their dates and locations are specified above in the section ''Previous Federal Action.'' We posted copies of the proposed rule, draft Environmental Assessment, draft Economic Analysis, associated **Federal Register** notices, fact sheets, and questions and answers concerning critical habitat on our internet site *http://mountain-prairie.fws.gov/pipingplover.*

We received a total of 395 comments during the three public comment periods. Several people submitted comments more than once. In total, written comments were received from 6 Federal agencies, 19 State agencies, 6 Tribal groups, 1 elected official, 36 local governments, 45 organizations, and 282 private individuals. Comments were received from residents in nine States, with Nebraska sources submitting the most of any one State. Four comments were received between comment periods but before the end of the final comment period including—one Federal, one State, one local government, and comments from Congressional Field Hearings in Nebraska. These comments were all considered in the final rule.

All comments received were reviewed for substantive issues and new data regarding critical habitat and the biology and status of the northern Great Plains breeding population of the piping plover, and economic information. We address all relevant comments received during the comment periods in the following summary of issues. Comments of a similar nature are grouped into a single issue. Comments that we incorporated into this final rule are discussed in the ''Summary of Changes from Proposed Rule'' section of this document.

*Issue 1—Biological Justification and Methodology*

*(1A) Comment*—Many commenters made reference to the broad scale of the proposed critical habitat making the designation vague because it includes areas that do not contain the primary constituent elements for the Northern Great Plains population of piping plovers. Further comments were made that designated areas considered not only areas where piping plovers were never observed but excluded areas where piping plovers have been observed. Additional commenters said the maps were not specific enough for comment.

*Response*—We recognize that not all land within designated critical habitat mapped units contains habitat components essential to piping plover conservation. Because they do not contain the primary constituent elements these lands are not being designated as critical habitat.

We are required to designate critical habitat based on the best available information and to describe the critical habitat with specific reference points and specific definable boundaries (50 CFR 424.12(c)). Because landowners in the northern Great Plains are most familiar in the use of township, range, and section descriptions, we used this method in the legal descriptions to help landowners identify their lands in relationship to the mapped critical habitat designation. Further description and clarification are provided in the final rule through better descriptions of mapped habitat units; the addition of township, range, and sections on the alkali lakes and wetlands maps; the addition of UTM coordinates placed in the center of alkali lakes and wetlands; and better location descriptions (*i.e.*, bridge names) on the Platte and Niobrara Rivers.

We also used information gathered during the public comment period to more accurately define the written critical habitat boundaries. We evaluated this new information, especially information concerning site locations or missing locations, and made appropriate changes. We also evaluated new data from the 2001 International Piping Plover Census to further document occurrences in different areas.

Despite our efforts to exclude all areas from critical habitat unit boundaries that do not contain the primary constituent elements for the piping plover, it is not practical to develop unit boundaries and provide maps and legal descriptions that exclude all developed areas such as towns, housing developments, or other developed lands unlikely to provide for the piping plover. We defined critical habitat unit boundaries as specific as practical given the time constraints imposed by the Court, workforce and time limitations, the absence of detailed Geographic Information System coverage in all areas and the dynamic nature of piping plover habitat. However, some areas not essential to conservation of piping plovers were included within critical habitat boundaries but they are not critical habitat.

However, developed areas such as main stem dam structures, buildings, marinas, paved areas, boat ramps, piers, bridges, bank stabilization and breakwater structures, regularly row cropped or plowed agricultural areas, mines, roads and other lands included in the textural description (*e.g.*, high bank bluffs along Missouri River reservoirs) which do not contain the primary constituent elements are not being designated as critical habitat.

Most important, the habitats used by the piping plover in the northern Great Plains, as explained in this rule, are highly dynamic. By using a coarser approach to the mapping effort and refining the critical habitat boundaries by describing those habitat features (primary constituent elements) essential to the plover's life-history requirements, critical habitat designation will accommodate the dynamic nature of the habitat changing through time as primary constituent elements form in one area while disappearing in another. We believe this approach is the only scientifically credible way to ensure the critical habitat designation reflects the species habitat's naturally ephemeral character.

All maps are footnoted with the following clarifying statement, ''Critical habitat is designated only in areas where the primary constituent elements are present.'' This statement reinforces our regulations at 50 CFR 17.94(c), which indicate critical habitat focuses only on the biological and physical constituent elements within the defined area of critical habitat.

In regard to the presence or absence of piping plovers in designated areas, we reviewed all the available survey data since the mid-1980s when the species was listed. Because piping plover breeding habitats are highly variable, use of these areas by piping plovers also is highly variable. Both the definition of critical habitat in the Endangered Species Act and the implementing regulations indicate that critical habitat is a specific geographic area(s) that is essential for the conservation of a threatened or endangered species and that may require special management. The term ''conservation'' is defined under section 3(3) of the Endangered Species Act as the measures necessary to bring a species to the point that its protection under the Endangered Species Act is no longer necessary. The northern Great Plains breeding populations of piping plovers current site distribution from a range perspective is adequate to achieve recovery but piping plover numbers are not adequate to achieve recovery. However, areas designated contain enough of the primary constituent elements to ensure the recovery of the species can be met within the broad delineated areas. Despite the presence of plovers, areas were excluded from designation based on one or more of the following—(1) a management plan exists for those areas that would ensure the species conservation; (2) areas we could not determine whether the sites

were a sink (*i.e.*, areas that attract birds but do not contribute to population productivity) or source for population growth (Kansas River and Colorado Reservoirs); (3) areas where previous breeding was considered an anomaly and insignificant to the species conservation (*e.g.*, parking lots and roads); (4) areas that could not support plovers in the long term (*e.g.*, sites with limited history or minimal potential because of their temporary nature; this includes fly-ash pits and sandpits); and (5) areas consistently surveyed but did not have more than 1 year of nesting (*e.g.*, some alkali wetlands).

We also conducted additional evaluation of the selection criteria used for designation of alkali wetlands in North Dakota and Montana. We included an area in the proposed critical habitat designation if data showed birds at sites in 2 out of 10 years. The 10-year period was chosen because in the northern Great Plains most 10-year periods encompass both wet and dry cycles. These cycles are the basis for the dynamic nature of prairie alkali lakes and wetlands, and the resulting shift in use by piping plovers from 1 year to the next and to different habitat types. The critical habitat criteria were designed to reflect the dynamic nature of water regimes in alkali lakes and wetlands that provide suitable shoreline habitat. The 2-year period was chosen because it demonstrated a consistent pattern of use by breeding piping plovers over a 10-year period. We also had supporting data that most of the sites used by breeding piping plovers also were used as nesting, foraging, and/or brood rearing habitat. Sites where plovers were observed in only 1 year generally had few birds and no records of nesting. Further, this criteria is consistent with criteria established for identifying habitat in Minnesota on the Lake of the Woods.

Our review of the data found plover use of alkali wetlands is evenly distributed among the number of years birds were observed at a site. Thus plover use on alkali lakes breeding grounds is not standard and reflects the natural variation of the northern Great Plains ecosystem. Our review also indicated we did not apply the alkali lakes criteria consistently during our initial review for the proposed rule. For example, several sites were proposed as critical habitat that do not meet the criteria. This sites have been eliminated from the final critical habitat designation. Also, our habitat mapping criteria was further refined and are reflected in this final rule.

*(1B) Comment*—Designating critical habitat for the piping plover will result in such high public animosity that the designation will cause more harm to the species than benefit.

*Response*—We agree that public support is a vital component of protection of federally listed species and their habitat, but, by statute and court order, we must designate critical habitat. We believe most concerns are based on misunderstanding of critical habitat. To clear up these misunderstanding and to increase public support for piping plovers, we expanded out outreach programs to address those issues.

*(1C) Comment*—Many expressed general concerns about the lack of data to support the proposed designation of critical habitat, making the proposed rule seem arbitrary.

*Response*—In accordance with section 3(5)(A)(i) of the Endangered Species Act and regulations at 50 CFR 424.12, we based this critical habitat determination on the best scientific and commercial data available at the time of designation. The designation identifies areas essential to the conservation of the species. As discussed below, peer reviewers concurred that the most current biological information was used for the designation.

The data upon which the designation was made is available for review at the South Dakota Ecological Services Field Office (see **ADDRESSES** section).

*(1D) Comment*—There were many comments about unoccupied habitat being designated as critical habitat on the Platte River. Specifically, some were opposed to the blanket coverage of the Platte River, and recommended that only colony sites be identified.

*Response*—Based on comments received both from commenters and peer reviewers, adjustments have been made. The Platte River unit now extends from near the town of Lexington to Plattsmouth. In the proposed rule the Platte River reach started from near the town of Cozad. This change shortens the Platte River reach by 14 mi. Habitats used by the piping plover in the northern Great Plains are highly dynamic. Designating such a long reach of the Platte River is necessary because of the highly ephemeral nature of shifting sandbars and river channels. Because habitats shifts, nesting does not always occur in the same location year after year. Birds may relocate within a given nesting season, and will utilize a variety of habitats during the course of the nesting season. The concept of critical habitat is to identify critical portions of the functioning habitat as a whole rather than individual fragments which do not function as a whole. Therefore, our approach has identified larger areas, portions of which have the potential to support nesting and foraging in any given year. This approach will accommodate the dynamic nature of the habitat. The extent of actual critical habitat within the broad area is further defined and limited by the primary constituent elements. We believe this approach is the only scientifically credible way to ensure that the critical habitat designation reflects the plovers' naturally ephemeral habitat.

*(1E) Comment*—One commenter stated that in the Service's attempt to identify site specific areas, we overlooked the larger picture of areas essential to the conservation of the species. In effect this commenter believes that areas were excluded from critical habitat because of a narrow focus of the primary constituent elements that falls to address the ''dynamic nature of the habitat.''

*Response*—The Service disagrees that our focus on habitat is narrow. The ''dynamic nature'' of piping plover critical habitats was considered in the proposed rule. However, changes have been made in the final rule to use the ''dynamic ecological process'' that create and maintain habitat as an overriding primary constituent element that must be present at all sites. These processes develop a mosaic of habitats that provide the essential combination of prey, forage, nesting, brooding and chick-rearing for the long term. Without these dynamic processes, sites would not be able to develop and support the other constituent elements.

*(1F) Comment*—Piping plover habitat has increased since historic times, why put on added restrictions?

*Response*—The historic and current record for the piping plover indicates the range of the piping plover may have slighlty expanded as birds have pioneered new sites, but the amount of habitat has significantly decreased. However, biologists are not certain the new site locations are range expansions as the historic record for this species is limited. Habitat loss was one of the primary reasons for listing the piping plover and is most apparent on our river systems. Many of the river systems that were historically occupied by piping plovers have been altered resulting in significant decline in the acreage of sparsely vegetated sandbar nesting habitat. Some documentation of the historic record is in the background section of this final rule. Additional historic information that formed the basis for this critical habitat designation is available in our files at the South Dakota Ecological Services Field Office (see **ADDRESSES** section).

*(1G) Comment*—One commenter suggested identifying instream flow requirements in the primary constituent elements specifically as they relate to riverine habitats.

*Response*—We did not identify specific instream flows in the primary constituent elements because of the complexity of identifying the specific instream flow needed for each river system, and that instream flow requirements should be adaptive, not codified as a rule. Instream flow needs would have to change as the nature and the character of the channel changes with time, accounting for climate seasonality and changes. Identifications of such instream needs are better settled on a location by location basis. However, we do consider instream flows as a component of the dynamic ecological processes that occur in all piping plover habitats and as an overriding primary constituent element. Riverine habitats are maintained by dynamic processes of continuous bank erosion and deposition that constantly reshape the channel and create unvegetated sandbars and islands. These dynamic processes rely on instream flows in riverine systems. Therefore, instream flows are part of the primary constituent elements.

*(1H) Comment*—The Great Lakes and Northern Great Plains Recovery Plan is not a final document and should not be referenced.

*Response*—The Great Lakes and Northern Great Plains Recovery Plan was finalized in 1988. A 1994 revised draft plan with updated information on the species was distributed for public comment. Subsequently, we decided that the recovery of these two inland populations would benefit from separate recovery plans. Although individual recovery plans are in development for these two populations, they have not been completed. The 1994 revised draft plan and our current workings on a new plan contain the best information available. We are required to include the most current scientific and commercial information when designating critical habitat. Therefore, we believe it is important to use the best available information regardless of whether a final recovery plan has been approved.

*(1I) Comment*—The majority of the critical habitat proposed for designation is unsuitable for the plover and contains no primary constituent elements.

*Response*—We do not agree. The primary constituent elements are defined at 50 CFR 424.12(b) as ''principal biological or physical constituent elements within the defined area that are essential to conservation of the species.'' Primary constituent elements may include but are not limited to ''roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types'' (50 CFR 424.12(b)). However, we have modified the primary constituent elements in this final rule to provide better understanding. The sites selected for critical habitat are suitable for piping plovers and have the primary constituent elements.

*(1J) Comment*—You cannot define critical habitat by using ephemeral reference points.

*Response*—We agree, critical habitat must be defined by specific limits using reference points and lines as found on standard topographic maps of the area. We have done this using river miles, township, range, and section, and UTM coordinates depending on the different habitat types. In fact the designations as mapped are inclusive because we could not designate ephemeral reference points like sandbars.

*(1K) Comment*—Designation of piping plover critical habitat ignores the requirement that the Service limit the geographic scope of the designation. The Service must designate with precision or violate applicable law.

*Response*—We have limited the geographic scope to include only occupied areas within the present range of the species. Furthermore, we believe we have designated within as precise a manner as possible within the law and given the ephemeral nature of piping plover critical habitat and time constraints by the court.

*(1L) Comment*—Dynamic ''processes'' cannot be primary element elements.

*Response*—We disagree. The dynamic ecological processes are essential to the conservation of the piping plover. These processes are the basis for the formation of plover habitat. When considering critical habitat, we are to focus on the principal and physical constituent elements that are essential to the conservation of the species. A list of primary constituent elements is included at 50 CFR 424.12(b). This list is noted in the regulations as not being inclusive and includes the example of ''tide'' as a primary constituent element. Tides are an ecological process. While it is not the process as we define it here as a primary constituent element for the piping plover it does establish within the regulation that processes can be included as primary constituent elements. In the final rule, we have clarified the discussion of the primary constituent elements.

*(1M) Comment*—The Service has failed to provide any evidence that any given reach of the rivers with potential habitat will ever become suitable for nesting, *e.g.*, does not contain the physical or biological features for the conservation of the species.

*Response*—The Service has documented nesting for piping plovers on sandbars in all rivers designated as critical habitat. We did not break each river up by reach except for the Missouri River which has a series of river and reservoir habitats. We acknowledge that not all areas in the designated stretches of river will have nesting piping plovers every year. Riverine habitats are maintained by dynamic processes of continuous bank erosion and deposition that constantly reshape the channel and create unvegetated sandbars and islands. In flood years sandbars are eroded and created at higher levels. In drier years some sandbars are lower in elevation and subject to rain events while higher sandbars become vegetated.

We acknowledge the commenter's concerns particularly for the central Platte River. The central Platte River is presently characterized by high elevation sandbars that are characterized by woody vegetation and low elevation sparsely vegetated sandbars that are subject to seasonal flooding while the other Platte River habitats more often have sandbars of elevation that can survive localized flooding events. Therefore, at this time plover habitats on other sections of the Platte River may supply more reliable nesting habitat for piping plovers. Nonetheless, birds continue to be attracted to sandbars in the central Platte River despite their having been unsuccessful in much of the past 10 years. Plovers have been recorded on the central Platte River in all International Piping Plover Censuses (1991, 1996, and 2001) and in survey years between and before the census (1982–2001).

Again the dynamic nature of the northern Great Plains is such that habitats may be better in one place for a few years and inferior the next few years. Ten years is not a significant period of time on the northern Great Plains when considering wet and dry cycles. Based on experiences in other prairie rivers with sandbar habitat (*e.g.*, Missouri River 1996–1997 (Pavelka 2002), central Platte River 1980, 1983, 1984 (Service 2002) and Lower Platte River 1983, 1984, 1990 (Sidle *et al.* 1992), and 1993) we believe that flood or flow events will occur on the central Platte that will encourage the movement, migration and building up of

sandbars so that nesting habitat for piping plovers will again be created. We also have consulted with hydrologists and sedimentologists who have concurred that peak flows that create sandbars/islands will again occur on the central Platte (P. Murphy and D. Anderson pers. comm. 2002).

It also is prudent to include a contiguous stretch of rivers to accommodate the dynamic nature of the habitat, changing through time as the habitat features (primary constituent elements sparsely vegetated channel sandbars, sand and gravel beaches on islands, temporary pools on sandbars and islands, the interface with the river and the dynamic processes that create these features) form in one area while disappearing in another. We believe this is the only scientifically credible way to ensure that critical habitat designation is compatible with the species' habitats' naturally ephemeral character.

*(1N) Comment*—The Service does not describe the relative potential of a given reach's potential for suitability and this commenter questions whether river reaches are currently capable of the formation of sand bars and islands.

*Response*—The Service has records on file documenting piping plover use on rivers. A review of this data on rivers shows that nesting locations on rivers can change. Over the years the dynamics of rivers has been documented in detail (Leopold 1992). However, the integration of river dynamics and piping plover habitat suitability has only been touched on by researchers. The Corps is currently conducting research on the Missouri River to track sandbar habitats in relation to flows. Over the years several studies have been completed on the Platte and Niobrara Rivers to look at sandbar habitats (Peake *et al.* 1985, Ziewitz, Sidle, and Dinan 1992, Sidle, Carlson, Kirsch, and Dinan 1993, Lingle 1993, Adolf 1998). Unfortunately, we have insufficient knowledge of the characteristics of most rivers and the effects of our actions over the years that alter their form and function. Therefore, predicting habitat suitability specifically would be a task beyond this critical habitat designation process. However, we do know enough about the rivers designated that there is a history of piping plovers nesting on sandbar habitats on these rivers and that they will continue to do so, so long as river dynamics continue. As noted in the previous response we believe the dynamic nature of piping plover habitats on rivers and the importance of these dynamic processes will be essential to the conservation and recovery of this species.

*(1O) Comment*—The rationale for excluding the portion of the Missouri River from Ft. Peck Dam to the Milk River could be applied to the central Platte River.

*Response*—We do not agree. Piping plovers have not been documented since listing in the reach of the Missouri River from Ft. Peck Dam to the Milk River. Additionally, the aggradation problem is severe in this reach and sandbars do not occur. However, in the central Platte piping plovers continue to be documented and sandbars are present.

*(1P) Comment*—Absence of historic information makes it impossible for the Service to determine what if any habitat meets the definition of critical habitat.

*Response*—We do not agree. ''Critical habitat means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Endangered Species 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,'' (50 CFR 424.02 (d)). All of the areas designated meet this definition. Furthermore, historic information is available on the piping plover that provides us a good picture of the historic range of this species. Historic information can be found in the Geographic Range section of this rule or in the Recovery Plan ( Service 1988).

*(1Q) Comment*—The Service failed to include a summary of what distribution and abundance data it did consider; this should be included in the final rule.

*Response*—Different aspects of the piping plover's population dynamics are discussed but we do not believe that this rule provides a forum or location for specific distribution and abundance data. Distribution is covered in the ''Geographic Range'' section and abundance data is referred to by reference. Abundance data used in our review is on file and is available from the South Dakota Ecological Services Field Office (see **ADDRESSES** section).

*(1R) Comment*—The Service should provide relevant data regarding the magnitude and frequency of flow necessary to create and destroy habitat, and regarding any other factor which can influence the primary constituent elements.

*Response*—It is not within the scope of critical habitat designation for us to determine the magnitude and frequency of flows on each river that affects the primary constituent elements. However, we do consider the dynamic ecological processes that occur in all piping plover habitats as an overriding primary constituent element. Riverine habitats are maintained by dynamic processes of continuous bank erosion and deposition that constantly reshape the channel and create unvegetated sandbars and islands. These dynamic processes rely on instream flows in riverine systems. Therefore, we have considered instream flows as part of the primary constituent elements. We have worked with cooperative parties on the Platte and Missouri Rivers to identify based on the best available information what the starting point of managing flows might be on those systems through section 7 consultations on Federal projects affecting those rivers. However, the dynamic nature of rivers would potentially require periodic adaptive revisions of flows to reflect changes in habitat conditions thus effectively making the designation of permanent specific flows impossible.

*(1S) Comment*—Plovers were not in the Dakotas until recent years.

*Response*—While it is true that historic data on the distribution of the northern Great Plains is somewhat scarce there is a historic record for the piping plover in the Dakotas that does not agree with the commenter. The first exploration of the Missouri River, the Lewis and Clark expedition passed up the river in 1804 and 1805 and journeyed back down the river in 1806 on their return to St. Louis. On September 21, 1804, the expedition reached the Big Bend of the Missouri River (now beneath the waters of Lake Sharpe) in present day central South Dakota. On that date William Clark wrote, ''* * * we observed an immense number of Plover of Different kind Collecting and taking flight Southerly * * *'' (Moulton 1987). Visher (1911) also reported the piping plover in Harding County, South Dakota, on the North Dakota border. Piping plovers have been reported from South Dakota in subsequent decades since the earliest sightings (South Dakota Ornithologists Union 1991).

In North Dakota piping plovers were observed breeding as early as 1898 on Devils Lake (Rolfe 1899). Breeding continued to be identified in the 1960s (Stewart 1975) and has been documented in 25 North Dakota counties (Stewart 1975 and Service 1988).

*(1T) Comment*—The Service has incorrectly interpreted ''occupied.''

*Response*—We do not agree. The definition of critical habitat states that critical habitat may be designated within geographic areas occupied by a species at the time of listing or specific areas outside the geographic area occupied by a species at the time it was

listed. In this designation all areas are considered occupied. The difficulty of understanding occupation may be because of a myopic view of occupation. Piping plovers on the northern Great Plains are not unique in that many species on the northern Great Plains depend on ephemeral yet stable habitats. For example sandbar/island complexes on rivers are ephemeral but the river is stable. The nature of defining an area of critical habitat as occupied means that the species is known to be present in the critical habitat area. In the example the river segment of the designated critical habitat would be considered occupied when birds were using sandbars anywhere in the reach.

*(1U) Comment*—The Service cannot designate all areas which may be occupied by a species.

*Response*—We disagree. We did not list all occupied areas although it is allowed by regulation. Critical habitat means ''(1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Endangered Species 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 (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination of the Secretary that such areas are essential for the conservation of the species'' (50 CFR 424.02 (d)). Areas considered but not designated included areas that—(1) had a specific management plan for the conservation of the species (*e.g.*, Lake McConaughy); (2) areas we could not determine whether the sites were a sink (*i.e.*, areas that attract birds but do not contribute to population productivity) or source for population growth (Kansas River and Colorado Reservoirs); (3) areas where previous breeding was considered an anomaly and insignificant to the species conservation (*e.g.*, parking lots and roads); (4) areas that could not support plovers in the long term (*e.g.*, sites with limited history and/or minimal potential because of its temporary nature; this includes fly-ash pits and sandpits); and (5) areas consistently surveyed but did not have more than 1 year of nesting (*e.g.*, some alkali wetlands).

*(1V) Comments*—Potentially numerous areas of piping plover critical habitat were unlawfully excluded.

*Response*—We disagree. Areas considered but not designated included areas that had a specific management plan for the conservation of the species (*e.g.*, Lake McConaughy), areas we could not determine whether the sites were a sink (artificially draws birds in but they fail to reproduce resulting in potential declines in population) or source (productivity contributes to population growth) for population growth (Kansas River and Colorado Reservoirs (Colorado also under State recovery and management plan)), areas where previous breeding was considered an anomaly (*e.g.*, parking lots and roads), areas that could not support plovers in the long term (*e.g.*, fly-ash pits and sandpits), and areas consistently surveyed but did not have more than 1 year of nesting (*e.g.*, some alkali wetlands).

*(1W) Comment*—There is a concern that piping plover critical habitat designation is not being done with sound science.

*Response*—Sound science was used to designate critical habitat. Our biologists reviewed the available scientific literature, conferred with local, regional scientists, researchers, and State and Tribal Game and Fish Agencies. The proposed rule was peer reviewed by scientists familiar with the species and its habitat. Many of the comments were favorable to the content of the proposed rule and modifications were made where necessary in line with the peer reviewers and other commenters.

*(1X) Comment*—Lake Sharpe on the Missouri River should be proposed as critical habitat.

*Response*—This comment from the Lower Brule Sioux Tribe reflects a concern by the Tribe that land along the Missouri River on Lake Sharpe is in need of special management if the Tribe is ever to see the return of this species to their reservation. In particular the Tribe refers to a peninsula adjacent to their land and within the Tribal reservation boundary. We cannot disagree that the area of concern by the Tribe on Lake Sharpe is an area in need of special management and meets the definition of critical habitat. Unfortunately because we cannot include it at this time because the public was not given opportunity to comment since Lake Sharpe was not included in the proposed rule. Because of the court-ordered deadline, we cannot repropose critical habitat at this time to include Lake Sharpe. However, we would like to include it later in an amendment if funding allows.

*(1Y) Comment*—The proposed critical habitat is not in their primary range.

*Response*—We disagree. The critical habitat designation does consider the primary range of the northern Great Plains piping plover. Apparently, this commenter was confused with references to piping plovers found in other populations along the Atlantic Coast and Great Lakes.

*(1Z) Comment*—The proposed critical habitat area includes highways, farmsteads, cities, forested areas, etc., that are not habitat for the plover.

*Response*—The commenter is correct in stating that highways, farmsteads, cities, forested areas etc. are not habitat for the plover. These types of areas may occur within the critical habitat boundary but were excluded in the area descriptions and by the lack of primary constituent elements.

*Issue 2—Policy and Regulations*

*(2A) Comment.*—Why are lands covered by management plans for the piping plover included in the designated critical habitat area. Specific references were made to the Platte River Cooperative Agreement, the NPS Management Plans on the Niobrara River, the John Williams Preserve in North Dakota, and the National Wildlife Refuge lands in North Dakota.

*Response*—As implied by these commenters, areas not in need of special management do not meet the definition of critical habitat and, therefore, are not included in a critical habitat designation. We used the following three criteria to determine if a management plan provides adequate special management or protection—(1) A current plan or 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 provisions 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.

On January 3, 2001, the Service's Region 6 Deputy Regional Director sent letters to States, Tribes, Federal agencies, non-governmental organizations, and others involved with the management of the northern Great Plains breeding population of the piping plover, informing them how habitat management plans are considered when designating critical habitat. The Service letter further invited entities to have sites under their jurisdiction with management plans to be submitted for consideration of exclusion during the critical habitat designation process. The only party that expressed interest in review of a management plan for potential exclusion from critical habitat

was the Central Nebraska Public Power and Irrigation District (District). The District has completed a conservation management plan to satisfy a FERC re-licensing requirement. The ''Land and Shoreline Management Plan'' and the ''Management Plan for Least Terns and Piping Plovers Nesting on the Shore of Lake McConaughy'' are being implemented on an interim basis while awaiting FERC approval. The Plan meets the Service's criteria for conservation plans as mentioned above. Therefore, despite the presence of nesting plovers, this site, is eligible for exclusion from critical habitat on the basis of having conservation management plans that specifically address the conservation and recovery of the piping plover. We determined that these plans, developed in coordination with the Nebraska Game and Parks Commission and the Service, were consistent with piping plover recovery and met our criteria for exclusion from critical habitat.

We received no other information from other public or private landowners requesting review of land management plans for consideration of exclusion from critical habitat designation. Therefore, no additional lands were excluded based on ''not [being] in need of special management.''

The Service is a partner in the Platte River Cooperative Agreement. Cooperative Agreement participants are in the process of developing a basin-wide Platte River Recovery Implementation Program. Habitat goals and flow changes will likely be part of any final plan implemented on the Platte River. However, presently, there is no Platte River Recovery Implementation Program. We cannot rely on something that is not in place. Even though the Platte River Cooperative Agreement is in the process of developing a management plan, the geographic scope may not be sufficient to cover all the proposed habitat. Therefore, this plan as yet does not meet our three criteria. When a Platte River Recovery Implementation Plan is in place, we can reconsider the designation of critical habitat.

The NPS in O'Neill, Nebraska, which manages the Wild and Scenic River and Recreational River designations on the Niobrara and Missouri Rivers, sent a letter of support for the designation on the Niobrara River but did not submit management plans for consideration during the critical habitat designation process.

The Service decided not to seek exclusions for our lands in the critical habitat designation process. We determined that the success of piping plover recovery on Service and private lands was intertwined such that there would be no recovery benefit nor regulatory relief in excluding Service lands from the critical habitat designation. The Service does not intend to undertake any management on Service lands that would adversely affect piping plovers or their critical habitat. Therefore, undergoing formal section 7 consultation is unlikely. The Service intends that none of their management actions adversely affect a listed species nor their critical habitat.

*(2B) Comment*—One commenter questioned the manner in which the Service excluded from critical habitat areas covered by ''current management practices or plans,'' noting that these practices or plans are untested, not based on the Endangered Species Act or drafted with the primary purpose of avoiding critical habitat designation. Reference was specifically made to the Lake McConaughy plan.

*Response*—The ''Land and Shoreline Management Plan'' and the ''Management Plan for Least Terns and Piping Plovers Nesting on the Shore of Lake McConaughy'' has been in the development for several years. Both plans are specific to the plover and are being implemented on an interim basis while awaiting FERC approval. The management actions are actions that have proven to be effective. The plans meet the Service's criteria for conservation plans as mentioned above. Therefore, Lake McConaughy, is eligible for exclusion from critical habitat on the basis of conservation management plans that specifically address conservation and recovery of the piping plover.

*(2C) Comment*—Several commenters contended that the benefits of exclusion outweigh the biological benefits of critical habitat.

*Response*—Section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species. As we have determined that no significant adverse economic effects will result from this critical habitat designation, we have not excluded any lands based on economic impacts.

*(2D) Comment*—Many requested an extension of the comment period for the proposed designation primarily to comment on the Economic Analysis completed.

*Response*—Following publication of the proposed critical habitat designation on June 12, 2001, we opened a 60-day public comment period that closed on August 13, 2001, held five public meetings in July 2001, and conducted outreach notifying elected officials, local jurisdictions, States, Tribes, interest groups, and private land owners. We conducted most of this outreach through legal notices in regional newspapers, telephone calls, letters, and news releases mailed to affected elected official, local jurisdictions, and interest groups, and publication of the proposed determination and associated materials on our internet site. We published a document in the **Federal Register** on December 28, 2001, announcing the availability of the draft Economic Analysis and reopening the comments period until January 28, 2002. Because of the court-ordered ten month time frame for completing the designation, we were not able to extend or open an additional public comment period beyond the three months provided. Subsequently, because of the numerous concerns expressed about the lack of access to Service internet sites and delays due to the Christmas/New Year's holidays the Service was able to secure relief from the court ordered March 15, 2002, and got the publication deadline postponed until August 19, 2002, the deadline for final rule publication. Upon receiving relief through the courts, the Service reopened the comment period from March 21, 2002, until May 20, 2002.

*(2E) Comment*—Many commenters referred to the lack of an Economic Analysis which made it impossible to fully evaluate all of the implications of the proposed designation and draft Environmental Assessment.

*Response*—We published a notice in the **Federal Register** on December 28, 2001, announcing the availability of the Economic Analysis and reopening the comment period until January 28, 2002, and again from March 21, 2002, until May 20, 2002. The Service acknowledges that the Economic Analysis was delayed by workload issues and changes that needed to be made according to a 10th Circuit decision (New Mexico Cattle Growers Association v. U.S. Fish and Wildlife Service, 248 F.3d 1277). Additional changes to the Economic Analysis were compiled in an addendum to the Economic Analysis. This addendum addresses comments made during the comment period.

*(2F) Comment*—There was a question whether there were sufficient data to designate critical habitat or to accurately

evaluate, the social, environmental, and economic impacts associated with the designation as required by the National Environmental Policy Act (NEPA).

*Response*—In accordance with section 3(5)(A)(i) of the Endangered Species Act and regulations at 50 CFR 424.12, we are basing this critical habitat determination on the best scientific and commercial data available at the time of designation. The designation indicates areas we believe are essential to conservation of the species. The data used in making this designation is available at the South Dakota Ecological Services Field Office (see **ADDRESSES** section).

The Service prepared a draft Environmental Assessment and a notice of availability was published in the **Federal Register** July 6, 2001, opening a comment period until August 13, 2001. A final Environmental Assessment and Finding of No Significant Impact have been prepared with this final rule. All impacts from critical habitat designation are expected to be indirect, as critical habitat designation does not in itself directly result in any alteration of the environment. Further, the Economic Analysis concluded that critical habitat designation for the plover will lead to minimal economic benefits or impacts separate from the benefits or impacts associated with the listing of the species.

*(2G) Comment*—The draft Environmental Assessment is deficient. The Environmental Assessment fails to address management plans as alternatives to designation and understates the adverse economic impacts of the designation on private activities.

*Response*—An explanation of how the Service addressed management plans as alternatives to critical habitat designation are addressed in Response (2A) above. The Service has made changes in the final Environmental Assessment to better reflect the information from the Economic Analysis.

*(2H) Comment*—Many commenters believed that economic impacts would affect farmers, ranchers, irrigators, and recreational businesses. Additional comments were made that this designation would cause the decline of property values and would infringe on private property rights.

*Response*—A critical habitat designation does not affect a landowner undertaking a project on private land that involves no Federal funding, authorization, or activity carried out by a Federal agency. Critical habitat designation does not impose any new regulatory burdens on private land in addition to any imposed by the species' original listing. Private actions on private property are exempted from the regulatory provisions of the Endangered Species Act unless the actions involve Federal funds, Federal authorizations, or other Federal nexus, or if the activity is likely to result in the take of piping plovers. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Prohibitions against the take of the species under section 9 of the Endangered Species Act are present despite whether or not critical habitat is designated. Although the legal definition of harm includes habitat modification, this applies only to the species and not to critical habitat. Critical habitat is not protected under the take prohibitions of section 9.

The Economic Analysis attempts to identify all potential Federal nexuses on private lands and their associated activities to assess the likelihood of additional section 7 consultations because of the proposed designation. The Economic Analysis identified different Federal agencies having potential nexuses on some private property activities. The analysis also considered the likelihood that critical habitat could trigger additional section 7 consultations based on the historical record of whether any of these nexuses or associated activities have triggered consultations in the past. In most cases involving river habitats, section 7 consultations for the piping plover, interior least tern, bald eagle, and pallid sturgeon, which occupy a significant portion of the river habitats being designated as critical habitat for the piping plover, involve many of the same activities that may affect piping plover habitat. The Platte River already has critical habitat for the whooping crane. For alkali lakes/wetlands, inland reservoirs, and lakes a limited number of section 7 consultations have been completed that considered effects to the piping plover. In cases of both river or alkali lakes/wetland habitats we estimated that a very small number of consultations would be due solely to designation of critical habitat. The Economic Analysis estimated that a maximum of $58,000 per year in consultation costs would be due solely to designation of critical habitat.

In addition to costs associated with the consultation process itself, costs also may be associated with the conservation measures suggested by the Service in the consultation. These costs may include the costs of modifying the design of a project, costs associated with delays in project implementation, the costs changes in ongoing operations of projects (such as Federal dams) necessary to protect a species. While only a subset of past consultations involving the plover included requested conservation or mitigation measures, such measures can impose significant additional costs on projects or operators.

These costs can range from $500 to $4,000 for minor water depletions on the Platte River and other habitat mitigation or improvement actions to minor modifications of project timing. However, the Economic Analysis concluded that the vast majority of any future costs will be due to the listing and subsequent consultation requirements, rather than designation of critical habitat.

We have no data indicating designation of critical habitat for the piping plover will cause declines in property values. The designation is not expected to have a significant economic impact on a substantial number of small entities and landowners because it imposes very little, if any, additional restrictions on land use beyond those that may be required as a result of listing the piping plover. Only activities taking place on their property having some sort of Federal nexus could potentially be affected and experience has shown that most of those activities are easily modified or rarely warrant enough concern to trigger formal section 7 consultation. Because the piping plover is a federally protected species, landowners are prohibited from taking the species under the Endangered Species Act. Non-Federal activities occurring on private property that could result in the ''take'' of a species would still be subject to coordination with the Service under the HCP provisions in section 10 of the Endangered Species Act. Such requirements remain unaffected by the designation of critical habitat.

*(2I) Comment*—Several State Departments of Transportation commented that the critical habitat designation would place an unacceptable burden on these agencies because construction, upgrade, and maintenance activities would be delayed because of additional section 7 consultation paper work and schedule delays caused by the designation. Several counties expressed similar concerns for activities such as road and bridge construction and maintenance, bank stabilization projects, dredging, construction of dwellings, roads, marinas, and other structures and associated impacts such as staging equipment and materials, certain types and levels of recreational activities and

water development projects including groundwater withdrawal, municipal, industrial, and agricultural water.

*Response*—Section 7(a) of the Endangered Species Act requires Federal agencies 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 critical habitat for the survival and recovery of the species. Federal actions not affecting the species or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation and will not be affected by critical habitat designation. Federal agencies will need to review their actions to determine if the species or its designated critical habitat would be affected. If the Federal action agency determines the proposed activity may affect the species or critical habitat, the agency will consult with us under section 7 of the Endangered Species Act. This process is already in place and is implemented by Federal agencies, and will not change with this designation.

The implications of the consultation process on agencies will vary according to the nature of the project. If during the consultation process, the Federal agency determined that the activity is likely to adversely modify critical habitat, we will work with the agency to minimize negative impacts to critical habitat. We will work with agencies and the affected public early in the process to avoid or minimize potential conflicts and wherever possible find a solution which protects listed species and their habitat while allowing the action to proceed. It has been our experience when working with numerous Federal agencies over the years that involving the Service early on in the planning process is the best way to avoid and minimize project delays.

*(2J) Comment*—Several commenters had concerns about the impacts of critical habitat designation on recreation and in some instances, tourism. The majority of concerns were from air boaters and all-terrain vehicle (ATVs) users.

*Response*—Most recreational activities have no Federal nexus and, therefore, will not be impacted by critical habitat designation. Use of piping plover critical habitat would only be affected if a Federal agency funds, authorizes, or carries out an action that will result in a level of human use that precludes successful piping plover breeding. In those cases we will work with the Federal agency (and the applicant) involved to protect potential breeding habitat while having as minimal an effect as possible on people's enjoyment of the areas. On non-Federal lands recreational activities will not be affected by the critical habitat designation. Access to private property is at the discretion of the landowners and critical habitat designation will have no effect upon property access issues. However, some recreational activities in active breeding areas have the potential to take birds as defined in section 9 of the Endangered Species Act. This provision of the Endangered Species Act was initiated upon listing of the species not the designation of critical habitat.

*(2K) Comment*—A couple of commenters expressed concerns about human safety related to State Department of Transportation projects that could be delayed by critical habitat designation.

*Response*—No delays should occur solely due to critical habitat designation. Ongoing projects should have already initiated section 7 consultations based on the listing of the species. Since unoccupied areas have not been designated then critical habitat would not be the sole basis for section 7 consultation initiation. Furthermore, projects initiated since the proposed critical habitat rule should have initiated conferencing (50 CFR 402.10) actions on any proposed project. Conferencing resolves potential conflicts between the time of the action and proposed critical habitat at an early point in the decision making process. Therefore, projects should not be delayed due to critical habitat designation. Early consultations (50 CFR 402.11) and emergency consultations (50 CFR 402.05) also are allowed so that delays can be avoided and human safety issues addressed.

*(2L) Comment*—One commenter was concerned that the draft Environmental Assessment failed to adequately address social impacts to Nebraska landowners. This commenter further claims a disproportionate impact on private landowners in Nebraska because of the high percentage of private land versus Federal land designated.

*Response*—We do not agree that private landowners are disproportionally affected by critical habitat designation. As previously mentioned, critical habitat only affects Federal actions. Therefore, actions on Federal land would require a section 7 consultation. Actions on private land will only involve section 7 consultation if there is a Federal action or authorization such as funding or permitting. The Service has made some changes to the final Environmental Assessment and Economic Analysis to make social issues associated with critical habitat more understandable.

*(2M) Comment*—Several State Departments of Transportation were concerned that the critical habitat designation creates redundancy in how projects are reviewed.

*Response*—We disagree that critical habitat designation is redundant with other project review processes. Critical habitat benefits species conservation by identifying important areas, describing the features within those areas that are essential to the conservation of the species (primary constituent elements), and by alerting public and private entities to the area's importance. This type of information is not always readily available to Federal agencies designing or revising projects. Critical habitat is an additional layer of information that can facilitate the section 7 review process.

*(2N) Comment*—State management is adequate without Federal government intervention. The rules already in effect adequately protect the piping plover.

*Response*—Management for the piping plover varies by State. This management has yet to lead to the recovery of the piping plover. While critical habitat designations usually add only marginal protections above those already afforded a listed species, its designation is required under the Endangered Species Act if any benefits would accrue to the species at hand. Furthermore, there is a court order that says we will designate critical habitat. As discussed in this rule critical habitat does provide some benefit to the northern Great Plains breeding piping plover population.

*(2O) Comment*—Management plans are a better solution than critical habitat.

*Response*—We agree that management plans are an alternative to designation of critical habitat. On January 3, 2001, the Service's Region 6 Deputy Regional Director sent letters to States, Tribes, Federal Agencies, non-governmental organizations, and others involved with the management of the northern Great Plains breeding population of the piping plover, explaining how habitat management plans can be considered when designating critical habitat. The Service letter further invited entities to submit management plans for consideration. Only one party expressed interest in using a management plan for potential exclusion from critical habitat (*see* response to 2A above).

*(2P) Comment*—The draft Environmental Assessment is deficient because it failed to consider the Platte River Recovery Implementation Program as an alternative and the Economic Analysis was not considered in the draft Environmental Assessment.

*Response*—The Platte River Recovery Implementation Plan was not considered as an alternative to designating critical habitat because it does not meet the requirements of a management plan as noted in (2A) above. The final Environmental Assessment does consider the Economic Analysis.

*(2Q) Comment*—Some commenters stated that designation of critical habitat is not beneficial to the piping plover nor its recovery.

*Response*—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 and section 10 permits.

However, designation of critical habitat can help focus conservation and recovery activities for listed species by identifying areas essential to conserve the species. Designation of critical habitat also alerts the public, as well as land-managing agencies, to the importance of these areas.

As a result of critical habitat designation, Federal agencies may be able to prioritize landowner incentive programs such as Conservation Reserve Program enrollment, grassland easements, and private landowner agreements that benefit piping plovers. Critical habitat designation also may assist States and Tribes in prioritizing their conservation and land-management programs. Designating critical habitat also may provide educational and informational benefits by alerting private individuals and organizations to the importance of these areas to the conservation of the species.

*(2R) Comment*—Timeframe for comments on the proposed rule and the Economic Analysis was insufficient and should be extended.

*Response*—On June 12, 2001, we published a proposed determination for the designation of critical habitat for the northern Great Plains breeding population of the piping plover (66 FR 31760). The comment period was open until August 13, 2001. On December 28, 2001, we published a notice in the **Federal Register** (66 FR 249) announcing the reopening of the comment period and a notice of the availability of the draft Economic Analysis on the proposed rule. This comment period was open until January 28, 2002. However, before that reopening the Service's web sites and electronic mail were disconnected in response to a court order in an unrelated lawsuit. In response to comments received during the December-January comment period the Service sought relief from the courts and the court took action extending the time for the final rule. On March 21, 2002, we again published a notice in the **Federal Register** (67FR55) extending the comment period until May 20, 2002. In total, 150 days were allowed for comment on the proposed rule and draft Environmental Assessment and 90 days were allowed for comment on the Economic Analysis.

*(2S) Comment*—The proposed designation will adversely impact the ability of natural resource managers to efficiently manage those natural resources in the future.

*Response*—Other natural resource management activities, *e.g.*, backwater restoration projects on the Missouri River already undergo section 7 consultation under the Endangered Species Act, and as previously mentioned, the designation of critical habitat only adds additional review of the project in regard to its impacts to critical habitat. In most if not all situations the initial review of the project, by virtue of the listing of the piping plover will provide the appropriate review and action recommendations such that additional recommendations for critical habitat will not be necessary. This is because impacts to the piping plover are significantly tied to impacts to this species' habitat.

*(2T) Comment*—When the Service listed the piping plover, the ''ephemeral'' nature of the piping plover's nesting habitat was listed as a reason for not designating habitat and now the Service wants to use the same reason to designate everything as critical habitat.

*Response*—The Service had stated in the original proposed rule (49 FR 44712) for listing the piping plover that critical habitat designation would not be prudent because of the often ephemeral nature of the plover's nesting habitat. However, in the final listing rule (50 FR 238), in response to public comments the Service chose to review the determinability of areas submitted during the original listing process and other potential areas as potential critical habitat. We further stated that ''the prudence of such a determination will be reviewed within 1 year, as allowed under section 4(b) (6)(C) of the Endangered Species Act.'' Subsequently, we did not propose critical habitat within 1 year and the court has required us to list critical habitat for the northern Great Plains piping plover population by August 2002.

*(2U) Comment*—What is the authority the Services uses to declare man-made habitat as critical?

*Response*—We have not designated man-made habitats as critical. However, it appears there are different interpretations of what are man-made habitats. Dams have been placed on rivers and are man-made but the dams have not been designated as critical habitat. Some commenters interpret that reservoirs are man made and by including reservoirs behind the dam we have included man-made habitats. Yet, the rivers are still in place and flow through the reservoir and dams. Now instead of islands there are reservoir shorelines and peninsulas instead of islands.

On rivers, land managing agencies have manipulated islands and sandbars (*e.g.*, cleared vegetation) to provide habitat for piping plovers. Some consider these areas to be man-made habitats; we do not. The dynamic nature of rivers formed the sandbar/islands and man has enhanced them to provide habitats for plovers where dams or other flow related activities have altered the river dynamics changing the sandbar/island migration process. Therefore, we do not agree that we have listed man-made habitats as critical. A review of the primary constituent elements shows we have tried to clarify the issue of man-made habitats by avoiding the listing of artificial or short term habitats critical to the conservation of this species (*e.g.*, sand and fly-ash pits). Man-made habitats in absence of the primary constituent elements are not critical habitat.

*Issue 3—Site Specific Issues*

*(3A) Comment*—A concern was expressed over the use of the term ''high water mark'' in reference to the mapping of prairie alkali wetlands, because the term implies that the area considered as critical habitat may change over time.

*Response*—The Service acknowledges- that ''high water mark'' lines may change over time. However, the Service used photos taken during the highest water period, in the spring, to create the National Wetland Inventory (NWI) maps that form the base for the critical habitat maps. Most of the NWI maps used were created from photos from the early 1980s (1982, 1983) and are the most recent maps available. The critical habitat is further defined by the primary constituent

elements. Our mapping methods are described in the final rule and discussed in response to comment 1A above.

*(3B) Comment*—The BOR corrected site descriptions for land owned by the United States and administered by the BOR in Units ND–3 and ND–4.

*Response*—The Service has reviewed the information and made the appropriate modifications.

*(3C) Comment*—We received a request to exclude the portion of Lewis and Clark Lake on the Missouri River from the Chief Standing Bear Memorial Bridge east to Gavins Point Dam.

*Response*—Unfortunately, this request did not provide information to support the withdrawal of this section of the Missouri River. Previous evaluations (Service 2000) made of data collected more than 14 years on the Missouri River showed that Lewis and Clark Lake supports more than 6 percent of the Missouri River plovers. While plovers currently concentrate at this time in the upper part of this reach, the majority of nesting sites are located 3 mi above and below the Chief Standing Bear Memorial bridge. With continued sediment aggradation in this reach we expect that habitat for piping plovers will continue to be created especially downstream of the bridge. Therefore, using the best scientific information available for this reach of river we have kept this reach in the final critical habitat designation.

*(3D) Comment*—The South Dakota Department of Game, Fish and Parks (SDGFP) and one other commenter recommended that Lake Francis Case not be included in the piping plover critical habitat designation.

*Response*—We reviewed the information provided by the SDGFP supporting the removal of Lake Francis Case from the designation. This information indicated that nesting piping plovers have not been documented nesting in this reach in recent times. We reviewed additional information from the 2001 International Piping Plover Census which found no plovers in this reach despite the recent formation of some new habitat. We further interviewed Corps staff concerning the operations of Lake Francis Case and the availability of habitat during the nesting season. Natural Resource staff at the Corps' Ft. Randall Project office indicated that while habitat is developing in Lake Francis Case just above the mouth of the White River, the flows on the river do not allow for sufficient exposure time for nesting plovers. Based on this information it is apparent that Lake Francis Case does not now and is not likely in the near future to provide significant nesting habitat for the piping plover. Based on a review of all of this information we removed Lake Francis Case from consideration as critical habitat.

*(3E) Comment*—The Glasgow Irrigation District, recognizing the MOU between the U.S. Department of Interior, BOR, the Service, and Bowdoin National Wildlife Refuge that protects the piping plovers and maintains Nelson reservoir for irrigation, recommended that Nelson Reservoir not be included as critical habitat.

*Response*—As discuss above, we have reviewed the current MOU for Nelson Reservoir and removed this area from the piping plover critical habitat designation.

*(3F) Comment*—One commenter proposed including fly ash settlement ponds at two Iowa coal-fired plants as critical habitat.

*Response*—The two fly ash pits are presently managed by MidAmerica Energy for both the coal-fired power plants and for nesting piping plovers. As modified, disturbed, and temporary habitats which support few birds, and do not need special management at this time we believe that these sites do not meet the requirements of critical habitat. Additionally, the Iowa Department of Natural Resources does not consider these areas essential to piping plovers.

*(3G) Comment*—One commenter was concerned that certain areas have been excluded from the proposed critical habitat designation. Specifically this commenter expressed concerns that any occupied habitat could be excluded for a species as imperiled as the northern Great Plains piping plover. The commenter specifically referred to exclusions on the Missouri River, Colorado, Kansas, Oklahoma, and exclusions for areas with management plans, *i.e.*, Lake McConaughy.

*Response*—Lake McConaughy was excluded because we determined that a sufficient long-term management plan is in place (see reply to item (2A) above) that provides for the conservation and recovery of piping plovers. The Lake Sharpe and Lake Francis Case reaches of the Missouri River were excluded from designation because they presently do not support nesting birds and do not contain the primary constituent elements. Lake Sharpe under current operations is a flow-through reservoir and has a very small amount of carryover and multiple-use storage space. This limits any sandbar or shoreline habitat. Lake Francis Case also is a small reservoir reach which remains filled into the annual flood control zone throughout most of the piping plover nesting season, limiting sandbar or shoreline habitat. The greatest variability on Lake Francis Case occurs in the fall after the birds have migrated. The Service acknowledges that at some time in the future these areas may be important piping plover recovery by virtue of their being a part of the Missouri River and our decision can be reevaluated at such a time.

Sites in Kansas, Colorado, and Oklahoma do not have a history of successful nesting piping plovers. Piping plovers at these areas are nesting in artificial situations. In Kansas, habitat was created as a result of an historic flood event followed by favorable flows. The flood events that created and supported the habitat are expected infrequently. Therefore, the dynamic ecological processes on the Kansas River do not support the long-term habitat needs for piping plovers. At Colorado birds are nesting on man-made reservoirs in small numbers and are dependent on intensive management efforts by State biologists. At Oklahoma the use of this site was a man-made reservoir and a one time occurrence. At Oklahoma and Colorado the long-term presence of dynamic ecological processes necessary to maintain long-term habitats is suspect. The Service recommends continued monitoring of these areas, to determine if these sites are a source for population productivity or artificial situations that may attract birds only to have them be unsuccessful in their long-term persistence at these sites. Therefore, at this time these sites are not considered essential to the conservation and recovery of the piping plover and should not be designated as critical habitat. Should information become available to the contrary the Service can reevaluate these sites.

*(3H) Comment*—Four State Departments of Transportation requested that highway projects, including easements, and fee-title lands for roads and bridges, be exempted from critical habitat designation because they believed an extra regulatory burden would be placed on their agencies for section 7 consultation.

*Response*—We have responded to their concerns about section 7 consultations in item (2H) above. Highways and bridges already built do not meet the definition of critical habitat and are already excluded. We do not agree that any additional regulatory burden will be put on future highway projects in addition to what already exists now as a result of the listing of the species. Not one highway project has been stopped since the piping plover was listed. All projects have proceeded with no more adjustments made for the piping plover than are made for other Federal regulatory

issues, such as the Historic Preservation Act.

*(3I) Comments*—The NDNG requested that Camp Grafton, which includes Lake Coe, be exempted from critical habitat designation because the NDNG has an active Integrated Natural Resources Management Plan in place for management of piping plovers.

*Response*—The NDNG owns portions of Lake Coe in North Dakota which were mapped as critical habitat in the proposed rule. The NDNG has completed the Camp Grafton Integrated Natural Resources Management Plan which includes Lake Coe. This plan provides a benefit for piping plovers on Lake Coe; includes implementation assurances and includes an opportunity for adaptive management. Therefore, this area of Lake Coe on Camp Grafton is not in need of special management and at the request of the NDNG, we have excluded the NDNG property on Lake Coe from critical habitat designation.

*(3J) Comment*—One commenter claimed that today's flows on the Missouri River provide much improved habitat for shorebirds and provided graphs of historic flows.

*Response*—We have reviewed the historic flow information from the Missouri River and do not agree that habitat today is much improved by current operations. The Service addresses the impacts of the operations of the Missouri River on the piping plover in detail in our November 30, 2000, biological opinion to the Corps (Service 2000) at >*http://www.nwd-mr.usace.army.mil/mmanual/opinion.html*<. The commenter provided graphs showing mean discharges on the Missouri River at Bismarck. These graphs show high flows peaking in June that the commenter equates with eliminating habitat for shorebirds like the piping plover. We know two things for sure about the Missouri River—(1) piping plovers used the Missouri River historically and (2) the Missouri River had hundreds of thousands of acres of sandbars at various elevations and sizes (Service 2000a). The current thinking by scientists is that piping plovers experienced and adapted to the dynamic ecological processes of the Missouri River. There were years when production was great because of the habitat provided by Missouri River sandbars, or production was poor because of flooding or production was somewhere between. Essentially productivity of the birds was linked to habitat conditions on the river much like it is today. Yet historically the population of plovers was greater in number and able to adapt to such fluctuations. On the Missouri River piping plovers most likely cued their nest initiation to declining flows in the river. As experienced in recent floods on the Missouri River in the 1990s, flooding creates high elevation sandbars that can be used successfully in subsequent years. Historically, plovers also nested on tributaries to the Missouri River plus prairie alkali wetlands. Tributaries and prairie wetlands offered alternative nesting areas for Missouri River birds affected by long-term flooding. Therefore, though historic mean daily discharges appear to some to preclude any historic use of the Missouri River by piping plovers it only portrays one aspect of the ecological picture. We do not believe that historic mean daily discharges accurately portray Missouri River piping plover nesting from all the historic and scientific information available.

*(3K) Comment*—The City of Bismarck requested removing the critical habitat designation for all lands along the Missouri River between a point 3 mi north of the Grant Marsh bridge and a point 3 mi south of the Bismarck Expressway bridge because of concerns for potential restrictions on the construction of a new bridge north of Bismarck.

*Response*—There are sandbar/islands in the vicinity of the bridges on the Missouri River that contain the primary constituent elements. This rule maintains the critical habitat designation in the vicinity of the bridges. However, since the City of Bismarck is just beginning planning for this bridge there is plenty of time for coordination with the Service's North Dakota Field Office to evaluate bridge locations that would avoid or reduce any potential impacts to piping plovers and their habitats on the Missouri River. The Service does not anticipate that the critical habitat designation will affect the bridge planning process beyond what project planners should already expect because of the presence of plovers nesting in this reach of river. Furthermore, the Service has a history of working through projects like this so that the species is conserved and the project proceeds.

*Issue 4—Nebraska River Issues*

*(4A) Comments*—Several commenters from Nebraska expressed concern that the general critical habitat boundaries along the Platte, Niobrara, and Loup Rivers and the location of excluded areas were not sufficiently detailed to easily ascertain which areas are covered critical habitat and which are not. Others commented on the confusion between noted exclusions and sandpits which exhibit primary constituent elements.

*Response*—Our response is similar to our response to Comment (1A) above. The necessity of designating a long reach of the Platte River is caused by the highly ephemeral habitat and the fact that nesting does not always occur in the same location year after year. In addition, birds may relocate within a nesting season, and will use a variety of habitats during the course of the nesting season. The marking of individual colonies is not always possible, and when done, marking only identifies the actual nesting location and does not acknowledge foraging habitat. The concept of critical habitat is to identify critical portions of the functioning habitat as a whole rather than individual fragments which do not function as a whole. Therefore, the ''blanket'' approach has been used to identify large areas, which in any given year have the potential to support nesting, as well as foraging.

For the Nebraska rivers we tried to better define the areas by adding better descriptions of locations. We also tried to better explain the role of primary constituent elements in further defining the critical habitat.

Although sandpits were discussed in the draft Environmental Assessment, the proposed rule was short on how sandpits were considered. Commenters have provided much data on sandpits and have discussed the need to include them and exclude them. We have thoroughly reviewed the information provided and additional information from the Nebraska Game and Parks Commission and various agencies that manage the sandpit areas. We have concluded that sandpits do not support the primary biological constituent element of dynamic ecological processes. Because sandpits are artificial and temporary, not all of the necessary biological and physical features that are essential to the conservation of the species are present at sandpits. We agree that sandpits have produced piping plovers over the years but it has not been without significant resource actions from managing agencies. Some biologists believe that the sandpits have been successful because of their location adjacent to the Platte River (Corn and Armbruster 1983 and Kirsch pers. comm. 2001). ''Birds nesting on sandpits appear to forage on river channel sites as well as on the sandpit shoreline, and in some cases appear to fly up to a mile between the sandpit nest site and the river channel foraging site (Corn and Armbruster 1993). Because sandpits are man-made, the

sand environment is machine shifted regularly affecting vegetative growth and soil moisture. Soil moisture at sandpit sites is lower than on river channel sites and declines dramatically from the shoreline edge on sandpits. Corn and Armbruster (1983) found that soil moisture was the key factor in explaining the difference in invertebrate catch rates between rivers and sandpits. They also found Invertebrate catch rates and densities are higher on river channel sites than on sandpits and invertebrate catch rates increased more dramatically over the course of the summer on river channel sites than on sandpits. Without the dynamic ecological processes sandpit habitats are only temporary for piping plovers. Once sandpits are abandoned, they become vegetated and too dense for piping plovers and the physical primary constituent elements are eliminated. Because sandpits do not meet the primary constituent element and are not likely to meet the primary constituent element in the future, we have excluded them from designation.

In addition to the lack of the primary constituent element, the nature of sandpits is not conducive to long-term management and recovery of the piping plover. We expect that mining will continue in areas of Nebraska as it has for years. However, eventually the mined areas are abandoned and usually sold for residential development. Usually within 1 and 3 years the abandoned mines re-vegetate and all value for piping plover nesting habitat is lost. Therefore, sandpits do not provide for piping plover recovery in the long term. This was recognized the recovery plan as sandpits are not listed as essential habitat. We have made changes in the final rule to clarify the exclusion of sandpits.

*(4B) Comment*—Many commenters requested exclusion of the Loup River between Genoa, Nebraska, and Columbus, Nebraska. Thirty-two form letters were received expressing concern over disruption of recreational activities along the Loup River. The form letters state that as a result of the operations of Loup Power District's canal west of Genoa, Nebraska, and the electrical generating plant by Columbus, Nebraska, the reach of the Loup River between Genoa and Columbus is either dry or inundated. Commenters contend that this would preclude successful nesting, and, therefore, this reach be excluded from critical habitat designation and left open to the public for recreation. Many commenters also expressed belief that if an area is designated as critical habitat it is essentially closed to public use.

*Response*—The Service agrees that flood events hamper nesting in this reach, but does not agree that the area is unworthy of inclusion in the critical habitat designation. Periodic flooding can be beneficial because it scours vegetation and encourages sandbar movement and regeneration, which results in wide sandy channels with little to no in-channel vegetation. The critical habitat designation does not limit or change existing recreational access on private property. Access will continue to be at the discretion of the landowner, and as stated earlier in this section, harassment or take of a threatened species will continue to be prohibited under the Endangered Species Act, as it has been since the species was listed, despite whether a critical habitat designation is in place or not.

*(4C) Comment*—One commenter requested that islands within the Platte River, within and adjoining the boundaries of the County of Saunders (but outside of county, State, or Federal rights of way, roads, highways, and bridges) be designated as critical habitat and that the wetlands located within the Metropolitan Utilities District of Omaha well fields and the City of Lincoln's well fields within Saunders County be designated as critical habitat for piping plovers.

*Response*—Islands within the Platte River along Saunders County were previously proposed for designation as critical habitat for the piping plover (66 FR 31760) and that designation remains in the final rule. The wetlands within the well fields were not proposed as critical habitat as they have no record of supporting nesting piping plovers and are not considered essential habitat for the recovery of this species.

*(4D) Comment*—The vast majority of Nebraska river reaches do not contain the physical or biological features (primary constituent elements) suitable for plover nesting.

*Response*—We disagree. Nebraska's rivers still have dynamic ecological processes that create and maintain sandbar habitats for piping plovers. We recognize that sandbars can migrate, appear, and reappear depending on flows and hydrologic cycles. However, as long as those processes continue on these rivers we believe that these rivers will continue to support critical habitat for piping plovers. We have further clarified the primary constituent elements of the final rule in order to bring clarity to this issue.

*(4E) Comment*—The Service has failed to explain why more than 500 mi of Nebraska's rivers are essential for the conservation of the species.

*Response*—We have reviewed the designation of rivers in Nebraska and have made some changes based on additional information provided during the comment period and there are now 440 rm designated in Nebraska. We believe based on our review of the available scientific information including but not limited to the historic and present nesting information in Nebraska that the riverine habitats proposed in Nebraska meet the definition of critical habitat, are essential to the conservation of the species, and are essential to meeting the recovery goals for the northern Great Plains population of the piping plover.

*(4F) Comment*—Use, nesting and census data do not support the entire Platte River is essential for the conservation of the species.

*Response*—First the entire Platte River has not been designated. The Platte River upstream of Cozad was not proposed for designation. We have since further modified the designation from the proposed rule based on information received during the comment period. The Platte River portion of critical habitat now runs from the Lexington bridge and extends to the Platte's confluence with the Missouri River. We believe the available nesting and census information does support listing the river as designated in this rule. Ridgeway (1874) documented piping plovers on what he called the ''Loup Fork of the Platte'' as early as 1874. The Nebraska Game and Parks Commission and others including the Service, Nebraska Public Power District, Central Public Power and Irrigation District, Platte River Trust, and the Tern and Plover conservation partnership, have been surveying piping plovers most years since the species was listed and have participated in the 1991, 1996, and 1997 International Piping Plover Census (Nebraska Game and Parks Commission 2001). Piping plovers have been counted every year since 1982 on the Platte River (J. Dinan pers. comm. 2002). The numbers of plovers on the Platte has varied over the years as birds take advantage of migrating sandbar habitats. Because sandbars are ephemeral and migrate, we chose to be inclusive in our designation to include the stretch of river that has a history of piping plovers and sandbar presence and contains the constituent elements. In this case that stretch of the Platte River runs from the Lexington bridge and extends to the Platte's confluence with the Missouri River. We believe that the Platte River as designated is essential to the conservation and recovery of this species.

*(4G) Comment*—In regard to the Niobrara and Loup Rivers in Nebraska it is impossible for the Service to determine that an area is ''essential'' for nesting when it has little to no data as to whether nesting even occurs.

*Response*—We disagree. These two rivers have been considered as essential habitats since the first recovery plan was written in 1988. These rivers also have been surveyed and found to have birds in all three International Piping Plover Censuses (1991, 1996, 2001). Plovers were documented on the Loup River as early as 1874 (Ridgeway 1874). Brunei, Walked, and Swank (1904) report that the piping plover ''breeds about the lakes in the sand-hill region, along the Niobrara River, in northern Nebraska, on the Loup at Dannebrog, along the Platte, and perhaps on any of the rivers of the State where are the sand-bars on which it nests.'' Bruner, Wolcott, and Swenk (1904) also report that Aughey recorded plovers breeding in Dakota County in July 1866, along the Missouri River. On the Niobrara River the habitat was thought to be so unique it was studied in 1996–1997 as one of the least modified prairie rivers with breeding piping plovers that still exhibits somewhat of a natural hydrograph (Adolf 1998). The Corps initiated this study to assist in their habitat and flow modeling efforts on the Missouri River.

*(4H) Comment*—The Service does not provide evidence that habitat quality or quantity in Nebraska rivers is currently a limiting factor in plover abundance.

*Response*—There have been numerous studies in Nebraska to document the quality of habitat necessary for piping plover nesting success (Faanes 1983, Scwalbach 1988, Sidle *et al.* 1992, Ziewitz 1992, Corn and Armbruster 1993, Adolph 1998). The ''Ecology'' section of this rule also discusses habitat quality. Habitat quality on Nebraska rivers is related to flows as many of the previously identified studies suggest. In regard to quantity, the carrying capacity of habitat on rivers to support breeding plovers is subject to fluctuation with the dynamic ecological processes that affect sandbar/island formation, vegetation and other habitat characteristics. These fluctuations can be affected by natural factors, such as climate/rainfall events and by human intervention through such actions as flow regulation and water withdrawal. For this reason any estimates of carrying capacity or habitat quantity, especially on a local basis, may be subject to change over time and would require periodic revision to reflect changes in habitat conditions. In regard to critical habitat designation the Service considered the amount of habitat we have seen over time on Nebraska rivers, the characteristics and changing of that habitat over time, the numbers of birds using those habitats, the recovery goals for those rivers, and the overall recovery of the northern Great Plains population. All of these things were considered before habitat designation. We concluded that all sites in Nebraska that had a history of piping plover nesting and met the primary constituent elements was necessary for the conservation of this species. Inclusion of all of the data upon which the designation is based in its entirety within the proposed or final rule would be impractical. However, the data upon which the designation was made is available from the South Dakota Ecological Services Field Office (*see* **ADDRESSES** section).

*(4I) Comment*—The Service fails to acknowledge or analyze other possible effects of modified flows on the Platte River.

*Response*—We have acknowledged the effects of modified flows on the Platte River but it is not the purpose of critical habitat designation to analyze these effects. The Service along with others over the years have analyzed the effects of modified flows on the Platte River and recognize the need to address the flow issues on the Platte. However, the critical habitat designation process is not the appropriate place to address flow issues.

*(4J) Comment*—The description of the primary constituent elements for rivers in Nebraska is inadequate; there is a need to define with precision.

*Response*—We have modified the primary constituent elements to better define all breeding habitat areas throughout the northern Great Plains. However, because of the broad range and types of habitats we defined one over-riding element for all habitats and more precisely defined how that element manifests itself in each habitat type.

*(4K) Comment*—The Service has failed to show that plover nesting has been ''consistently'' documented on the Platte, Loup, and Niobrara Rivers since listing.

*Response*—Not all of the data we reviewed and considered during this designation was printed in this document. Piping plover data from Nebraska has been collected for all of these rivers during each of the three International Piping Plover census in 1991, 1996, and 2001 (Nebraska Game and Parks Commission 2001). In each year piping plovers were documented as present. Additional years of surveys that were conducted by various partners over the years also were reviewed, which indicate that plovers use the river. Therefore, we believe that piping plover presence on these rivers have been appropriately documented.

*(4L) Comment*—Piping plover nesting habitat is not likely to exist on the central Platte River without flows in the 12k-20kcfs range.

*Response*—This commenter refers to a Platte River article by Paul Currier (2001). We believe the commenter misrepresents Currier's paper. Currier refers to ''Flows in the 12,000–20,000 cubic feet per second range once occurred every 2 to 3 years, but there were only two such events during the last 20 years (1983–84 and 1995).'' Currier also acknowledges that ''the biggest challenge [to managing sandbar habitats on the Platte] has been a lack of high water flows to rework the river bed.'' We acknowledge that the river is currently in a low-flow period but we remain optimistic that another high-flow event will occur as it has done historically, albeit in the last 20 years probably not as often. Unfortunately, the central Platte River did not experience any significant high-flow events in the 1990s that were comparable to what occurred during the preceding decade in order to sufficiently redistribute sandbars and provide extensive nesting areas for piping plovers. We believe hydrological conditions will again enter a wet cycle with high peak flows, resulting in redistributed sandbars that have elevations conducive to nesting. As long as those high flows and associated processes continue we believe that the Platte River, including the central Platte River, will continue to support critical habitat for piping plovers.

*(4M) Comment*—This critical habitat designation proposal appears to be an effort to supercede the cooperative efforts to provide habitat for threatened and endangered species recovery on the Platte River.

*Response*—We do not agree. The critical habitat designation was prompted and ordered through the courts and is not being used to supercede any cooperative efforts for the conservation and recovery of threatened and endangered species on the Platte River. We remain committed to the cooperative efforts on the Platte River.

*(4N) Comment*—Check the accuracy of Table 2 in the proposed rule in regard to Platte, Loup, and Niobrara River counties.

*Response*—These data have been re-verified and modified where appropriate.

*(4O) Comment*—Some commenters used a letter written by Gary Lingle to

the Service on March 22, 2000, as a reason to exclude the central Platte River from critical habitat designation since commenters believed the letter showed that there has been no documented successful reproduction of piping plovers on the central Platte River.

*Response*—The letter was written to the Service and we are well aware of its contents. While successful reproduction has not been documented recently, the central Platte River provides important habitat for piping plovers. Plovers that nest on sandpits along the central Platte River rely primarily on the river for food, and they abandon the sand pits at the end of the nesting season and reside on the river until they migrate. We have data showing plovers used the river and even nested in some years on the central Platte River, but the lack of follow-up monitoring on some of these areas is another reason for the lack of documentation. As mentioned in previous responses, there are records of successful production on the central Platte River during the 1980s and records of plover nests and plovers using sandbar/island habitats during the 1990s and into the 2000s. A standardized survey protocol for piping plovers has been developed by the Technical Committee of the Platte River Cooperative Agreement, and was carried out on an annual basis for the first time in 2001. The future use of this survey protocol should provide consistent, long-term monitoring information on piping plover occurrences and reproduction on the central Platte River.

*(4P) Comment*—One commenter listed all of the active management actions on the Platte, Loup, Niobrara, and Missouri Rivers that involve management actions for the piping plover including the Platte River Cooperative Agreement; the Tern and Plover Conservation Partnership; Central Platte Natural Resources District's instream flow rights for macroinvertebrates; Nebraska Game and Parks Commission's Nongame Wildlife program; the Service's Partners for Wildlife Program; management actions by the National Audubon Society, and Platte River Whooping Crane Habitat Maintenance Trust, Inc.; the Loup Public Power District's conservation work; the Central Nebraska Public Power and Irrigation District and Nebraska Public Power District's management in accordance with their Federal Energy Regulatory Commission licenses, the Corps' conservation efforts on the Missouri River and the Niobrara River; and the Loup Public Power District and Nebraska Game and Parks Commission Habitat Management Plan as reasons that the Service should consider avoiding the designation of critical habitat on these rivers.

*Response*—As implied by this commenter, areas not in need of special management do not meet the definition of critical habitat and can be excluded from a critical habitat designation. As mentioned in (2A) above we used three criteria to determine if a management plan provides adequate special management or protection—(1) A current plan or 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 provisions 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.

The list of management actions provided by this commenter could be the beginning of an effort to design a Statewide piping plover management and recovery plan for Nebraska. However, a specific plan to address each of the rivers in Nebraska is not in place. A plan should contain funding and assurance that management actions are in place that will allow for the recovery of the piping plover in Nebraska, in addition to a monitoring program that will ensure success. If the many conservation partners in Nebraska get together and create such a program then the critical habitat designation can be reassessed.

*Issue 5—Other Relevant Issues*

*(5A) Comment*—One commenter requested the final rule include a more thorough discussion of the positive impacts of critical habitat.

*Response*—We have reviewed the document and added additional discussion where warranted in the rule and in the Environmental Assessment. s

(*5B*) *Comment*—The Endangered Species Act is flawed and has created and/or supported a state of lawlessness.

*Response*—The Endangered Species Act is a complex law; one that not everyone likes. The purposes of the Endangered Species Act are to protect threatened and endangered species and to provide a means to conserve their habitat. As an administrator of the Endangered Species Act, the Service has worked to achieve its purposes. In doing so the Service has found flexibility in the Endangered Species Act that has brought successful recovery to some species and kept many species from extinction all while conserving the ecosystems upon which those species are dependent. Therefore, we do not agree that the Endangered Species Act is flawed nor that it creates or supports lawlessness.

*(5C) Comment*—The use of the word ecosystem should not be used.

*Response*—We disagree with this commenter. This commenter did not provide any rationale for eliminating the use of the word ''ecosystem.'' However, this term is widely used and accepted among the professional biological community and is mentioned in the purposes of the Endangered Species Act (see definition of the purposes of the Endangered Species Act as noted above).

*(5D) Comment*—The citation of Ziewitz *et al.* 1992, does not support the statement in the proposed rule, ''After upstream dams were built, reduced flows allowed the establishment of woody vegetation on most islands, due to the lack of scouring, high spring flows (Ziewitz *et al.* 1992).''

*Response*—This statement has been modified and more appropriately cited.

*(5E) Comment*—This proposed designation is not in line with the 10th Circuit Court decision on the southwest willow flycatcher.

*Response*—The commenter did not speak to any particular finding in this case. However, we believe that this designation is consistent with the findings of the subject case.

*(5F) Comment*—The designation of critical habitat is an ''about face'' from the decision made in the listing rule not to list critical habitat.

*Response*—We were required by the court to designate critical habitat for the northern Great Plains breeding population of the piping plover. The final listing rule for the piping plover indicated that designation of critical habitat was not determinable. Thus, designation was deferred. No further action was taken to designate critical habitat for piping plovers. On December 4, 1996, Defenders of Wildlife (Defenders) filed a suit (*Defenders of Wildlife and Piping Plover* v. *Babbitt, Case No. 96CV02965*) against the Department of the Interior and the Service over the lack of designation of critical habitat for the Great Lakes population of the piping plover. Defenders filed a similar suit (*Defenders of Wildlife and Piping Plover* v. *Babbitt, Case No. 97CV000777*) for the northern Great Plains piping plover population in 1997. During November and December 1999 and January 2000, we began negotiating with Defenders on a schedule for piping plover critical

habitat designation. On February 7, 2000, before the settlement negotiations were concluded, the U.S. District Court for the District of Columbia issued an order directing us to publish a proposed critical habitat designation for nesting and wintering areas of the Great Lakes breeding population of the piping plover by June 30, 2000, and for nesting and wintering areas of the northern Great Plains population of the piping plover by May 31, 2001. A subsequent order, after we requested 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. In response to comments received during the December-January comment period, the Service sought relief from the courts and the court took action extending the time for the final rule until August 19, 2002.

*(5G) Comments*—Since the Service and local management authorities have no control of the flows on the Missouri River the result of the designation will be to circumvent this obstacle by transferring the impact analysis to neighboring landowners.

*Response*—We do not agree. The Corps is ultimately responsible for the operations of the Missouri River. Like all Federal agencies the Corps has a responsibility for recovery and conservation of federally listed species. We issued a biological opinion to the Corps in November 2000 for operation of the Missouri River on piping plovers and other federally listed species and the Missouri River ecosystem. The Corps has been working toward meeting their Endangered Species Act responsibilities. The designation of critical habitat for the piping plover on the Missouri River may not significantly change what the Service has already recommended to the Corps in the November 2000 biological opinion since many of the recommendations were habitat based. So we believe the Corps is responsible for a large portion of the piping plover conservation and recovery effort. We do not see that this impact has been transferred to neighboring landowners. Neighboring landowners will only be impacted in so far as they engage in actions on Missouri River sandbars/islands/reservoir shoreline that may require a Federal permit, authorization or funding. The findings of the Economic Analysis are that the impacts of designation are not significant and that most impacts would have occurred with the listing of the species and not due to the incremental effect of critical habitat designation.

*(5H) Comment*—Bridge construction and maintenance will be significantly impacted by prohibiting work during the nesting season, costing travelers and shippers.

*Response*—Bridge construction and maintenance within .25 mi of any piping plover nesting area is already required to avoid work during the nesting season. Since the piping plover was listed, this condition has been used for bridge construction and other maintenance of project actions. Therefore, it is unlikely there will be significant extra costs beyond what already occur.

*Issue 6—National Environmental Policy Act Compliance*

*(6A) Comment*—The Service should prepare an Environmental Impact Statement (EIS).

*Response*—The commenters did not provide sufficient rationale for their belief that an EIS is required. An EIS is only required if we find that the proposed action is expected to have significant impact on the human environment. To make that determination we prepared an Environmental Assessment which analyzed the probable effects of the designation as well as several alternatives to the proposed action. The Environmental Assessment was made available to the public for review and comment on July 6, 2001. In addition we conducted an Economic Analysis that was made available to the public for review and comment on December 28, 2001. An addendum to the Economic Analysis also is being completed prior to this rule. Based on these analyses and comments received from the public, we prepared a final Environmental Assessment and made a Finding of No Significant Impact, which negated the need for preparing an Environmental Impact Statement. The final Environmental Assessment, final Economic Analysis, and the Finding of No Significant Impact provide our rationale for determining that critical habitat designation would not have a significant effect on the human environment. Those documents are available for public review at the South Dakota Ecological Services Field Office (*see* **ADDRESSES** section).

*(6B) Comment*—The Service should consider a broader range of alternatives; *e.g.*, excluding areas of potential habitat.

*Response*—We disagree with the commenter. We considered a no-action alternative and three action alternatives. Two of the action alternatives that were not chosen had greater amounts of habitat than the proposed alternative. The final designation has even excluded additional habitat from the original proposal. Therefore, we have provided a sufficient range of alternatives and actually chose the alternative that was most exclusive.

*(6C) Comment*—The draft Environmental Assessment is inadequate and ignores the lack of tax considerations and social and human impacts, *e.g.*, loss of crop land because of the lack of water.

*Response*—We disagree. The final Environmental Assessment has been revised to include information from the Economic Analysis and the addendum to the Economic Analysis. However, we do not agree that crop land will be lost solely because of the designation of critical habitat. Water supply or lack there of is a much broader issue that critical habitat designation.

*(6D) Comment*—The draft Environmental Assessment fails to include cumulative impacts and connected actions.

*Response*—We disagree. We did consider cumulative impacts in the draft and final Environmental Assessment, but since we determined the impacts to be relatively small we believe only minimal incremental impacts will occur when added to other past, present, and reasonably foreseeable future actions. If we had determined significant impacts then we would have either prepared an Environmental Impact Statement which would have considered more detail in regard to cumulative impacts and connection actions or deleted sites with significant impacts.

*(6E) Comment*—There is a disagreement with a statement in the Environmental Assessment that states that recreational impacts are significant on the entire 80-mi stretch of Lake Sharpe.

*Response*–We have changed the text of the Environmental Assessment and the final rule to better reflect the nature of recreational impacts on Lake Sharpe.

*Issue 7—Tribal Issues*

*(7A) Comment*—There are Tribal trust lands within the proposed designation that were not identified as Tribal lands.

*Response*—We have made the correction and appropriately identified both reservation boundaries and Tribal trust land. Although, we had made preliminary contacts with the Tribes, new information after the proposed rule was published was provided that showed the details and extent of Indian trust lands. Based on the data provided some of the islands and sandbars along the Missouri River are adjacent or formed over flooded Indian trust land. Indian trust lands are lands held by the United States in trust for either a Tribe

or an individual Indian. Initially, the proposed rule reported that lands in the Missouri River belonged in Montana to the States of Montana and the Ft. Peck Sioux and Assiniboine Tribes; in North Dakota to the State; and in Nebraska to the adjacent landowner. Subsequently, we have been informed that the Submerged Lands Act, 43 U.S.C. sections 1301–1356, states that ''* * * land beneath navigable water held by the United States for the benefit of any tribe, band, or of Indians or for individual Indians is excepted from the confirmation and establishment of the States'' rights confirmed by 43 U.S.C. section 1311. Therefore, these modifications to recognize Tribal trust lands have been made.

The Turtle Mountain Tribe was not previously recognized in the proposed rule as having lands within the proposed critical habitat designation but information provided during the comment period revealed that the Turtle Mountain Tribe has mineral rights on land outside their reservation boundary on the Missouri River. The final rule reflects this change.

Concerning reservation boundaries we have made modifications in the final rule to reflect that designated critical habitat does lie within reservation boundaries.

*(7B) Comment*—There is a need to recognize the Ft. Peck Tribes (Assiniboine and Sioux) water rights in relationship to the critical habitat designation and associated management decisions resulting from this designation.

*Response*—We respect the Ft. Peck Tribes' water rights as well as the 28 Tribes claiming water rights to the Missouri River. We further acknowledge our role to manage natural resources in a way that protects natural resource that the Federal government holds in trust for Tribes. However, the designation of critical habitat cannot and does not legally affect any Tribal water rights. Critical habitat designation does not create a water right on the river and does not create a property right. Critical habitat is a designation only. The Service will continue to work with the Ft. Peck Tribes to ensure that we work toward managing natural resources in a way that protects natural resources that the Federal government holds in trust for Tribes. The Service is presently working with the Ft. Peck Tribe on an endangered species management plan for the Missouri River within their reservation.

*(7C) Comment*—The Ft. Peck Tribes are interested in developing their own management plan for the piping plover and least tern.

*Response*—We have communicated with and agreed to work with the Tribe on this effort to further the conservation and recovery of these species.

*(7D) Comment*—The Ft. Peck Tribes believe there is a burden from designating critical habitat such as limitations on the area's use, access protocols and the Endangered Species Act prohibitions against jeopardy and destruction.

*Response*—As noted in this rule we believe that critical habitat is not an additional burden with limitation's on areas nor access nor is it necessarily additive to habitat destruction that rises to the level of jeopardy. First critical habitat designation is a formal delineation of habitat essential to the species recovery. It does not create or exercise a property right or access rights. Further, we believe future Endangered Species Act section 7 consultations involving Tribes (section 7 of the Endangered Species Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out may affect a listed species or its critical habitat) will take place because such actions have the potential to adversely affect a federally listed species. We believe that planned projects would require a section 7 consultation regardless of the critical habitat designation.

We understand that we have a fiduciary responsibility to Indian Tribes to protect their lands and resources, including threatened and endangered species. We would not be designating critical habitat on Tribal lands unless it was determined essential to conserve a listed species. The Service believes that this is consistent with the special trust responsibility the Federal government has to Indian people to preserve and protect their lands and resources. Both the Service and Tribes have acknowledged that species conservation could be best achieved through government-to-government collaboration and communication and to that end we will continue to work with the Ft. Peck Tribes to ensure the conservation of the piping plover.

*Issue 8—Economic Analysis Issues*

*(8A) Comment*—Several commenters expressed concern over the fact that they did not believe that our draft Economic Analysis evaluated the potential economic effects of the designation consistently with the recent 10th Circuit Court ruling on the southwestern willow flycatcher critical habitat.

*Response*—On May 11, 2001, the U.S. Court of Appeals in the 10th Circuit issued a ruling that addressed the analytical approach used by the Service to estimate the economic impacts associated with the critical habitat designation for the southwestern willow flycatcher. Specifically, the court rejected the approach used by the Service to define and characterize baseline conditions. Defining the baseline is a critical step within an Economic Analysis, as the baseline in turn identifies the type and magnitude of incremental impacts attributed to the policy or change under scrutiny. In the flycatcher analysis, the Service defined baseline conditions to include the effects associated with the listing of the flycatcher and, as is typical of many regulatory analyses, proceeded to present only the incremental effects of the rule.

We believe this analysis complies with the decision by revising the approach to defining baseline conditions within the areas of proposed critical habitat. This approach to baseline definition employed in the analysis of the designation of critical habitat for the northern Great Plains piping plover is similar to that employed in previous approaches in that the goal is to understand the incremental effects of a designation. However, it does provide more extensive discussion of pre-existing baseline conditions than previous critical habitat economic analyses. Typical economic analyses concentrate mostly on identifying and measuring, to the extent feasible, economic effects most likely to occur because of the action being considered. Baseline conditions, while identified and discussed, are rarely characterized or measured in any detailed manner because, by definition, these conditions remain unaffected by the outcome of the decision being contemplated. While the goal of this analysis remains the same as previous critical habitat economic analyses that are to identify and measure the estimated incremental effects of the proposed rulemaking, the information provided in this analysis concerning baseline conditions is more detailed than that presented in previous studies. The final addendum to this analysis provided further information concerning the baseline and potential incremental effects of the designation of critical habitat for the northern Great Plains piping plover.

*(8B) Comment*—The Service is obligated to consider ''other relevant impacts'' in our analysis pursuant to section 4(b)(2) of the Endangered Species Act for potential exclusions from critical habitat.

*Response*—As previously discussed in this final rule, section 4(b)(2) of the

Endangered Species Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species. We are aware that some areas that we have designated as critical habitat for the northern Great Plains piping plover are subject to activities that have the potential to change the hydrology of the habitat areas (*e.g.*, dam construction, changes in releases and dam operations, dredging and draining). We also recognize that many of these activities are subject to a Federal nexus. As a result, we expect that future consultations will, in part, include planned and future dam operations relating to river flow. However, we believe that these resulting consultations will not take place solely with respect to critical habitat issues. While it is true that altered flows can adversely affect designated critical habitat, we believe that our future consultations regarding such activities will take place because such actions have the potential to adversely affect a federally listed species. We believe that such planned projects would require a section 7 consultation despite the critical habitat designation. Again, as we have previously mentioned, section 7 of the Endangered Species Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out may affect a listed species or its critical habitat.

*(8C) Comment*—Many commenters, including 22 counties that passed resolutions against critical habitat designation, were concerned that the critical habitat designation would have significant adverse economic impacts to particular projects, agencies, and/or the economic recovery of the entire region.

*Response*—During the development of critical habitat for the northern Great Plains piping plover, we conducted an analysis of the economic impacts that were likely to occur as a result of the designation. The results of our analysis are contained in our draft Economic Analysis and the final Addendum to the Economic Analysis. Because the areas being designated are primarily occupied, our Economic Analysis concluded that the designation would not result in significant economic impacts to the lands being designated as critical habitat or the economic recovery of the region as a whole.

*(8D) Comment*—The Draft Economic Analysis of Critical Habitat Designation for the northern Great Plains piping plover is flawed, inaccurate, contains numerous errors, and makes improper assumptions.

*Response*—As previously discussed, section 4(b)(2) of the Endangered Species Act and 50 CFR 424.19 requires us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We published our proposed designation of critical habitat for the northern Great Plains piping plover in the **Federal Register** on June 12, 2001 (66 FR 31759). At that time, our Division of Economics and their consultants Industrial Economics, Inc., and Bioeconomics, Inc., initiated the draft Economic Analysis. We made the draft Economic Analysis of the proposed critical habitat designation available for review and public comment during a 30-day public comment period beginning on December 28, 2001 (66 FR 67165). Subsequently, on March 21, 2002 (67 FR 13123), we reopened the public comment period for an additional 60 days because the Service's internet electronic mail was inoperable during the initial 30-day comment period due to a court order in an unrelated case. Based on the public comments received during the open comment periods, a final Addendum to the Economic Analysis of critical habitat for the northern Great Plains piping plover was drafted. This final Addendum addressed the concerns raised through the comment period and considered new data and a revised methodology to better quantify coextensive, future section 7 impacts. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents. Copies of both the draft Economic Analysis and the final Addendum constitute the final economic analysis and are in the supporting record for this rulemaking. They can be inspected by contacting the South Dakota field office staff of the Service (refer to the **ADDRESSES** section of this rule).

*(8E) Comment*—The Economic Analysis failed to estimate various potential economic impacts adequately.

*Response*—In the Addendum to the Economic Analysis of Critical Habitat Designation for the northern Great Plains piping plover we conducted a revised analysis to address all concerns that were brought up during the public comment process. We obtained additional data and increased our estimates and in other instances we addressed the concerns mentioned by particular commenters by explaining why our estimate might be more accurate/appropriate. Please refer to the Addendum to the Economic Analysis for a more thorough discussion regarding potential economic impacts.

*(8F) Comment*—No monetary benefits for the survival of the species were included in the draft Economic Analysis.

*Response*—While we have acknowledged the potential for society to experience such benefits in our economic analyses for critical habitat rulemakings, our ability to measure these benefits in any meaningful way is difficult and imprecise at best. While we are aware of many studies that attempt to identify the value (in monetary units) of listed species, open space, the use of public lands for recreational purposes, the cost of sprawl, etc.; few of these studies provide any meaningful information that can be used to develop estimates associated with a critical habitat designation.

The designation of critical habitat will not necessarily affect the management of the river systems through dam operations, which makes it difficult to draw upon the literature of economic values of such eco-friendly activities such as eco-tourism and birdwatching. Also, while some economic studies attempt to measure the social value of protecting endangered species, the species that are often valued are well known and easy to identify in contrast to other species. Furthermore, the values identified in these studies would be most closely associated with the listing of a species as endangered or threatened because the listing serves to provide the majority of protection and conservation benefits under the Endangered Species Act.

While we will continue to explore ways that will allow us to provide more meaningful descriptions of the potential benefits associated with a critical habitat designation, we believe that due to the current lack of available data specific to these rulemakings, along with the time and resource constraints imposed upon the Service, the benefits of a critical habitat designation are best expressed in biological terms that can then be weighed against the expected social costs of the rulemaking.

*Summary of Changes From Proposed Rule*

Changes on Alkali Lakes and Wetlands

Based on a review of public comments received on the proposed determination of critical habitat for the northern Great Plains breeding population of the piping plover, we re-evaluated our proposed designation of critical habitat for the piping plover. In addition, we discovered some potential errors in the alkali lakes that were

included or excluded from the proposed rule in our reevaluation. This re-evaluation resulted in the following changes that are reflected in this final determination.

Our review also indicated we did not apply the alkali lakes criteria consistently during our initial review for the proposed rule. We included an area in the proposed critical habitat designation if data showed birds at sites in 2 out of 10 years. For example, several sites were proposed as critical habitat that do not meet the criteria. These sites have been eliminated from the final critical habitat designation.

The NDNG has completed the Camp Grafton Integrated Natural Resources Management Plan which includes Lake Coe. This plan provides a benefit for piping plovers on Lake Coe; includes implementation assurances and includes an opportunity for adaptive management. Therefore, the area is not in need of special management and at the request of the NDNG, we have excluded the NDNG property on Lake Coe from critical habitat designation.

Those alkali lakes and wetlands eliminated are reported in Table 3.

TABLE 3.—SITES PROPOSED AS CRITICAL HABITAT, BUT DO NOT MEET THE CRITERIA

| Map No. | Common name | Survey data |
|---|---|---|
| McLean 1 | Blue Hill WPA | Surveyed 4 years; 2 adults in 1996. |
| McLean 9 | Fisher Lake | Surveyed 6 years; no birds. |
| McHenry 1, Pierce 2 | Smokey Lake | Surveyed 2 years; 1 adult in 1994. |
| Pierce 1 | Meyer WPA | Surveyed 6 years; 6 adults in 1994. |
| Burleigh 1 | Hysterical 02 | Surveyed 2 years; no birds. |
| Burleigh 3 | Hertz Lake | Surveyed 5 years; 7 adults in 1993. |
| Burleigh 6 | Trusty | Surveyed 8 years; 4 adults in 1995. |
| Buleigh 8, Kidder 6 | Stoney Slough | Surveyed 1 year; 2 adults in 1995. |
| Kidder 5 | McPhail WMA | Surveyed 6 years; 4 adults in 1993. |
| Kidder 8 | Lake Etta | Surveyed 4 years; no birds. |
| Kidder 9 | Lake George | Surveyed 5 years; 5 adults in 1993. |
| Kidder 10 | Mud Lake South | Surveyed 2 years; no birds. |
| Emmons 1 | Sisco-Fallgatter WPA | Surveyed 4 years; 1 adult in 1994. |
| Burleigh 2 | Salt Lake | Surveyed 6 years; 43 adults in 1992. |
| Eddy 1 | Lake Coe | Exclusion Request from NDNG. |
| Sheridan 11 (MT) | Peterson Lake | Surveyed 1 year; 1 adult in 1988. |

Four sites originally proposed as critical habitat were re-described because of—(1) a name change; or (2) the site was included in the proposed rule, but was not identified as a separate wetland basin because it was part of a complex of wetlands, with wetlands located adjacent to each other. The four sites include—Unit ND–1, Divide 4; Unit ND–2, Burke 3; Unit ND–4, McLean 1, McLean 8.

*Missouri River Changes*

Lake Francis Case, Missouri River (107.5 mi or 172.9 km), and Nelson Reservoir (4,559-ac 1,845-ha) were excluded from critical habitat designation as described above in the Missouri River and Reservoir section and comment (3D). Lake Sharpe was not included because this reservoir reach has only supported a few pairs of birds on one beach since listing and, therefore, is not considered essential and do not meet the definition of critical habitat. However, a small peninsula/island within the Lower Brule Sioux Tribe Reservation boundary is considered an area in need of special management. The Tribe and the Service believe this area if managed could help restore piping plovers to this reservation. Although this site is an area in need of special management, we cannot designate this area at this time because it was not in the proposed rule and thus was not subject to public comment. However, this area could be considered in a future amendment to the critical habitat designation.

*Mapping Changes*

Mapping changes were made for alkali lakes and wetlands. All of the alkali lakes and wetlands were mapped to include a UTM coordinate at the center point of each site. This was done to provide a better legal description for these sites. Unit description changes also were made to clarify understanding of all units. These changes include adding county names, acreages, and river miles or river locators (*i.e.*, bridges). Maps were changed for clarity and thus the mapping units increased in number.

*Primary Constituent Element Changes*

Some people had trouble understanding the primary constituent elements. We re-wrote this section to try and make this section more readable. We also identified the primary constituent elements into biological and physical components. We are required to base critical habitat determinations on the best scientific and commercial data available and to consider physical and biological features (primary constituent elements) that are essential to conservation of the species, and that may require special management considerations and protection. These include, but are not limited to—(1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing (or development) of offspring; and (5) habitats protected from disturbance or that are representative of the historic geographical and ecological distributions of a species. We defined one overriding primary constituent element as biological component that must be present at all sites. That biological component is the dynamic ecological processes that create and maintain piping plover habitat. Without this biological process the physical component of the primary constituent elements would not be able to develop. The biological primary constituent element, *i.e.*, dynamic ecological processes, creates different physical primary constituent elements on the landscape. These physical primary constituent include mixosaline to hypersaline wetlands (Cowardin *et al.* 1979), rivers, reservoirs, and inland lakes.

*Nebraska Changes*

The reach of the Platte River was reduced by 23 mi and the Niobrara River was reduced by 9 mi based on new information provided during the comment period by a peer reviewer. This information indicated that survey

information for the excluded areas were historical and not recent (since listing).

*Tribal Changes*

We have modified all Tribal sections of the rule to recognize reservation boundaries and Tribal trust lands. This designation does not and cannot make any legal conclusions on ownership of lands, including any submerged lands or determine which lands are held in trust. Previously in the proposed rule this information had not been provided. Tables 1 and 2 also have been modified to reflect Tribal information.

*Economic Analysis*

Section 4(b)(2) of the Endangered Species Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating these areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species.

The Economic Analysis must examine the incremental economic effects of the critical habitat designation above those effects of the listing. Economic effects are measured as changes in national income, regional jobs, and household income. A draft analysis of the economic effects of the critical habitat designation for the northern Great Plains breeding population of the piping plover was prepared (Bioeconomics, Inc., 2001) and made available for public review (December 28, 2001 to January 28, 2002, 66 FR 67165). We also completed the Economic Analysis that incorporated public comments, information gathered since the draft analysis, and changes to the critical habitat designation in an addendum. This analysis finds that over the next 10 years, total annual Endangered Species Act Section 7 consultation costs associated with activities potentially affecting piping plover due to designation of critical habitat would be a maximum of approximately $58,000 per year. This cost estimate is based on the number of anticipated informal and formal consultations generated because of the critical habitat designation. It also acknowledges that there might be some project delays because of the consultation requirement. Overall, the report finds that all associated impacts would be minimal.

The analysis found that critical habitat designation for the plover will result in minimal economic impacts. We have determined that these economic impacts do not warrant excluding any areas from the designation.

A copy of the final Economic Analysis is included in our administrative record and may be obtained by contacting our office (*see* **ADDRESSES** section).

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

The northern Great Plains breeding population of piping plover was listed as a threatened species in 1986. In Fiscal Years 1992 through 2000, we conducted 90 formal section 7 consultations with other Federal agencies (88 of these included minor water depletion work done in Nebraska, Colorado, and Wyoming, which involved the Platte River) to ensure that their actions are not likely to jeopardize the continued existence of the piping plover. Approximately 1,207.5 mi (1,943.3 km) and 183,422 ac (74,228.4 ha) of the areas encompassing critical habitat for the northern Great Plains breeding population of piping plovers are currently unoccupied by nesting piping plovers.

Under the Endangered Species Act, critical habitat may not be adversely modified or destroyed by a Federal agency action; the Endangered Species Act does not impose any restrictions through critical habitat designations on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 4). Section 7 requires Federal agencies to ensure that they are not likely to jeopardize the continued existence of the species. Based upon our experience with the northern Great Plains breeding population of the piping plover, we concluded that any Federal action or authorized action that could potentially cause adverse modification of the proposed critical habitat would almost always be considered as ''jeopardy'' under the Endangered Species Act.

TABLE 4.—ACTIVITIES POTENTIALLY IMPACTED BY PIPING PLOVER LISTING AND CRITICAL HABITAT DESIGNATION

| 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]. | Direct take and activities such as removing or destroying piping plover breeding habitat, whether by mechanical, chemical, or other means (e.g., construction, wetland drainage (subsurface or surface) road building, boat launch and marina construction or maintenance, dam construction and management, bank stabilization); regulation of water flows, damming, diversion, and channelization; recreational activities that significantly deter the use of suitable habitat areas by piping plovers or alter habitat through associated maintenance activities (e.g., recreational vehicle access, walking paths); any activity that results in changing the hydrology of habitat areas (e.g., dam construction, changes in releases and dam operations, dredging, draining); sale, exchange, or lease of Federal land that contains suitable habitat that may result in the habitat being destroyed or appreciably degraded (e.g., shoreline development, building of recreational facilities, road building); activities that may result in increased human activity and disturbance). | None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected but consultation will be required on these activities in additional areas. |

TABLE 4.—ACTIVITIES POTENTIALLY IMPACTED BY PIPING PLOVER LISTING AND CRITICAL HABITAT DESIGNATION—Continued

| Categories of activities | Activities potentially affected by species listing only [1] | Additional activities potentially affected by critical habitat designation [2] |
|---|---|---|
| Private and other non-Federal activities potentially affected [4]. | Direct take and activities such as removing or destroying piping plover habitat, whether by mechanical, chemical or other means (e.g., construction, wetland drainage (subsurface and surface) road building, boat launch and marina construction or maintenance, dam construction and management, bank stabilization); any activity that results in changing the hydrology of habitat areas (e.g., dam construction, changes in releases and dam operations, dredging, draining) regulation of water flows, damming, diversion, and channelization; recreational activities that significantly deter the use of suitable habitat areas by piping plovers and appreciably decreasing habitat value or quality (e.g., increased predation, invasion of exotic species, increased human presence or disturbance) that require a Federal action (permit, authorization, or funding). | None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected but consultation will be required on these activities in additional areas. |

[1] This column represents impacts of the final rule listing the piping plover (December 11, 1985) (50 FR 50726) under the Endangered Species Act.
[2] This column represents impact of the critical habitat designation above and beyond those impacts resulting from listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

Accordingly, the designation of currently occupied areas as critical habitat is not anticipated to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal connection to their actions are not restricted by the designation of critical habitat; however, they continue to be bound by the provisions of the Endangered Species Act concerning ''take'' of the species.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions are not likely to jeopardize the continued existence of piping plovers since the listing in 1986. The prohibition against adverse modification of critical habitat is not expected to impose any restriction in addition to those that currently exist in occupied areas of critical habitat. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency 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 are not likely to 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 additional effects in areas of occupied habitat.

(d) The OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to require a certification statement. In this rule, we are certifying that the critical habitat designation for northern Great plains breeding population of piping plovers will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. While the SBREFA does not explicitly define ''substantial number,'' the Small Business Administration, as well as other federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small

entities potentially affected, we also consider whether their activities have any Federal involvement. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect northern Great Plains piping plovers. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

Therefore, the estimated impacts due solely to the designation of critical habitat for the plover are examined in the context of the SBREFA analysis. Of the projects that are potentially affected by section 7 implementation for the plover, a few occur exclusively on land managed by the Service, and thus do not have any third-party involvement. Small entities should not be affected by section 7 implementation for affected projects with the Fish and Wildlife Service (activities associated with National Wildlife Refuges).

Of the projects that are potentially affected by section 7 implementation for the plover that do not occur exclusively on Federal lands, many are expected to involve no project modifications, or very minor ones (*e.g.*, minor delays in project timing, installing informational signs, or requiring relatively minor contributions to fish and wildlife conservation funds). Overall, less than 56 percent of formal plover consultations and only 8 percent of informal consultations are anticipated to have any third party costs associated with them beyond administrative costs. The greatest share of the costs associated with the consultation process stems from project modifications and mitigation (as opposed to the consultation itself). Indeed, costs associated with the consultation itself are relatively minor, with third party costs estimated to range from $1,200 to $4,100 per consultation. Therefore, small entities are unlikely to be significantly affected by consultations that do not involve costly project modifications.

The draft Economic Analysis and final Addendum contain the factual bases for this certification and contain a complete analysis of the potential economic effects of this designation. Copies of these documents are in the supporting record for this rulemaking and are available at the Service's South Dakota Field Office (refer to **ADDRESSES** section).

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the northern Great Plains breeding population of the piping plover will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed in the economic analysis, future potential section 7 costs in areas that we are designating as critical habitat for the northern Great Plains breeding population of the piping plover are anticipated to have a total estimated economic effect ranging between approximately $3.5 million and $6.0 million over 10 years. Furthermore, because all the areas that we are designating as critical habitat in this rule currently support populations of the northern Great Plains breeding population of the piping plover, the Service would consult on the same range of activities in the absence of this critical habitat designation and the above costs are most appropriately attributable to the section 7 jeopardy provisions of the Act due to the listing of the species (*see* ''Effects of Critical Habitat'' section).

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

*Executive Order 13211*

On May 18, 2001, the President issued an Executive Order (E.O. 13211) which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat include agricultural and recreational. Significant energy production, supply, and distribution facilities are not included within designated critical habitat. Therefore, this action does not represent a significant action affecting energy production, supply, and distribution facilities; and no Statement of Energy Effects is required. Additionally, all of the areas designated as critical habitat for the northern Great Plains breeding population of the piping plover are considered to be occupied by this listed species. Therefore, any consultation required pursuant to section 7 of the Act by a Federal agency undertaking an action in these areas would likely be triggered by the presence of the listed species, whether or not critical habitat for the species was designated.

*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 of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat.

(b) This rule, will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat for the piping plover 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 determination will not ''take'' private property and will not alter the long-term value of private

property. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of piping plovers as defined in section 9 of the Endangered Species Act and its implementing regulations (50 FR 17.31). Due to current public knowledge of the species' protection, the prohibition against take of piping plovers both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. 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 utilize their property in ways consistent with the conservation 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 and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat determination with appropriate State and Tribal resource agencies in Minnesota, Montana, North Dakota, South Dakota, Nebraska, Iowa, Kansas, and Colorado as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the northern Great Plains piping plover with the appropriate State and Tribal agencies. The designation of critical habitat for the piping plover imposes few additional restrictions to those currently in place and, therefore, has little incremental impact on State, Tribal, and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation 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 Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The determination uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the northern Great Plains breeding population of piping plover.

*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. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

*National Environmental Policy Act*

Our position is that, outside the 10th Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the 10th Circuit, pursuant to the 10th Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75] F.3d 1429 (10th Cir. 1996), we will complete a NEPA analysis with an Environmental Assessment. The range of the northern Great Plains breeding population of the piping plover includes States within the 10th Circuit; therefore, we completed a draft Economic Analysis and announced its availability in the **Federal Register** on July 6, 2001 (66 FR 35580). After reviewing comments on the draft Economic Analysis, we completed an Environmental Assessment and Finding of No Significant Impact on the designation of critical habitat for the northern Great Plains breeding population of the piping plover.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We believe certain Tribal trust resources are essential for the conservation of the piping plover because they support essential populations and habitat. In Montana, plovers have nested on alkali wetlands within the Blackfeet Reservation. However, nesting on the Blackfeet Reservation is rare and none of this habitat was proposed for critical habitat.

Many Native American people live along the Missouri River and are dependent on the natural resources of the Missouri River Basin. Eight Tribes along the Missouri River have critical habitat designated within the boundary of their reservation including the Assiniboine and Sioux Tribes of Ft. Peck, Montana; the Standing Rock Sioux Tribe, and the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara Tribes) of the Ft. Berthold Reservation, in North Dakota; the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, the Lower Brule Sioux Tribe, the Crow Creek Sioux Tribe, and the Yankton Sioux Tribe in South Dakota; and the Santee Sioux Tribe of Nebraska. Additionally, eight Tribes have land or Tribal trust land on submerged sites or sandbars/islands within the critical habitat designation of the Missouri River. These Tribes include—the Assiniboine and Sioux Tribes of Ft. Peck, Montana; the Standing Rock Sioux Tribe, and the Three Affiliated Tribes (Mandan Hidatsa and Arikara Tribes) of the Ft. Berthold Reservation, in North Dakota; the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, the Lower Brule Sioux Tribe, the Crow Creek Sioux Tribe, and the Yankton Sioux Tribe in South Dakota and the Santee Sioux Tribe of Nebraska. The Turtle Mountain Tribe has mineral rights to land along the Missouri River in North Dakota that was taken by the Corps for the Missouri River mainstem system. These habitats on the Missouri River within the boundary of a Tribe, or held by the Tribe, individual Indian or held in Trust by the United States are essential to the recovery of the piping plover. We also coordinated with three

additional Tribes, including the Rosebud Sioux and Oglala Sioux Tribes of South Dakota and the Winnebago Tribe of Nebraska, with interest in lands on the Missouri River because of their recognition of the Ft. Laramie Treaty of 1868 or other issues.

The Assiniboine and Sioux Tribes of Ft. Peck have ownership of sandbars and islands of the Missouri River from the north shoreline of the Missouri River to the mid-channel of the river where their Reservation borders the river. The Reservation borders the Missouri River for 81.7 mi (131.5 km) in Missouri River Unit MT–3. Piping plovers nest on sandbars and islands of the Assiniboine and Sioux Tribes of Ft. Peck. We believe that these Tribal lands are essential for the conservation of the piping plover and we have designated critical habitat for the piping plover on these lands of the Assiniboine and Sioux Tribes of Ft. Peck. However, the Ft. Peck Tribes have expressed concerns over designation of critical habitat on their lands because—(1) perception of burdens from the designation; (2) their view that it has never been established that the Endangered Species Act applies to Indian Tribes and their natural resources, and (3) their plan to develop a HCP for species along the Missouri River including the piping plover. The Ft. Peck Tribal land within the high banks of the Missouri river will remain in the critical habitat designation. When the Ft. Peck Tribes have completed a HCP the Service will review the plan for removal from the critical habitat designation.

Five miles of the Niobrara River in the critical habitat designation is within the reservation boundary of the Ponca Tribe in Nebraska. No Tribal trust lands have been identified for the Niobrara River.

In 1999 the ''Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, State of South Dakota Terrestrial Wildlife Habitat Restoration'' was passed into law under Title VI of the Water Resources Development Act. This Act has transferred much of the Federal land and recreation areas in South Dakota managed by the Corps to the State and the BIA (for the Cheyenne River and Lower Brule Sioux Tribes). Although land to be transferred in fee title is above the top of the maximum operating pool on Missouri River reservoirs, and not likely to have the primary constituent elements for piping plover critical habitat, under this legislation the BIA will obtain, via easement, the management authority to the water's edge, an area which is likely to contain the primary constituent elements. Land adjacent to the Cheyenne River Sioux Tribe along Lake Oahe, Missouri River, South Dakota, and Lower Brule Sioux Tribe along Lakes Sharpe and Francis Case, Missouri River, South Dakota, will be transferred to the BIA in the near future.

*Relationship to Canada*

In the 1988 Recovery Plan, one of our criteria for recovery and delisting of the piping plover is that the Canadian Recovery Objective must be met for the prairie region. Because of this, we have some joint conservation projects ongoing with Canada. However, according to CFR 402.12(h), ''Critical habitat shall not be designated with foreign countries or in other areas outside of the United States jurisdiction.'' Since the areas of joint conservation do not fall within the United States jurisdiction, they are not included in this critical habitat designation.

*References Cited*

A complete list of all references cited in this final rule is available upon request from the South Dakota Ecological Services Field Office (see **ADDRESSES**).

*Authors*

The primary author of this rule is Nell McPhillips, Biologist, of the South Dakota Ecological Services Field Office (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

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 ''piping plover'' 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, MN, NY, OH, PA, and WI and Canada (Ont.). | E | 211 | 17.95(b) | NA |
| Plover, piping ..... | *Charadrius melodus* | U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf Coasts, PR, VI) Canada, Mexico, Bahamas, West Indies. | Northern Great Plains in States of MN, MT, ND, NE, and SD. | 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 | | | | | | |
| Do | ....do | ....do | Entire, except those areas where listed as endangered above. | T | 211 | NA | NA |
| * | * | * | * | * | * | * | |

3. Amend § 17.95(b) by adding critical habitat for the piping plover (*Charadrius melodus*)—Northern Great Plains Breeding Population in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(b) *Birds.*

* * * * *

Piping Plover (*Charadrius melodus*)—Northern Great Plains Breeding Population

1. Critical habitat units are depicted for Minnesota, Montana, Nebraska, North Dakota, and South Dakota, on the maps and as described below.

2. The one overriding primary constituent element (biological) required to sustain the northern Great Plains breeding population of piping plovers that must be present at all sites is the dynamic ecological processes that create and maintain piping plover habitat. Without this biological process the physical component of the primary constituent elements would not be able to develop. These processes develop a mosaic of habitats on the landscape that provide the essential combination of prey, forage, nesting, brooding and chick-rearing areas. The annual, seasonal, daily, and even hourly availability of the habitat patches is dependent on local weather, hydrological conditions and cycles, and geological processes. The biological primary constituent element, *i.e.*, dynamic ecological processes, creates different physical primary constituent elements on the landscape. These physical primary constituent elements exist on different habitat types found in the northern Great Plains, including mixosaline to hypersaline wetlands (Cowardin *et al.* 1979), rivers, reservoirs, and inland lakes. These habitat types or physical primary constituent elements that sustain the northern Great Plains breeding population of piping plovers are described as follows:

i. On prairie alkali lakes and wetlands, the physical primary constituent elements include—(1) shallow, seasonally to permanently flooded, mixosaline to hypersaline wetlands with sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; (2) springs and fens along edges of alkali lakes and wetlands; and (3) adjacent uplands 200 ft (61 m) above the high water mark of the alkali lake or wetland.

ii. On rivers the physical primary constituent elements include—sparsely vegetated channel sandbars, sand and gravel beaches on islands, temporary pools on sandbars and islands, and the interface with the river.

iii. On reservoirs the physical primary constituent elements include—sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, gravel, or shale, and their interface with the water bodies.

iv. On inland lakes (Lake of the Woods) the physical primary constituent elements include—sparsely vegetated and windswept sandy to gravelly islands, beaches, and peninsulas, and their interface with the water body.

3. Critical habitat does not include existing developed areas such as mainstem dam structures, buildings, marinas, boat ramps, bank stabilization and breakwater structures, row cropped or plowed agricultural areas, roads and other lands (*e.g.*, high bank bluffs along Missouri River) unlikely to contain primary constituent elements essential for northern Great Plains piping plover conservation.

**Minnesota**

*Projection:* UTM Zone 15, NAD83, GRS 1980, Meters.

*Unit MN–1:* Rocky Point, Morris Point, and Pine and Curry Island.

This unit consists of sparsely vegetated and windswept sandy to gravelly islands, beaches, and peninsulas, and their interface with the water body (as defined in item 2 i-iv above) located in Lake of the Woods County in the following Township, Range, and Section(s):

*Pine and Curry Islands:* T. 162 N., R. 31 W., Sec. 1; T. 162 N., R. 32 W., Sec. 6, 10–12; Morris Point: T. 162 N., R. 32 W., Sec. 15–16; Rocky Point: T. 163 N., R. 34 W.; Sec. 4–5, 9.

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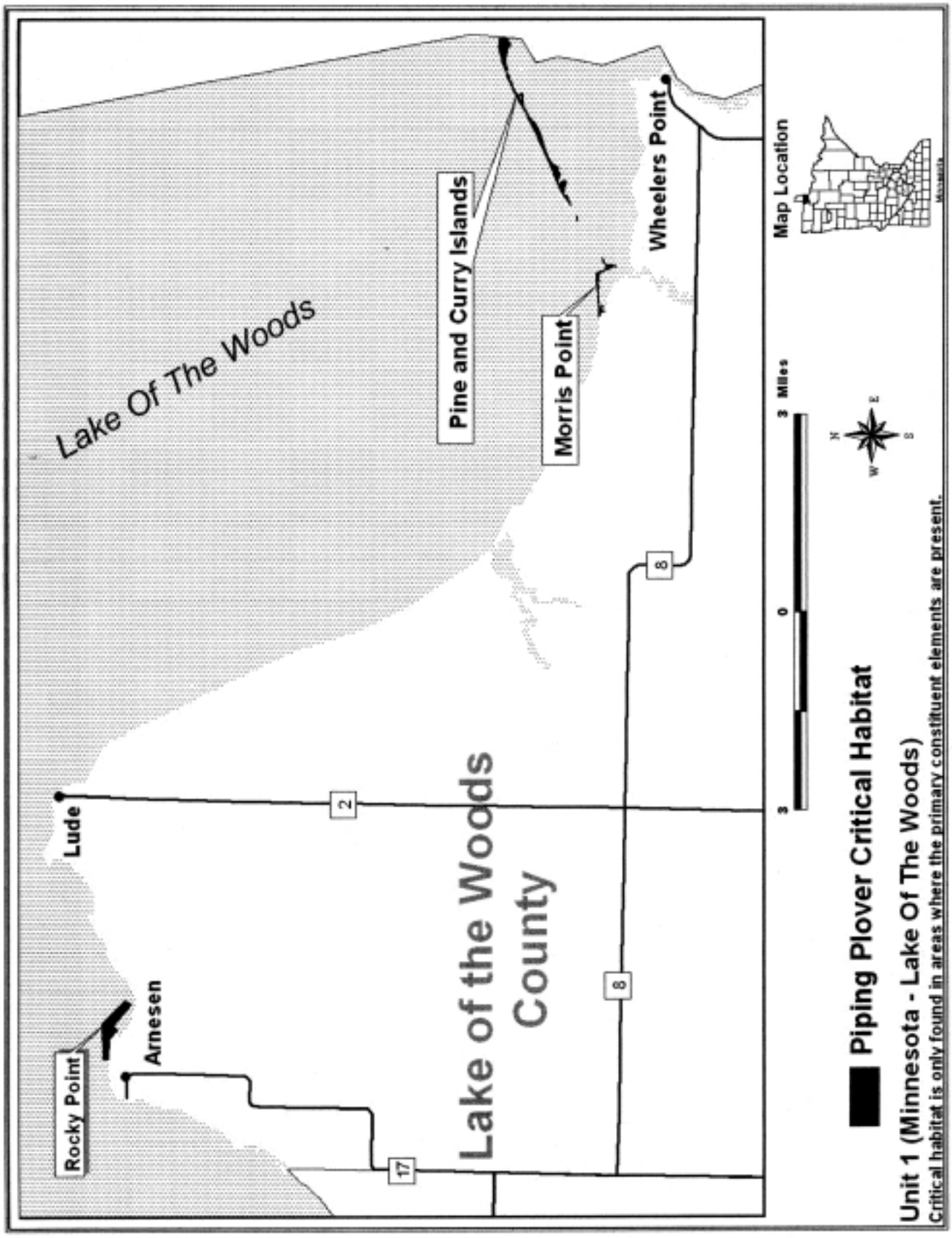

Lake Of The Woods
Pine and Curry Islands
Morris Point
Wheelers Point
Lude
Rocky Point
Arnesen
Lake of the Woods County
2
17
8
8
Map Location
3 Miles
3
0
Piping Plover Critical Habitat
Unit 1 (Minnesota - Lake Of The Woods)
Critical habitat is only found in areas where the primary constituent elements are present.

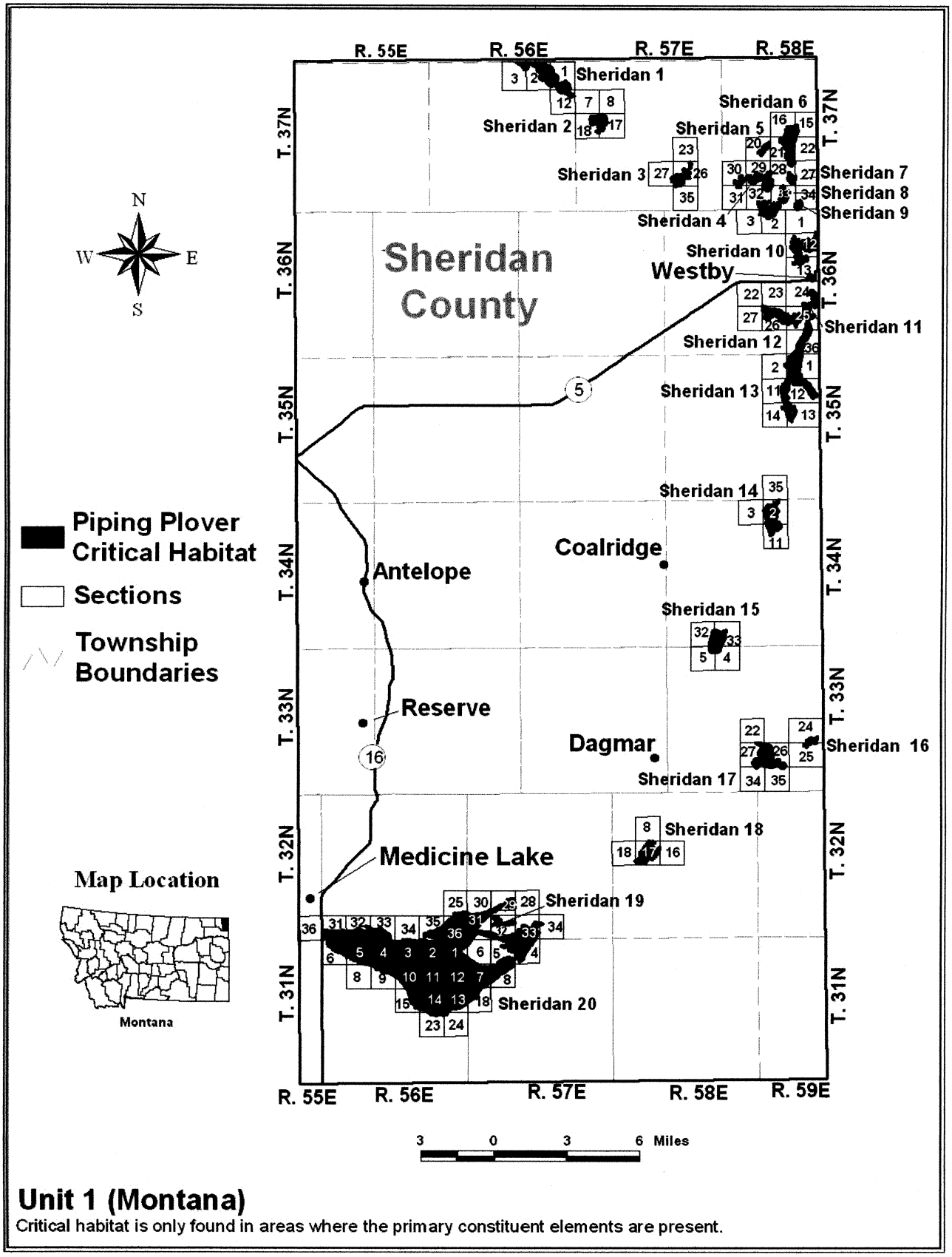
**Montana**

*Projection:* UTM Zone 13, NAD27, Clarke 1866, Meters.

*Unit MT–1:* Sheridan 1–20.

This unit consists of 20 alkali lakes and wetlands (as defined in item 2. i–iv. above) located in Sheridan County in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parentheses; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

Sheridan 1 (Salt Lake); T. 37 N., R. 56 E., Sec. 1, 2, 12; T. 37 N., R. 57 E., Sec. 7; 551735.070, 5426228.954; Sheridan 2 (Galloway Lake); T. 37 N., R. 57 E., Sec. 7, 8, 17; 18; 555270.876, 5423341.594; Sheridan 3 (Lake North Of Espen); T. 37 N., R. 57 E., Sec. 7, 8, 17; 560733.568, 5420004.719; Sheridan 4 (Throntveit Lake); T. 37 N., R. 58 E., Sec. 28–33; 565501.589, 5419571.004; Sheridan 5 (Dog Leg WPA); T. 37 N., R. 58 E., Sec. 20; 566167.080, 5421711.910; Sheridan 6 (Anderson Lake); T. 37 N., R. 58 E., Sec. 15, 16, 21, 22, 27, 28; 567829.681, 5421938.009; Sheridan 7 (Gjesda; East WPA); T. 37 N., R. 58 E., Sec. 27, 28, 33; 568018.405, 5419742.779; Sheridan 8 (Flat Lake); T. 37 N., R. 58 E., Sec. 28, 32, 33; T. 36 N., R. 58 E., Sec. 2, 3; 566825.455, 5418175.594; Sheridan 9 (Lake North Of Stateline); T. 37 N., R. 58 E., Sec. 33, 34, T. 36 N., R. 58 E., Sec. 1; 568493.188, 5417985.314; Sheridan 10 (Round/Westby Lake); T. 36 N., R. 58 E., Sec. 1, 12, 13; 568830.499, 5415144.074; Sheridan 11 (Upper Goose Lake); T. 36 N., R. 58 E., Sec. 24, 25; 568964.588, 5411105.524; Sheridan 12 (West Goose Lake); T. 36 N., R. 58 E., Sec. 22, 23, 25–27; 567098.230, 5410658.484; Sheridan 13 (Goose Lake); T. 36 N., R. 58 E., Sec. 25, 36; T. 35 N., R. 58 E., Sec. 1, 2, 11–14; 568569.535, 5406908.114; Sheridan 14 (Big Slough WPA); T. 35 N., R. 58 E., Sec. 35; T. 34 N., R. 58 E., Sec. 1, 3, 11; 566846.207, 5397179.894; Sheridan 15 (Clear Lake); T. 34 N., R. 58 E., Sec. 32, 33; T. 33 N., R. 58 E., Sec. 4, 5; 563265.689, 5389005.274; Sheridan 16 (Erickson WPA); T. 33 N., R. 58 E., Sec. 24, 25; 569395.858, 5382318.164; Sheridan 17 (Parry Lake); T. 33 N., R. 58 E., Sec. 22, 26, 27, 34, 35; 566648.805, 5381422.559; Sheridan 18 (Katy's Lake); T. 32 N., R. 58 E., Sec. 8, 16–18; 558661.047, 5375001.119; Sheridan 19 (Deep Lake); T. 32 N., R. 57 E., Sec. 32; 548829.097, 5370424.894; Sheridan 20 (Medicine Lake); T. 31 N., R. 56 E., Sec. 1–6, 8–12, 13–15, 23, 24; T. 31 N., R. 57 E., Sec. 4–8, 18; T. 32 N., R. 55 E., Sec. 36, T. 32 N., R. 56 E., Sec. 25, 31–36; T. 32 N., R. 57 E., Sec. 28–34; 544469.013, 5368031.399.

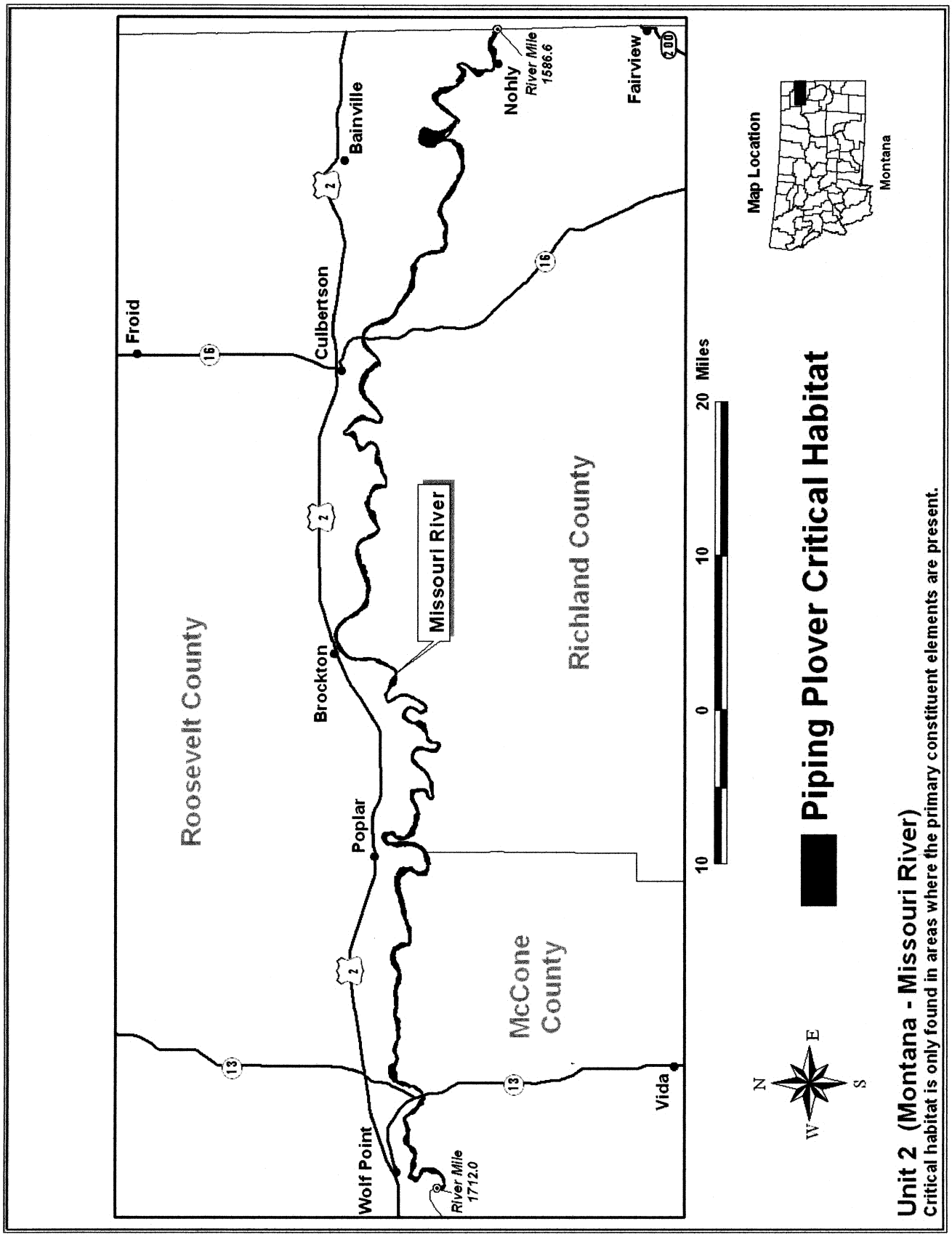



**Unit 1 (Montana)**

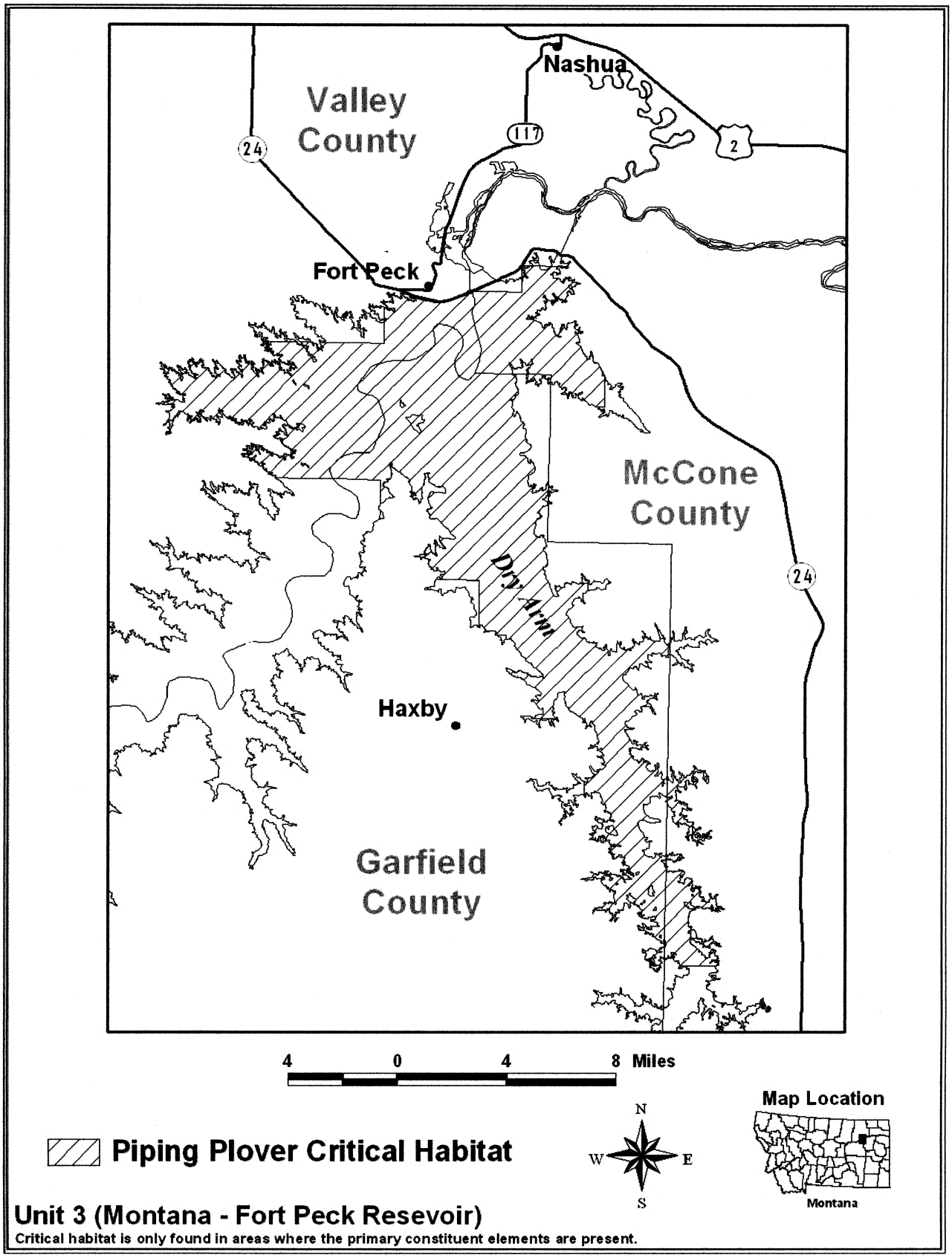
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit MT–2: Missouri River*—approximately 125.4 mi (201.8 km) from just west of Wolf Point, McCone County, Montana, at RM 1712.0 downstream to the Montana/North Dakota border, Richland County, Montana, and McKenzie County, North Dakota, at RM 1586.6 including TRS listed below. The Missouri River in this unit flows through reservation lands of the Assiniboine and Sioux Tribes of Fort Peck (81.7 mi (131.5 km), State, and privately owned land.

T. 26 N., R. 58 E., Sec. 1–6, T. 26 N., R. 59 E., Sec. 3–6, 9, 10, 13–16, 22–24; T. 27 N., R. 47 E., Sec. 21–24, 27–28, 33–34; T. 27 N., R. 48 E., Sec. 13–16, 19–22, 28–29, T. 27 N., R. 49 E., Sec. 13–18, 24; T. 27 N., R. 50 E., Sec. 14–21, 23–26; T. 27 N., R. 51 E., Sec. 7–8, 17–27, 30; T. 27 N., R. 52 E., Sec. 10–16, 19, 21–23, 27–32; T. 27 N., R. 53 E., Sec. 1–3, Sec. 6–7, 18; T. 27 N., R. 54 E., Sec. 1–6, 9–12; T. 27 N., R. 55 E., Sec. 1–5, 7–11; T. 27 N., R. 56 E., Sec. 2–6, 8–9, 11, 13–14, 24; T. 27 N., R. 57 E., Sec. 18–21, 27–28, 33–36; T. 27 N., R. 58 E., Sec. 23, 25–27, 31–32, 34–36; T. 27 N., R. 59 E., Sec. 29–32; T. 28 N., R. 53 E., Sec. 27–31, 33–34; T. 28 N., R. 54 E., Sec. 31–33; T. 28 N., R. 55 E., Sec. 33–35.


Froid
Culbertson
Bainville
Nohly
River Mile 1586.6
Fairview
Brockton
Missouri River
Poplar
Wolf Point
River Mile 1712.0
Vida
Roosevelt County
Richland County
McCone County
Map Location
Montana
10 0 10 20 Miles
N
E
S
W
Piping Plover Critical Habitat
Unit 2 (Montana - Missouri River)
Critical habitat is only found in areas where the primary constituent elements are present.

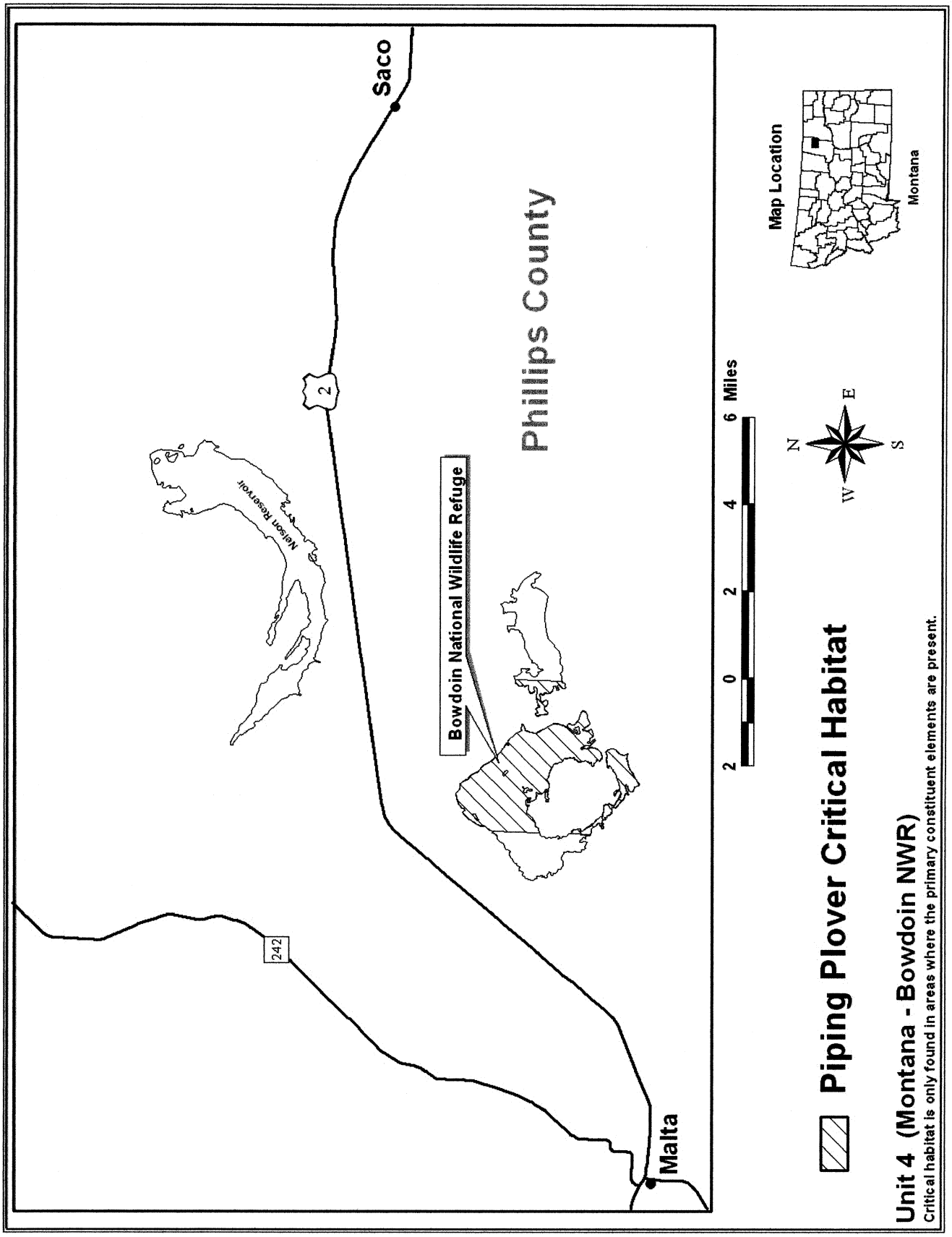
*Unit MT–3*, Fort Peck Reservoir—This unit encompasses approximately 77,370 acres (31,311 ha) of Fort Peck Reservoir, located entirely within the Charles M. Russell National Wildlife Refuge in Garfield, McCone, and Valley Counties. This unit consists of the following TRS: T. 22 N., R.42E., Sec. 1–3, 10–15, 24; T. 22 N., R. 43 E., Sec. 6–8, 18–20; T. 23 N., R. 42 E., Sec. 10–15; T. 23 N., R. 42 E., Sec. 22–27, 34–36; T. 23 N., R. 43 E., Sec. 18–19, 30–31; T. 24 N., R. 41 E., Sec. 1–3, 10–13, 24; T. 24 N., R. 42 E., Sec. 5–8, 16–21, 25–36; T. 25 N., R. 39 E., Sec. 1–2, 11–12; T. 25 N., R. 40 E., Sec. 1–17, 20–24; T. 25 N., R. 41 E., Sec. 1–36; T. 25 N., R. 42 E., Sec. 5–6; T. 26 N., R. 39 E., Sec. 35–36; T. 26 N., R. 40 E., Sec. 31–36; T. 26 N., R. 41 E., Sec. 13–17, 19–36; T. 26 N., R. 42 E., Sec. 17–19, 29–32.


Nashua
Valley County
24
117
2
Fort Peck
McCone County
24
Dry Arm
Haxby
Garfield County
4 0 4 8 Miles
N
W
E
S
Map Location
Montana
Piping Plover Critical Habitat
Unit 3 (Montana - Fort Peck Resevoir)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit MT–4:* Bowdoin NWR.

This unit is located on Bowdoin National Wildlife Refuge in Phillips County and includes sparsely vegetated shoreline beaches, peninsulas, and islands composed of sand, gravel, or shale that interface with these water bodies in the following TRS:

*Bowdoin NWR:* T. 30 N., R. 31 E., Sec. 1–2, 4, 9–11; T. 31 N., R. 31 E., Sec. 21–22, 25–28, 33–36.


Saco
Phillips County
Nelson Reservoir
Bowdoin National Wildlife Refuge
2
242
Malta
2 0 2 4 6 Miles
N
E
S
W
Map Location
Montana
Piping Plover Critical Habitat
Unit 4 (Montana - Bowdoin NWR)
Critical habitat is only found in areas where the primary constituent elements are present.

**Nebraska**

*Projection:* UTM Zone 14, NAD83.

*Unit NE–1:* Platte, Loup, and Niobrara Rivers.

a. Platte River [1] Begins at the Lexington bridge over the main channel in Dawson County and extends downstream to its confluence with the Missouri River in Sarpy County and includes area within the river banks in the following Townships, Ranges, and Sections:

T. 08 N., R. 13 W., Sec. 4–7; T. 08 N., R. 14 W., Sec. 9–12, 15–18; T. 08 N., R. 15 W., Sec. 13–21; T. 08 N., R. 16 W., Sec. 7,8, 13–18, 23, 24; T. 08 N., R. 17 W., Sec. 7,8,10–18; T. 08 N., R. 18 W., Sec. 2–12; T. 08 N., R. 19 W., Sec. 1–12; T. 08 N., R. 20 W., Sec. 1–12; T. 08 N., R. 21 W., Sec. 1,2, 12; T. 09 N., R. 10 W., Sec. 3–7; T. 09 N., R. 11 W., Sec. 1, 11, 12, 14–19; T. 09 N., R. 12 W., Sec. 13, 22–24; 26–31; T. 09 N., R. 13 W., Sec. 25–27, 31, 33–36; T. 09 N., R. 21 W., Sec. 20, 21, 27–29, 34–36; T. 10 N., R. 08 W., Sec. 6; T. 10 N., R. 09 W., Sec. 1, 11, 12, 14, 15, 21, 22, 28, 29; T. 10 N., R. 10 W., Sec. 25, 33, 34, 35, 36; T. 11 N., R. 07 W., Sec. 6; T. 11 N., R. 08 W., Sec. 1, 2, 10, 11, 15, 16, 20, 21, 29 30, 31; T. 11 N., R. 09 W., Sec.36; T. 12 N., R. 06 W., Sec. 6; T. 12 N., R. 07 W., Sec. 1, 2, 10–12, 14–16, 20–22, 29–31; T. 12 N., R. 08 W., Sec. 36; T. 13 N., R. 05 W., Sec. 5–7; T. 13 N., R. 06 W., Sec. 12–15, 21–23, 28, 29, 31, 32; T. 14 N., R. 04 W., Sec. 4, 5, 7–9, 18; T. 14 N., R. 05 W., Sec. 13, 14, 22, 23, 24, 27, 28, 32, 33; T. 14 N., R. 39 W., Sec. 2–5, 11; T. 15 N., R. 03 W., Sec. 3–5, 7–9, 17–19; T. 15 N., R. 04 W., Sec. 12–14, 23, 24, 26, 27, 33, 34; T. 15 N., R. 38 W., Sec. 19, 20, 21, 28–30, 33; T. 15 N., R. 39 W., Sec. 24, 25, 30, 31, 32, 33, 34; T. 15 N., R. 40 W., Sec. 10, 23, 24, 25, 26, 36; T. 16 N., R. 01 W., Sec. 1–4, 7–10, 17, 18; T. 16 N., R. 02 W., Sec. 10–16, 19–21 29, 30; T. 16 N., R. 03 W., Sec. 25, 26, 33–36; T. 17 N., R. 01 W., Sec. 36; T. 12 N., R. 10 E., Sec. 3–5, 9–13, 24; T. 12 N., R. 11 E., Sec. 1, 11, 12, 14–16, 18–21; T. 12 N., R. 12 E., Sec. 06; T. 13 N., R. 10 E., Sec. 4, 5, 7–9, 17–19, 29, 30, 32, 33; T. 13 N., R. 12 E., Sec. 25–28, 31–34, 36; T. 13 N., R. 13 E., Sec. 25, 26, 30–36; T. 14 N., R. 09 E., Sec. 1,12; T. 14 N., R. 10 E., Sec. 6–8, 17, 18, 20, 29, 32; T. 15 N., R. 09 E., Sec. 1–3, 11–13, 24, 25, 36; T. 15 N., R. 10 E., Sec. 19; T. 16 N., R. 01 E., Sec. 1, 2,4–6, 12; T. 16 N., R. 02 E., Sec. 1–12; T. 16 N., R. 03 E., Sec. 4–6; T. 16 N., R. 08 E., Sec. 1, 2, 12; T. 16 N., R. 09 E., Sec. 6–9, 16, 17, 21, 22, 27, 28, 33, 34; T. 17 N., R. 01 E., Sec. 31, 32, 33, 34, 35, 36, T. 17 N., R. 03 E., Sec. 25, 26, 27, 31, 32, 33, 34; T. 17 N., R. 04 E., Sec. 9–12, 14–17, 20, 21, 29, 30; T. 17 N., R. 05 E., Sec. 7–10, 13–15; T. 17 N., R. 06 E., Sec. 7–9, 14–18, 22–24; T. 17 N., R. 07 E., Sec. 13–24; T. 17 N., R. 08 E., Sec. 20, 21, 27–29, 34–36.

b. Loup River [2] Entire river beginning at the confluence of the North and Middle Loup Rivers to form the Loup River in Howard County, to its confluence with the Platte River in Platte County and includes area within the river banks in the following Townships, Ranges, and Sections:

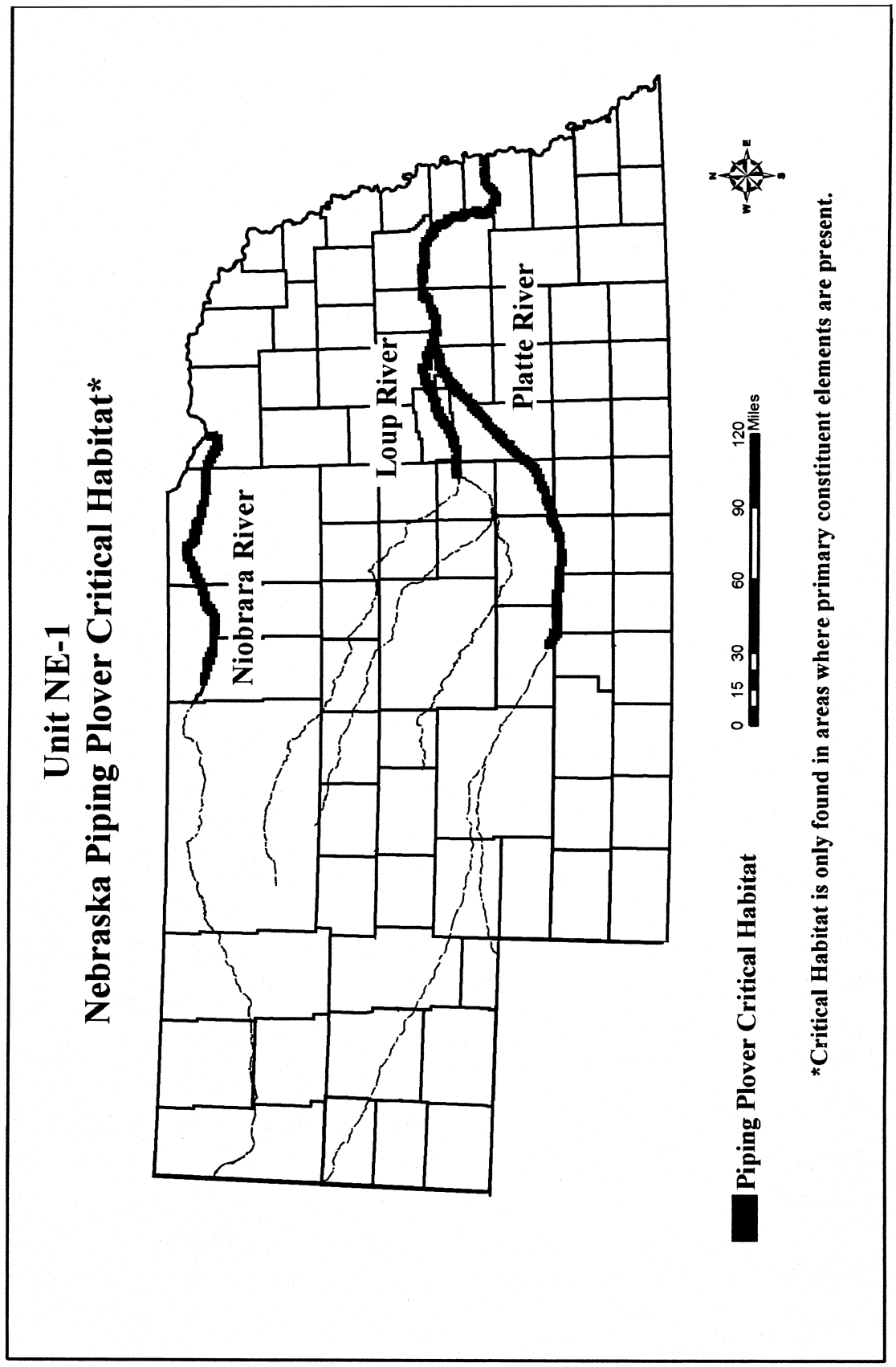
T. 15 N., R. 06 W., Sec. 06; T. 15 N., R. 07 W., Sec. 1–5, 7–10; T. 15 N., R. 08 W., Sec. 07, 8, 12–18; T. 15 N., R. 09 W., Sec. 7–18; T. 16 N., R. 04 W., Sec. 5, 6; T. 16 N., R. 05 W., Sec. 1–5, 7–10, 18; T. 16 N., R. 06 W., Sec. 13; 14, 22–24, 27–29, 31, 32; T. 16 N., R. 07 W., Sec. 36; T. 17 N., R. 01 W., Sec. 16, 17,.18, 21–23, 25, 26; T. 17 N., R. 02 W., Sec. 3, 4, 7–10, 13–15, 22–24; T. 17 N., R. 03 W., Sec. 10–21, 30; T. 17 N., R. 04 W., Sec. 24–28, 32–35; T. 17 N., R. 05 W., Sec. 35, 36; T. 17 N., R. 01 E., Sec. 29, 30, 32, 33.

c. Niobrara River: Begins at the bridge south of Norden in Keya Paha County and extends downstream to its confluence with the Missouri River in Knox County and includes area within the river banks in the following Townships, Ranges, and Sections:

T. 31 N., R. 06 W., Sec. 6; T. 31 N., R. 07 W., Sec. 01–4; T. 32 N., R. 06 W., Sec. 17–20, 29–31; T. 32 N., R. 07 W., Sec. 29–34, 36; T. 32 N., R. 08 W., Sec. 7, 8, 15–17, 22–25; T. 32 N., R. 09 W., Sec. 2–6, 8–12; T. 32 N., R. 10 W., Sec. 1–6, 9–12; T. 32 N., R. 11 W., Sec. 1–3; T. 32 N., R. 17 W., Sec. 5, 6; T. 32 N., R. 18 W., Sec. 1–4, 8–10, 16–19; T. 32 N., R. 19 W., Sec. 19, 20, 22–24, 26–30; T. 32 N., R. 20 W., Sec. 19–26; T. 32 N., R. 21 W., Sec. 7, 16, 17, 18, 20–24; T. 32 N., R. 22 W., Sec. 2–6, 8–14; T. 32 N., R. 23 W., Sec. 1, 2; T. 33 N., R. 11 W., Sec. 29, 30, 32–34; T. 33 N., R. 12 W., Sec. 17–21, 25–28, 36; T. 33 N., R. 13 W., Sec. 7–10, 14–18, 23, 24; T. 33 N., R. 14 W., Sec. 1, 12; T. 33 N., R. 15 W., Sec. 2–5, 7–9, 18; T. 33 N., R. 16 W., Sec. 11–16, 19–22, 29, 30; T. 33 N., R. 17 W., Sec. 25–27, 31, 33, 34; T. 33 N., R. 17 W., Sec. 35, 36; T. 33 N., R. 18 W., Sec. 36; T. 33 N., R. 23 W., Sec. 33, 34, 35; T. 34 N., R. 14 W., Sec. 26–31, 34, 35; T. 34 N., R. 15 W., Sec. 25, 35, 36.

[1] Sections T. 17 N., R. 01 E., sec. 32 and T. 17 N., R. 01 E., sec. 33 are designated CH for both Platte and Loup Rivers.

[2] See footnote 1.


Unit NE-1
Nebraska Piping Plover Critical Habitat*
Niobrara River
Loup River
Platte River
0 15 30 60 90 120
Miles
Piping Plover Critical Habitat
*Critical Habitat is only found in areas where primary constituent elements are present.

**North Dakota**

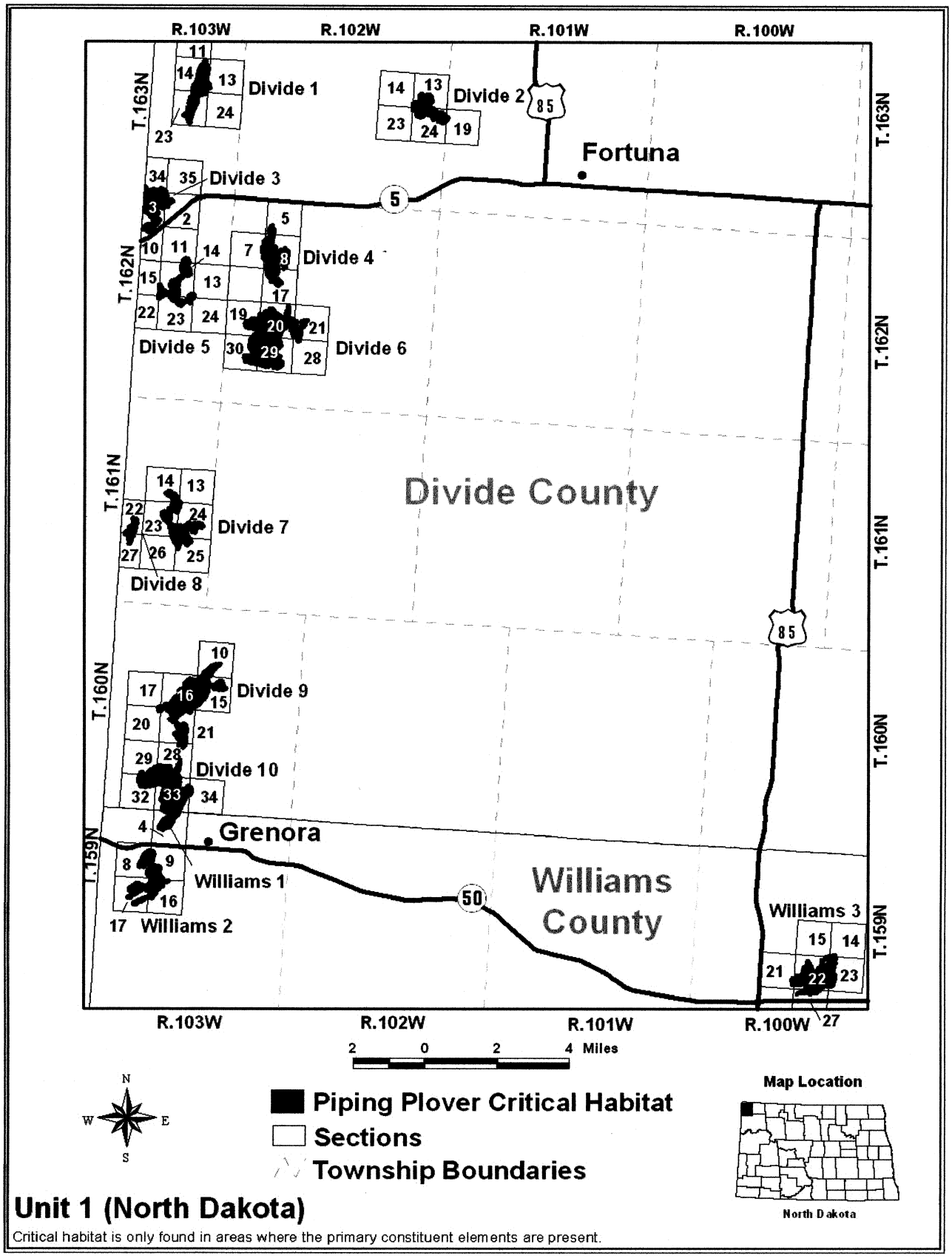
*Projection:* UTM Zone 14, NAD27, Clarke 1866, Meters.

*Unit ND–1:* Divide 1–10, Williams 1–3.

This unit consists of 13 alkali lakes and wetlands (as defined in item 2 i–iv above) located in Divide and Williams Counties in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X,Y) of the center point:

Divide 1 (McCone Lake); T. 163 N., R. 103 W., Sec. 11, 13, 14, 23, 24; 132483.986, 5432552.457; Divide 2 (Radar WPA); T. 163 N., R. 101 W., Sec. 19, T. 163 N., R. 102 W., Sec. 13, 14, 23, 24; 143450.351, 5431765.782; Divide 3 (Westby Lake); T. 162 N., R. 103 W., Sec. 2, 3, 10, T. 163 N., R. 103 W., Sec. 34, 35; 130664.334, 5426964.175; Divide 4 (North Lake); T. 162 N., R. 102 W., Sec. 5, 7, 8, 17; 136194.956, 5424819.822; Divide 5 (No-Name 01); T. 162 N., R. 103 W., Sec. 11, 13–15, 22–24; 131550.101, 5423562.595; Divide 6 (Miller Lake) T. 162 N., R. 102 W., Sec. 19–21, 28–30; 136221.252, 5420997.659; Divide 7 (Daneville Lake); T. 161 N., R. 103 W., Sec. 13, 14, 23–26; 131145.927, 5412367.023; Divide 8 (Johnson WPA); T. 161 N., R. 103 W., Sec. 22, 27; 129454.347, 5411841.319; Divide 9 (Camp Lake); T. 160 N., R. 103 W., Sec. 10, 15–17, 20, 21, 28; 132345.880, 5403610.519; Divide 10 (Africa Lake); T. 160 N., R. 103 W., Sec. 28, 29, 32–34; 131067.961, 5399853.506; Williams 1 (Africa Lake); T. 159 N., R. 103 W., Sec. 4; 131252.336, 5398158.780; Williams 2 (Twin Lake); T. 159 N., R. 103 W., Sec. 8, 9, 16, 17; 130274.523, 5395507.964; Williams 3 (Appam Lake); T. 159 N., R. 100 W., Sec. 14, 15, 21–23, 27; 161534.618, 5390959.346.

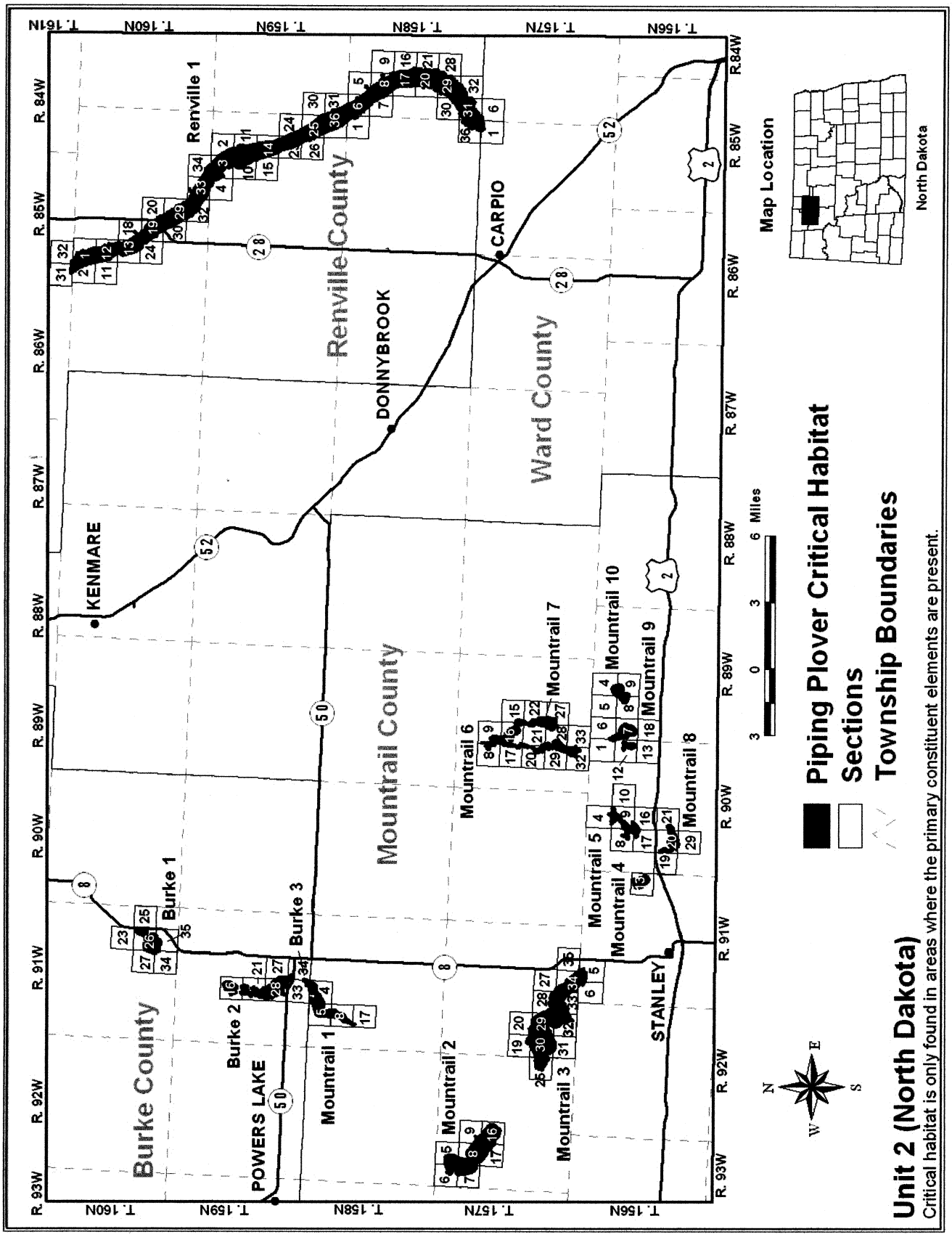
*Unit ND–2:* Burke 1–3, Mountrail 1–10, Renville 1.


R.103W
R.102W
R.101W
R.100W
T.163N
T.162N
T.161N
T.160N
T.159N
Divide 1
Divide 2
Divide 3
Divide 4
Divide 5
Divide 6
Divide 7
Divide 8
Divide 9
Divide 10
Williams 1
Williams 2
Williams 3
Fortuna
Grenora
Divide County
Williams County
85
5
50
2 0 2 4 Miles
N
W
E
S
Piping Plover Critical Habitat
Sections
Township Boundaries
Map Location
North Dakota
Unit 1 (North Dakota)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–2:* Burke 1–2, Mountrail 1–10, Renville 1.

This unit consists of 14 alkali lakes and wetlands (as defined in item 2 i–iv above) located in Burke, Renville, and Mountrail Counties in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X,Y) of the center point:

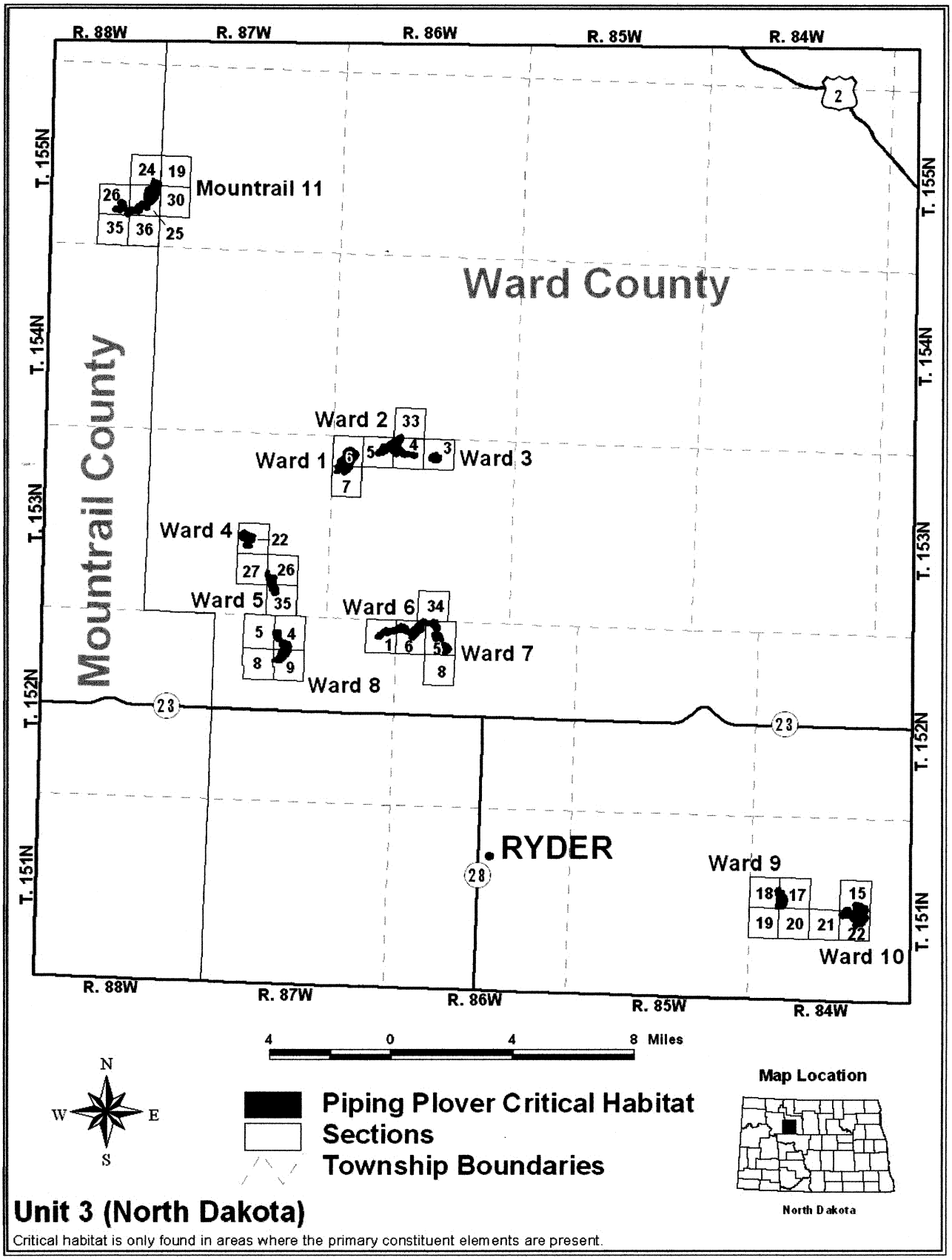
Burke 1 (Thompson Lake); T. 160 N., R. 91 W., Sec. 23, 25–27, 34, 35; 249736.234, 5394198.422; Burke 2 (Knudson Slough); T. 159 N., R. 91 W., Sec. 16, 21, 27, 28, 33, 34; 245951.025, 5385634.794; Burke 3 (Salt Wetland); T. 159 N., R. 91 W., Sec. 33,34, T. 158 N., R. 91 W., Sec. 4; 246764.949, 5382725.766; Mountrail 1 (Lower Lostwood Lake); T. 158 N., R. 91 W., Sec. 4, 5, 8, 17, T. 159 N., R. 91 W., Sec. 33; 244500.547, 5380906.195; Mountrail 2 (Cottonwood Lake); T. 157 N., R. 92 W., Sec. 5–9, 16, 17; 234663.178, 5370756.188; Mountrail 3 (White Lake); T. 156 N., R. 91 W., Sec. 5, 6, T. 157 N., R. 91 W., Sec. 19, 20, 27–35, T. 157 N., R. 92 W., Sec. 25; 244128.820, 5364745.652; Mountrail 4 (BLM 01); T. 156 N., R. 91 W., Sec. 13; 254103.216, 5358673.926; Mountrail 5 (Halvorson WPA); T. 156 N., R. 90 W., Sec. 4, 8–10, 16, 17; 2588354.936, 5359918.409; Mountrail 6 (Redmond Lake); T. 157 N., R. 89 W., Sec. 8, 9, 16, 17, 20, 21, 28, 29, 32, 33; 263839.454, 5366646.371; Mountrail 7 (Redmond Lake Southeast); T. 157 N., R. 89 W., Sec. 15, 16, 21, 22, 27, 28; 265502.148, 5366251.040; Mountrail 8 (Palermo SW); T. 156 N., R. 90 W., Sec. 19–21, 29; 257212.039, 5356658.356; Mountrail 9 (Piping Plover WPA); T. 156 N., R. 89 W., Sec. 6, 7, 18, T. 156 N., R. 90 W., Sec. 1, 12, 13; 264548.981, 5359978.921; Mountrail 10 (USA 01); T. 156 N., R. 89 W., Sec. 4, 5, 8, 9; 267688.206, 5360; Renville 1 T. 157 N., R. 84 W., Sec. 6, T. 157 N., R. 85 W., Sec. 1, T. 158 N., R. 84 W., Sec. 5–9, 16, 17, 20, 21, 28–32, T. 158 N., R. 85 W., Sec. 1, 36, T. 159 N., R. 84 W., Sec. 30, 31, T. 159 N., R. 85 W., Sec. 2–4, 10, 11, 14, 15, 24–26, 36, T. 160 N., R. 85 W., Sec. 18–20, 29, 30, 32, 33, 34, T. 160 N., R. 86 W., Sec. 1, 2, 11–13, 24, T. 161 N., R. 85 W., Sec. 31, 32; 307279.646, 5385022.925;


Unit 2 (North Dakota)
Critical habitat is only found in areas where the primary constituent elements are present.
Piping Plover Critical Habitat
Sections
Township Boundaries
Map Location
North Dakota
Burke County
Renville County
Mountrail County
Ward County
KENMARE
DONNYBROOK
CARPIO
POWERS LAKE
STANLEY
Renville 1
Burke 1
Burke 2
Burke 3
Mountrail 1
Mountrail 2
Mountrail 3
Mountrail 4
Mountrail 5
Mountrail 6
Mountrail 7
Mountrail 8
Mountrail 9
Mountrail 10
6 Miles

*Unit ND–3:* Mountrail 11, Ward 1–10.

This unit consists of 11 alkali lakes and wetlands (as defined in item 2 i-iv above) located in Mountrail and Ward Counties in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

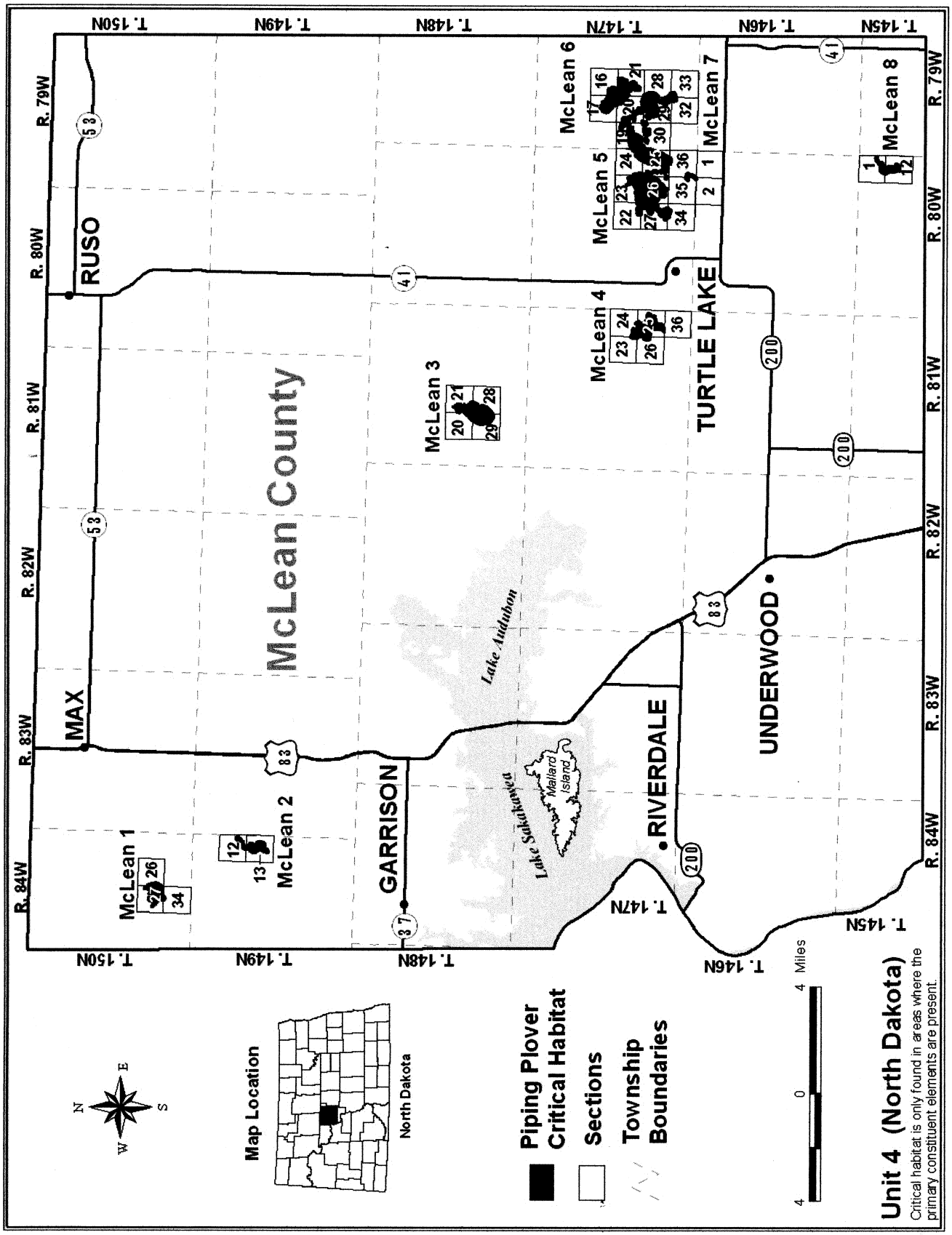
Mountrail 11 (USA 03); T. 155 N., R. 87 W., Sec. 19, 30, T. 155 N., R. 88 W., Sec. 24–26, 35, 36; 282515.422, 5344702.765; Ward 1 (Wheeler Lake); T. 153 N., R. 86 W., Sec. 6, 7; 292853.430, 5330725.995; Ward 2 (Schaefer Lake); T. 153 N., R. 86 W., Sec. 4, 5, T. 154 N., R. 86 W., Sec. 33; 295503.020, 5331528.170; Ward 3 (Simonson Lake); T. 153 N., R. 86 W., Sec. 3; 297540.190, 5330903.772; Ward 4 (Weltikot WPA); T. 153 N., R. 87 W., Sec. 22; 287595.875, 5326568.445; Ward 5 (Galusha WPA); T. 153 N., R. 87 W., Sec. 26, 27, 35; 288918.535, 5324257.230; Ward 6 (LGFR); T. 152 N., R. 86 W., Sec. 5, 6, T. 152 N., R. 87 W., Sec. 1, T. 153 N., R. 86 W., Sec. 34; 296191.685, 5321732.495; Ward 7 (Roberts Lake); T. 152 N., R. 86 W., Sec. 5, 8; 298162.740, 5320754.445; Ward 8 (Orlein WPA); T. 152 N., R. 87 W., Sec. 4, 5, 8, 9; 289443.885, 5320877.280; Ward 9 (Foss Lake); T. 151 N., R. 84 W., Sec. 17–20; 315877.075, 5307516.530; Ward 10 (Danielson WPA); T. 151 N., R. 84 W., Sec. 15, 21, 22; 319713.809, 5306604.459.


R. 88W
R. 87W
R. 86W
R. 85W
R. 84W
T. 155N
T. 154N
T. 153N
T. 152N
T. 151N
Ward County
Mountrail County
Mountrail 11
Ward 1
Ward 2
Ward 3
Ward 4
Ward 5
Ward 6
Ward 7
Ward 8
Ward 9
Ward 10
RYDER
2
23
28
4 0 4 8 Miles
N
W
E
S
Piping Plover Critical Habitat
Sections
Township Boundaries
Map Location
North Dakota
Unit 3 (North Dakota)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–4:* McLean 1–8.

This unit consists of eight alkali lakes and wetlands (as defined in item 2 i-iv above) located in McLean County in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

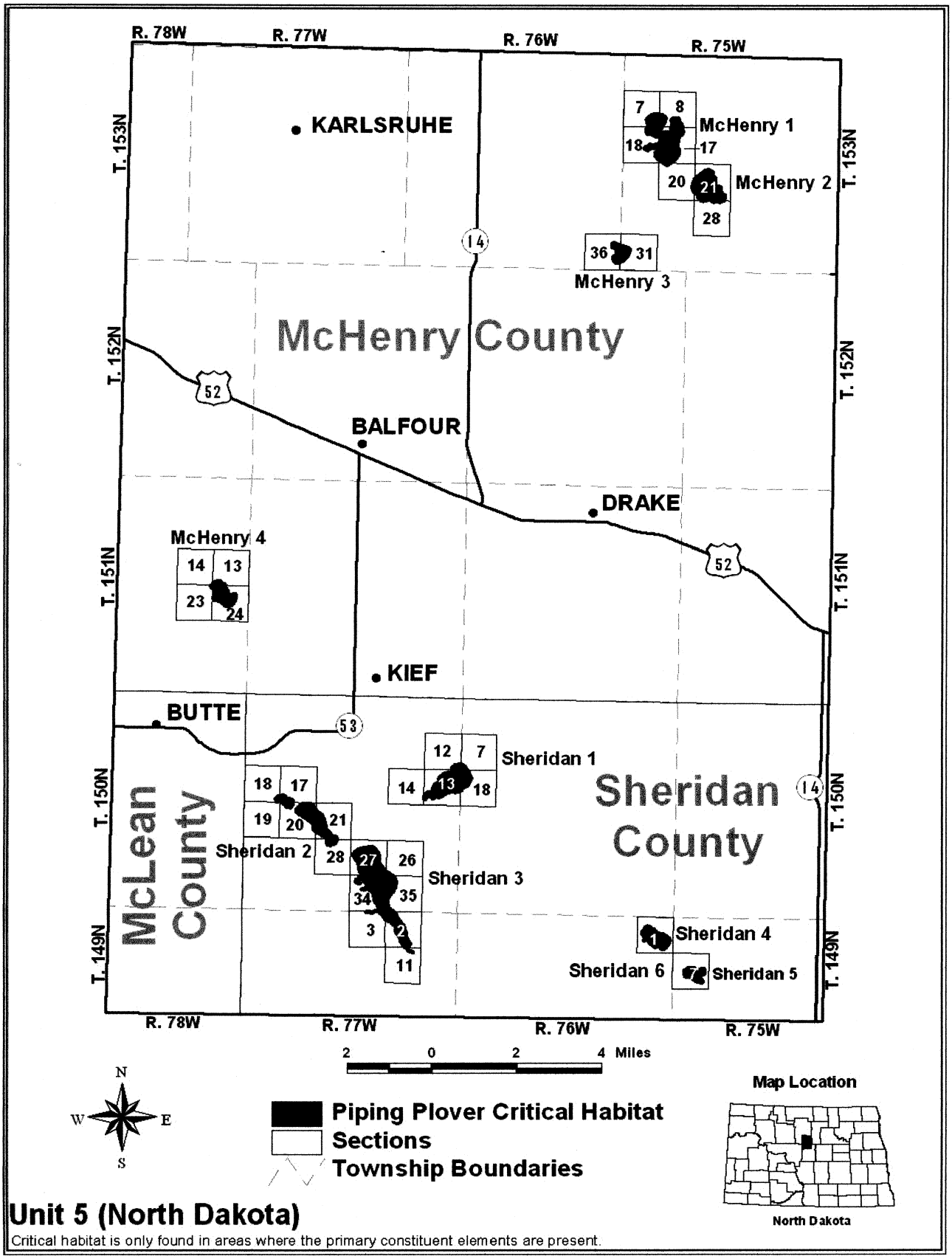
McLean 1 (Crystal Lake); T. 150 N., R. 84 W., Sec. 26, 27, 34; 319688.770, 5294525.701; McLean 2 (Engel Lake); T. 149 N., R. 84 W., Sec. 12, 13; 322716.750, 5288701.540; McLean 3 (Lake Nettie); T. 148 N., R. 81 W., Sec. 20, 21, 28, 29; 348624.522, 5275584.490; McLean 4 (Cherry Lake); T. 147 N., R. 81 W., Sec. 23–26, 36; 353837.658, 5265184.800; McLean 5 (Lake Williams); T. 147 N., R. 79 W., Sec. 19–21, 28–30, 32, 33, T. 147 N., R. 80 W., Sec. 22–27, 34, 36; 364083.475, 5265192.285; McLean 6 (Blue Lake); T. 147 N., R. 79 W., Sec. 16, 17, 20, 21; 367727.830, 5266869.230; McLean 7 (Tractor Lake); T. 146 N., R. 80 W., Sec. 1, 2, 35, 36; 362857.085, 5262620.315; McLean 8 (Koeing WDA); T. 145 N., R. 80 W., Sec. 1, 12; 363258.729, 5250887.545.


McLean County
RUSO
MAX
GARRISON
RIVERDALE
TURTLE LAKE
UNDERWOOD
McLean 1
McLean 2
McLean 3
McLean 4
McLean 5
McLean 6
McLean 7
McLean 8
Lake Audubon
Lake Sakakawea
Mallard Island
T. 150N
T. 149N
T. 148N
T. 147N
T. 146N
T. 145N
R. 79W
R. 80W
R. 81W
R. 82W
R. 83W
R. 84W
Map Location
North Dakota
Piping Plover Critical Habitat
Sections
Township Boundaries
4 0 4 Miles
Unit 4 (North Dakota)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–5:* McHenry 1–4, Sheridan 1–6.

This unit consists of 10 alkali lakes and wetlands (as defined in item 2 i-iv above) located in McHenry and Sheridan Counties in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

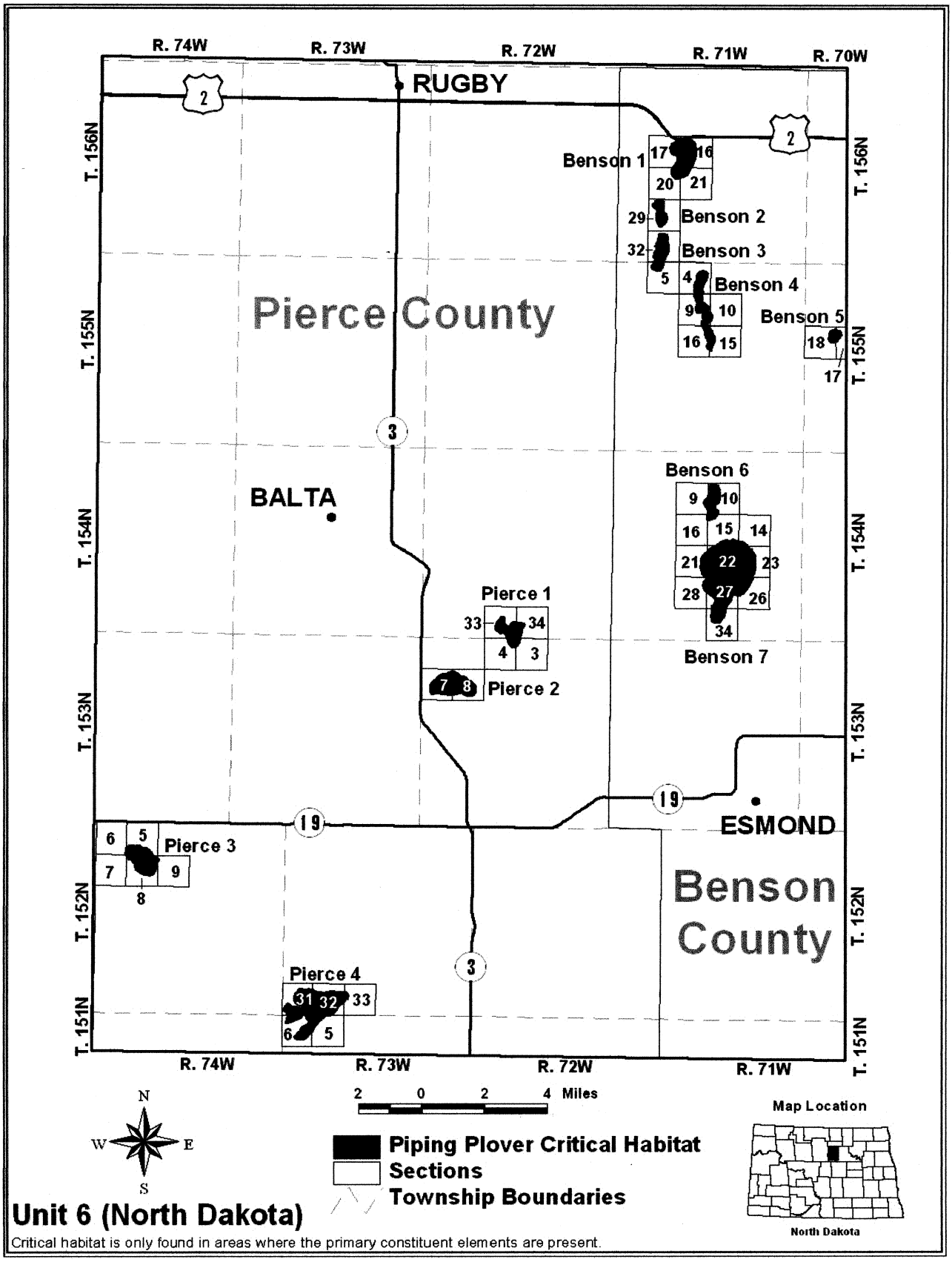
McHenry 1 (Lake Lemer); T. 153 N., R. 75 W., Sec. 7, 8, 17, 18, 20; 400056.197, 5325316.812; McHenry 2 (Bromley Lake); T. 153 N., R. 75 W., Sec. 20, 21, 28; 402047.786, 5323231.640; McHenry 3 (Crooked Lake); T. 153 N., R. 75 W., Sec. 31, T. 153 N., R. 76 W., Sec. 36; 398136.708, 5320218.780; McHenry 4 (Spiche WPA); T. 151 N., R. 78 W., Sec. 13, 14, 23, 24; 380388.750, 5304863.342; Sheridan 1 (Kandt Lake); T. 150 N., R. 76 W., Sec. 7, 18, T. 150 N., R. 77 W., Sec. 12–14; 390437.732, 5296427.775; Sheridan 2 (Moesner Lake); T. 150 N., R. 77 W., Sec. 17–21, 28; 384577.857, 5294515.153; Sheridan 3 (Krueger Lake); T. 149 N., R. 77 W., Sec. 2, 3, 11, T. 150 N., R. 77 W., Sec. 26, 27, 34, 35; 387560.771, 5291126.275; Sheridan 4 (New Lake); T. 149 N., R. 76 W., Sec. 1; 399759.605, 5289417.669; Sheridan 5 (Plover Pond); T. 149 N., R. 75 W., Sec. 7; 401849.925, 5287906.865; Sheridan 6 (Gadwall Lake); T. 149 N., R. 75 W., Sec. 7; 401439.445, 5287735.436.


R. 78W
R. 77W
R. 76W
R. 75W
T. 153N
T. 152N
T. 151N
T. 150N
T. 149N
KARLSRUHE
BALFOUR
DRAKE
KIEF
BUTTE
McHenry County
McLean County
Sheridan County
McHenry 1
McHenry 2
McHenry 3
McHenry 4
Sheridan 1
Sheridan 2
Sheridan 3
Sheridan 4
Sheridan 5
Sheridan 6
14
52
53
2 0 2 4 Miles
N
W
E
S
Map Location
North Dakota
Piping Plover Critical Habitat
Sections
Township Boundaries
Unit 5 (North Dakota)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–6:* Benson 1–7, Pierce 1–4.

This unit consists of 11 alkali lakes and wetlands (as defined in item 2 i–iv above) located in Benson and Pierce Counties in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

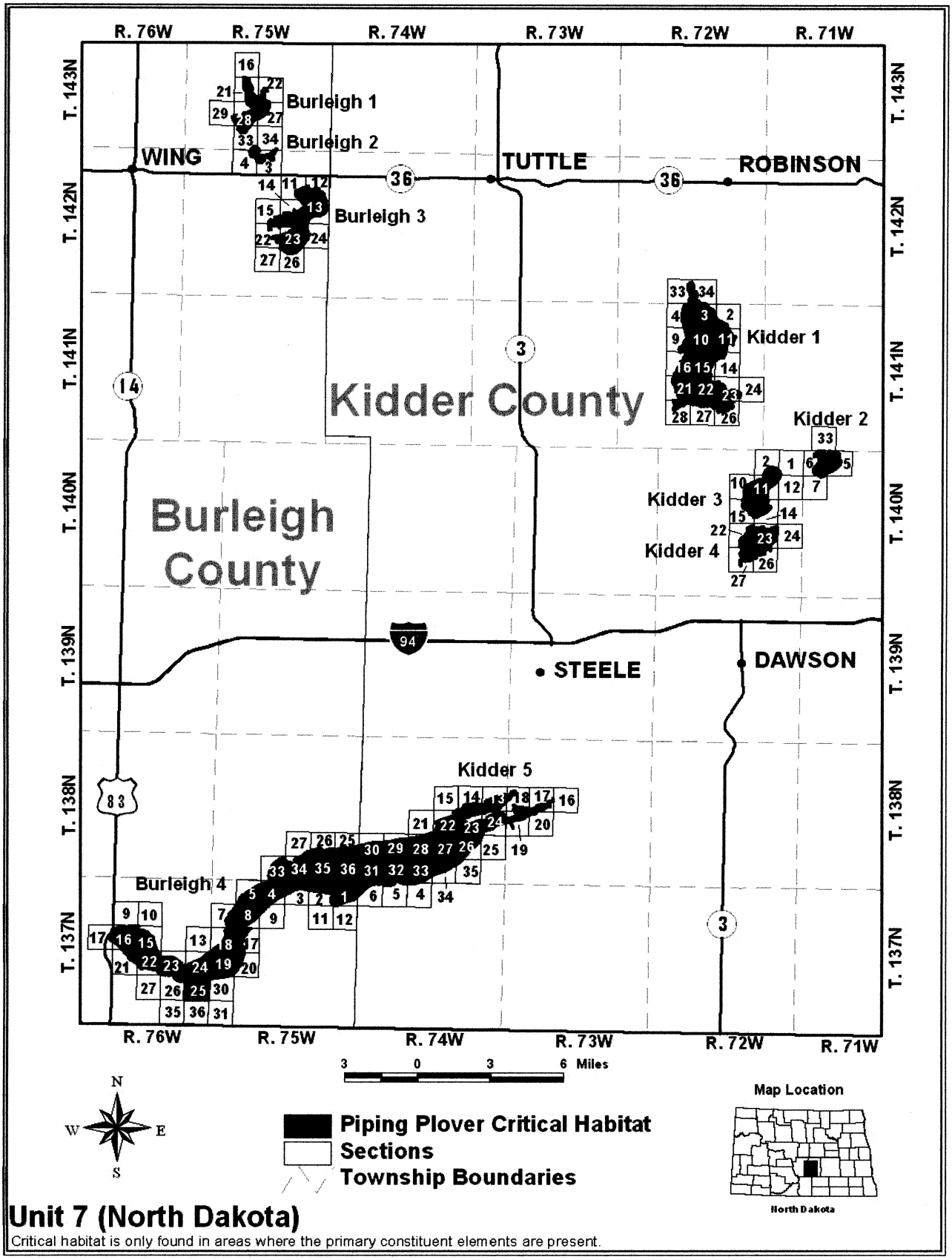
Benson 1 (Horseshoe Lake); T. 156 N., R. 71 W., Sec. 16, 17, 20, 21; 440518.660, 5353030.147; Benson 2 (Shively WPA); T. 156 N., R. 71 W., Sec. 20, 29; 439353.229, 5350282.062; Benson 3 (Pfeifer Lake); T. 155 N., R. 71 W., Sec. 5, T. 156 N., R. 71 W., Sec. 32; 439370.542, 5348281.846; Benson 4 (Long Lake WPA) T. 155 N., R. 71 W., Sec. 4, 9, 10, 15, 16; 441621.551, 5345274.731; Benson 5 (Volk WPA West); T. 155 N., R. 70 W., Sec. 17, 18; 448265.688, 5344009.988; Benson 6 (Simon WPA); T. 154 N., R. 71 W., Sec. 9, 10, 15, 16; 442022.195, 5335513.405; Benson 7 (Cranberry Lake); T. 154 N., R. 71 W., Sec. 14, 15, 21–23, 26–28, 34; 442842.177, 5331453.343; Pierce 1 (Sandhill Crane WPA); T. 153 N., R. 72 W., Sec. 3, 4, T. 154 N., R. 72 W., Sec. 33, 34; 431750.466, 5328861.394; Pierce 2 (Petrified Lake); T. 153 N., R. 72 W., Sec. 7, 8; 428853.027, 5326213.903; Pierce 3 (Orrin Lake); T. 152 N., R. 74 W., Sec. 5–9; 413060.595, 5317206.795; Pierce 4 (Little Antelope Lake); T. 151 N., R. 73 W., Sec. 5, 6, T. 152 N., R. 73 W., Sec. 31–33; 421895.100, 5309374.573.


R. 74W
R. 73W
R. 72W
R. 71W
R. 70W
RUGBY
Benson 1
Benson 2
Benson 3
Benson 4
Benson 5
Benson 6
Benson 7
Pierce County
BALTA
Pierce 1
Pierce 2
Pierce 3
Pierce 4
ESMOND
Benson County
T. 156N
T. 155N
T. 154N
T. 153N
T. 152N
T. 151N
2 0 2 4 Miles
N
W
E
S
Map Location
North Dakota
Piping Plover Critical Habitat
Sections
Township Boundaries
Unit 6 (North Dakota)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–7:* Burleigh 1–4, Kidder 1–5.

This unit consists of nine alkali lakes and wetlands (as defined in item 2 i–iv above) located in Burleigh and Kidder Counties in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

Burleigh 1 (Rath WPA); T. 143 N., R. 75 W., Sec. 16, 21, 22, 27–29, 33; 410335.925, 522591.163; Burleigh 2 (Rachel Hoff); T. 142 N., R. 75 W., Sec. 3, 4, T. 143 N., R. 75 W., Sec. 33, 34; 411135.195, 5222640.220; Burleigh 3 (Lake Arena); T. 142 N., R. 75 W., Sec. 11–15, 22–24, 26, 27; 413457.835, 5218315.984; Burleigh 4 (Long Lake NWR); T. 137 N., R. 75 W., Sec. 1–12, 17–20, 30, 31, T. 138 N., R. 75 W., Sec. 25–27, 33–36, T. 137 N., R. 76 W., Sec. 9, 10, 13, 15–17, 21–27, 35, 36; 409304.489, 5171717.886; Kidder 1 (Horsehead Lake); T. 141 N., R. 72 W., Sec. 2–4, 9–11, 14–16, 21–24, 26–28, T. 142 N., R. 72 W., Sec. 33, 34; 440436.505, 5209889.760; Kidder 2 (Spring Lake); T. 140 N., R. 71 W., Sec. 5–7, T. 141 N., R. 71 W., Sec. 33; 448424.870, 5202157.335; Kidder 3 (Sibley Lake); T. 140 N., R. 72 W., Sec. 1, 2, 10–12, 14, 15; 444092.995, 5200289.957; Kidder 4 (Big Muddy Lake); T. 140 N., R. 72 W., Sec. 22–24, 26, 27; 443892.205, 5196747.645; Kidder 5 (Long Lake NWR); T. 137 N., R. 74 W., Sec. 4–6, T. 138 N., R. 73 W., Sec. 16–20, T. 138 N., R. 74 W., Sec. 13–15,21–35; 423970.257, 5176976.647.



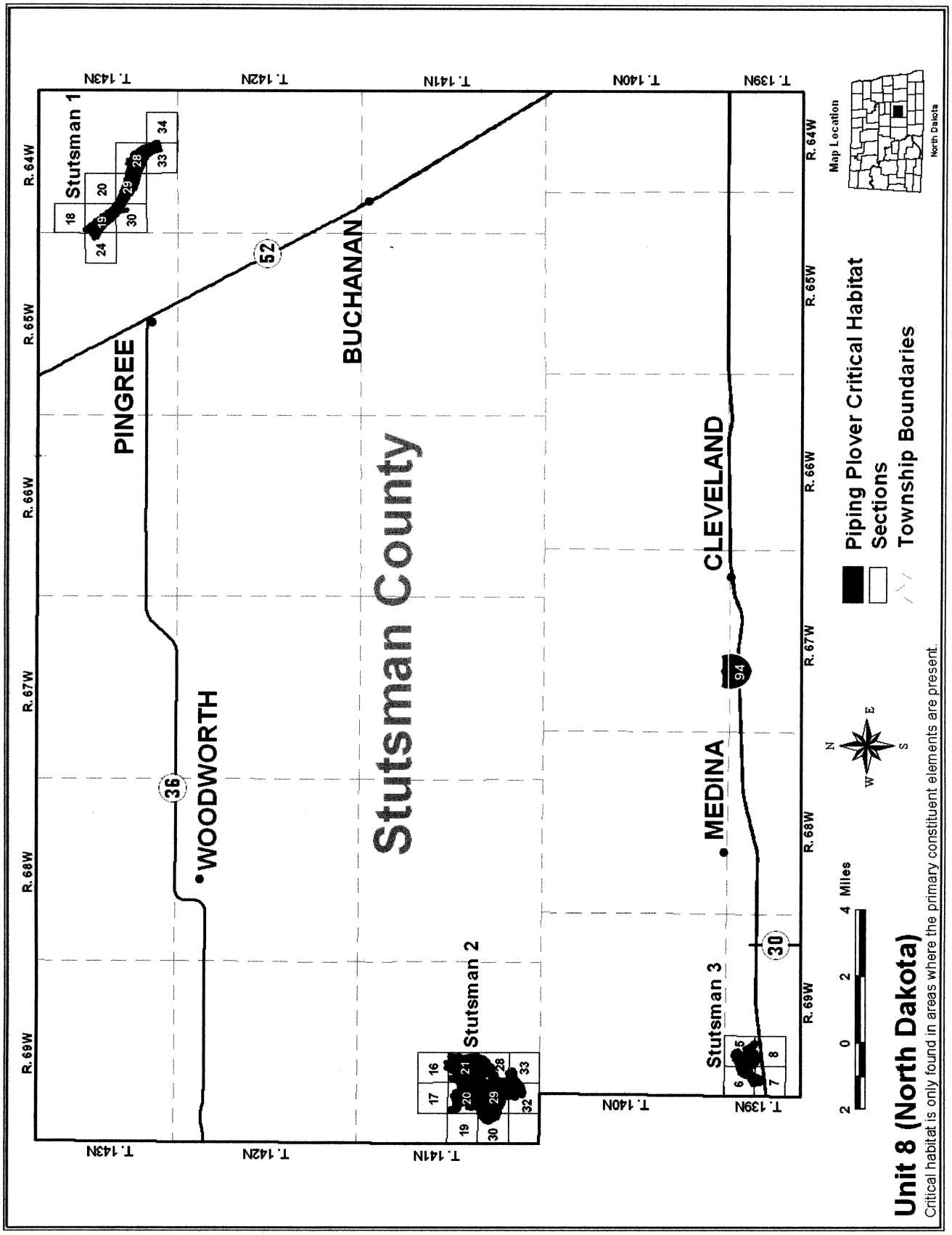

**Unit 7 (North Dakota)**

Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–8:* Stutsman 1–3.

This unit consists of three alkali lakes and wetlands (as defined in item 2 i–iv above) located in Stutsman County in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

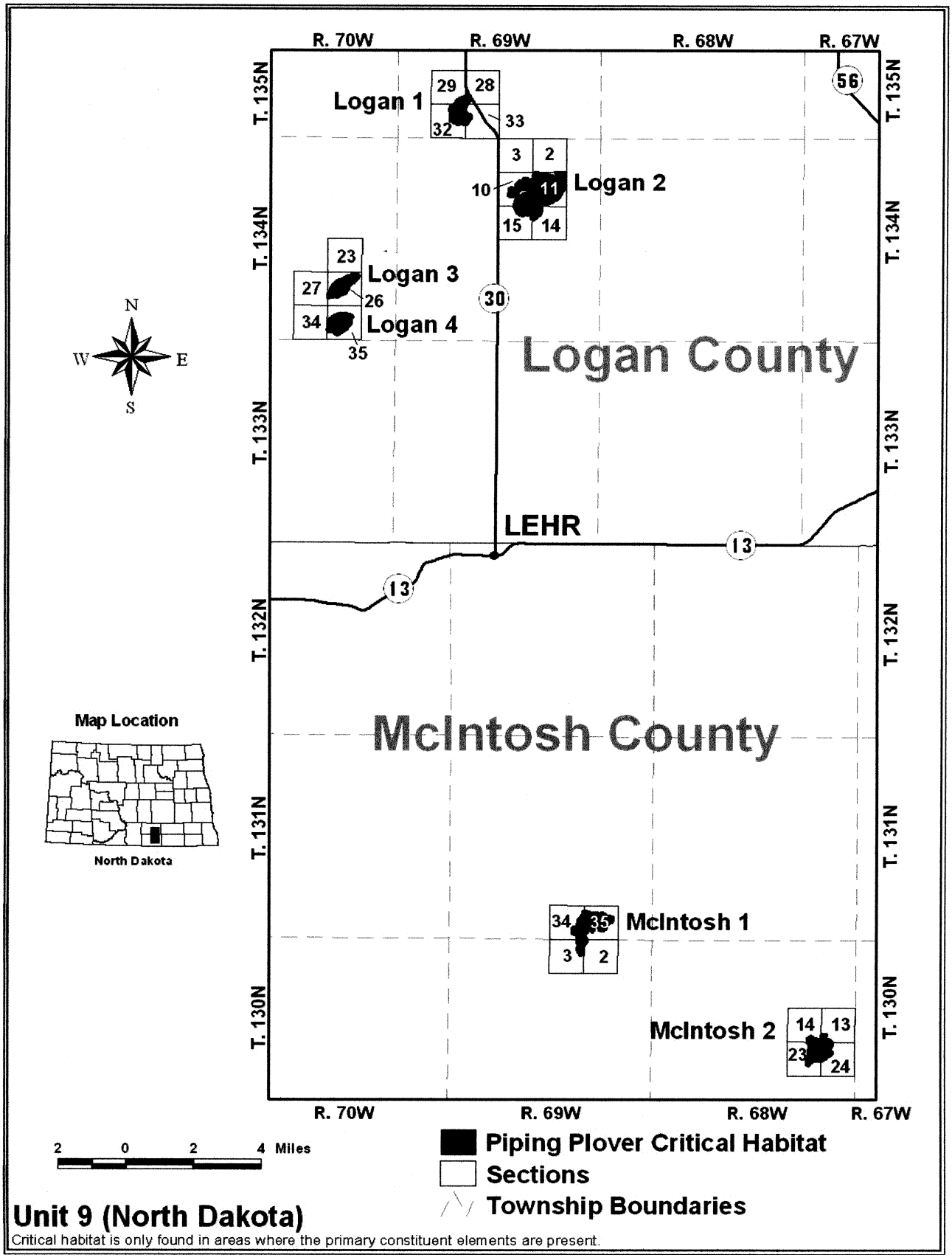
Stutsman 1 (Jim Lake); T. 143 N., R. 64 W., Sec. 18–20, 28–30, 33, 34, T. 143 N., R. 65 W., Sec. 24; 513814.853, 5224895.395; Stutsman 2 (Chase Lake); T. 141 N., R. 69 W., Sec. 16, 17, 19–21, 28–30, 32, 33; 466386.425, 5205713.905; Stutsman 3 (Stink Lake 01); T. 139 N., R. 69 W., Sec. 5–8; 467714.455, 5191874.900.


Stutsman County
PINGREE
BUCHANAN
WOODWORTH
CLEVELAND
MEDINA
Stutsman 1
Stutsman 2
Stutsman 3
T. 143N
T. 142N
T. 141N
T. 140N
T. 139N
R. 64W
R. 65W
R. 66W
R. 67W
R. 68W
R. 69W
52
36
94
30
Map Location
North Dakota
Piping Plover Critical Habitat
Sections
Township Boundaries
N
S
E
W
4 Miles
2
0
2
Unit 8 (North Dakota)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–9:* Logan 1–4, McIntosh 1–2.

This unit consists of six alkali lakes and wetlands (as defined in item 2 i–iv above) located in Logan and McIntosh Counties in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

Logan 1 (Eberie Lake); T. 135 N., R. 69 W., Sec. 28, 29, 32, 33; 471236.510, 5146008.575; Logan 2 (Schweigert WPA); T. 134 N., R. 69 W., Sec. 2, 3, 10, 11, 14, 15; 474875.710, 5141918.770; Logan 3 (Baltzer WPA); T. 134 N., R. 70 W., Sec. 23, 26, 27; 465722.478, 5137658.555; Logan 4 (Logan County WMA); T. 134 N., R. 70 W., Sec. 34, 35; 465577.090, 5135812.195; McIntosh 1 (Turkey Island WPA); T. 130 N., R. 69 W., Sec. 2, 3, T. 131 N., R. 69 W., Sec. 34, 35; 476990.724, 5106836.450; McIntosh 2 (McIntosh 02); T. 130 N., R. 68 W., Sec. 13, 14, 23, 24; 488392.570, 5101297.805.



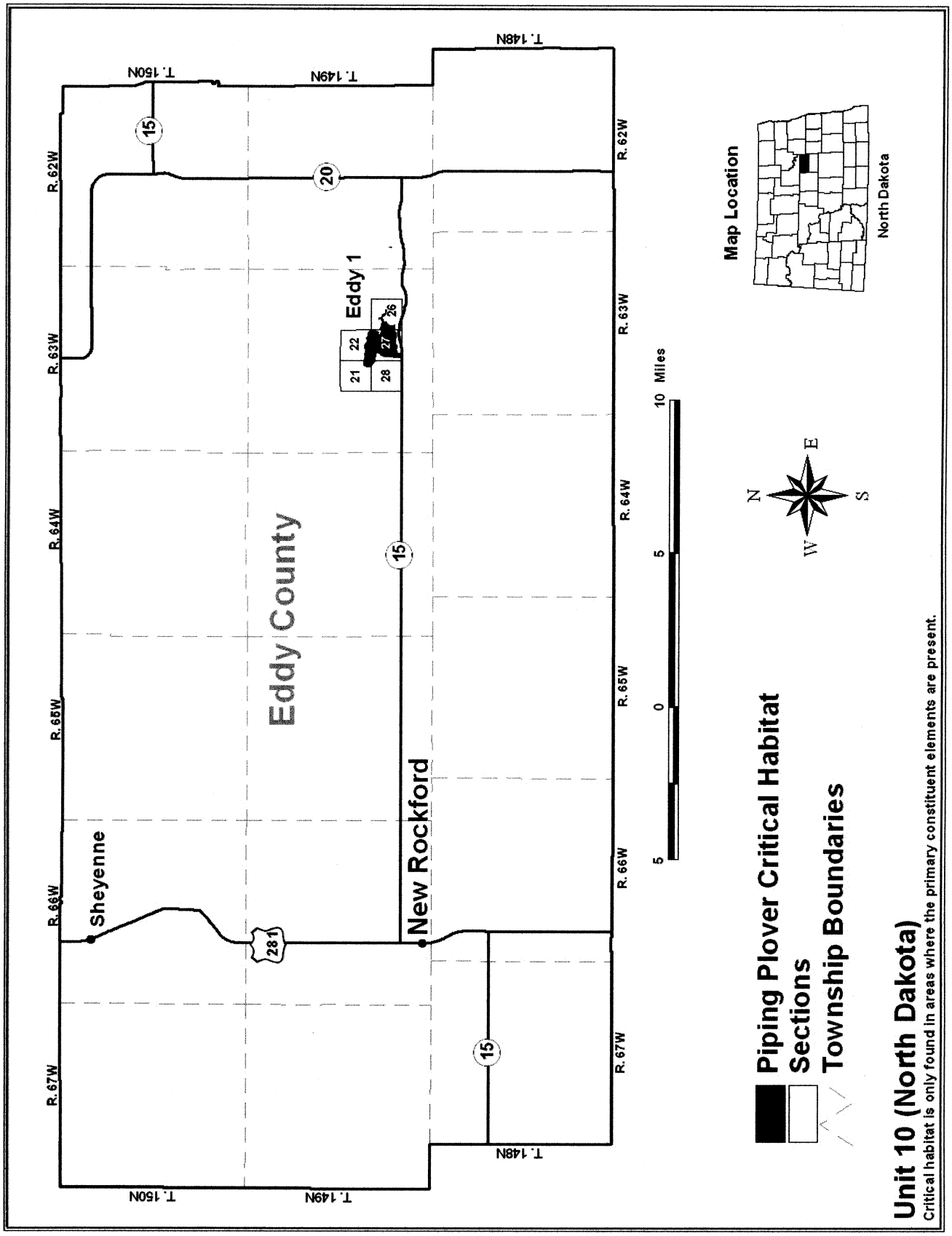

**Unit 9 (North Dakota)**

Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–10:* Eddy 1.

This unit consists of one alkali lake and wetland (as defined in item 2 i–iv above) located in Eddy County in the following Township, Range, and Section(s). The description that follows includes site map number; common name in parenthesis; Township, Range, and Section(s); and UTM coordinate (X, Y) of the center point:

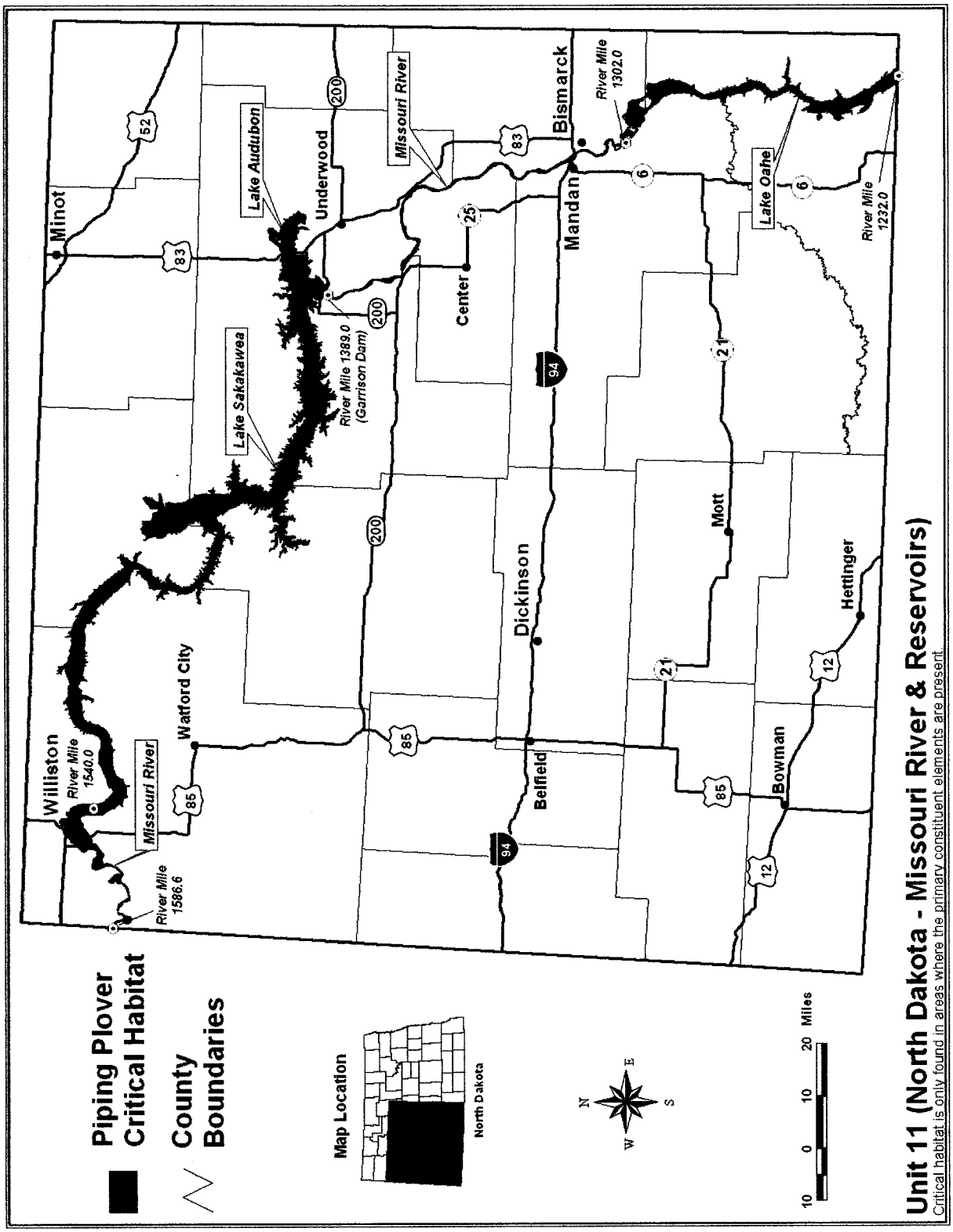
Eddy 1 (Lake Coe); T. 149 N., R. 63 W., Sec. 21, 22, 26–28; 522343.035, 5282341.250.


T. 150N
T. 149N
T. 148N
R. 62W
R. 63W
R. 64W
R. 65W
R. 66W
R. 67W
Eddy County
Eddy 1
21
22
27
28
26
Sheyenne
New Rockford
281
15
20
Map Location
North Dakota
10 Miles
5
0
5
N
E
S
W
Piping Plover Critical Habitat
Sections
Township Boundaries
Unit 10 (North Dakota)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit ND–11:* Missouri River.

Approximately 354.6 mi (570.6 km) from the Montana/North Dakota border just west of Williston, McKenzie County, North Dakota, at RM 1586.6 downstream to the North Dakota/South Dakota border in Sioux and Emmons Counties, North Dakota, and Corson and Campbell Counties, South Dakota, at RM 1232.0. Lake Sakakawea, Lake Audubon, and Lake Oahe are included in this unit, along with a free-flowing stretch of the Missouri River from RM 1389 to 1302 (Garrison Reach). This unit consists of the following TRS:

T. 129 N., R. 78 W., Sec. 19, 29–32 ; T. 129 N., R. 79 W., Sec. 3–6, 8–11, 13–16, 21–27, 35–36, T. 129 N., R. 80 W., Sec. 1, T. 130 N., R. 79 W., Sec. 3–9, 17–21, 27–34, T. 130 N., R. 80 W., Sec. 1–3, 10–14, 23–26, 36; T. 131 N., R. 79 W., Sec. 4–9,17–20, 29–32, T. 131 N., R. 80 W., Sec. 1, 11–15, 22–26, 35–36; T. 132 N., R. 78 W., Sec. 15–22; T. 132 N., R. 79 W., Sec. 3–5, 8–10, 13–16, 21–24, 26–29, 32–36. T. 133 N., R. 78 W., Sec. 5–8, 18–19, 30; T. 133 N., R. 79 W., Sec. 1–2, 11–13, 23–28, 34–36; T. 134 N., R. 78 W., Sec. 31; T. 134 N., R. 79 W., Sec. 2–3, 10–16, 22–26, 35–36, T. 135 N., R. 78 W., Sec. 6–7, T. 135 N., R. 79 W., Sec. 1–2, 11–15, 22–24, Sec. 26–27, 34–35; T. 136 N., R. 78 W., Sec. 18–19, 30–31; T. 136 N., R. 79 W., Sec. 1–3, 5–6, 8–16, 22–27, 35–36, T. 137 N., R. 79 W., Sec. 8, 14–23, 26–36, T. 137 N., R. 80 W., Sec. 3–5, T. 8–11, 13–17, 22–26, 36, T. 138 N., R. 80 W., Sec. 5–7, 18–19, 28–34, T. 138 N., R. 81 W., Sec. 13, 24–25; T. 139 N., R. 80 W., Sec. 30–31, T. 139 N., R. 81 W., Sec. 3–4, Sec. 10–11, 14, 23–26; T. 140 N., R. 81 W., Sec. 5, 8–9, 16, 21, 27–28, 33, T. 141 N., R. 80 W., Sec. 7, 18; T. 141 N., R. 81 W., Sec. 1–3, 11–13, 24–27, 33–35, T. 142 N., R. 81 W., Sec. 4–5, 9–10, 15–16, 21–22, 27–28, 34–35, T. 143 N., R. 81 W., Sec. 5–8, 18–19, 29–33, T. 144 N., R. 81 W., Sec. 30–32, T. 144 N., R. 82 W., Sec. 14–18, 23–25, T. 144 N., R. 83 W., Sec. 13–14, 21–24, 27–34, T. 144 N., R. 84 W., Sec. 5–9, 14–17, 22–25, T. 145 N., R. 84 W., Sec. 5, 8–9, 15–16, 21, 22, 27,. 34–35; T. 146 N., R. 84 W., Sec. 4–7, 18–20, 29–30, Sec. 32; T. 146 N., R. 85 W., Sec. 12–13, 24; T. 146 N., R. 86 W., Sec. 3, T. 146 N., R. 86 W., Sec. 6–7, T. 146 N., R. 87 W., Sec. 1–10, 18, T. 146 N., R. 88 W., Sec. 1–14, 16–18, 20–21, 24; T. 146 N., R. 89 W., Sec. 1–2, 10–12, T. 147 N., R. 82 W., Sec. 2–6, 8–11, 15–18, T. 147 N., R. 83 W., Sec. 1–9, Sec. 16–20, T. 147, N., R. 84 W., Sec. 1–24, T. 147 N., R. 85 W., Sec. 1–27, 28–35, 29–31, 34–36, T. 147 N., R. 86 W., Sec. 1–3, 7, 9–36; T. 147 N., R. 87 W., Sec. 7–36, T. 147 N., R. 88 W., Sec. 6–11, 13–36; T. 147 N., R. 89 W., Sec. 1–29, 34–36; T. 147 N., R. 90 W., Sec. 1–18, 20, 23–27; T. 147 N., R. 91W., Sec. 1–7, 11–12; T. 147 N., R. 92 W., Sec. 1–9, 12–13, 16–20, 29–30, 32; T. 147 N., R. 93 W., Sec. 1–2, 12–13, T. 148 N., R. 82 W., Sec. 7–8, 17–20, 28–34; T. 148 N., R. 83 W., Sec. 11–15, 19–36, T. 148 N., R. 84 W., Sec. 18–19, 22–27, 29–36; T. 148 N., R. 85 W., Sec. 19–20, 24–25, 27, T 29–36; T. 148 N., R. 86 W., Sec. 23–28, 33–36; T. 148 N., R. 89 W., Sec. 30–32, T. 148 N., R. 90 W., Sec. 6, 19–21, 25–36; T. 148 N., R. 91 W., Sec. 1–12, 14–17, 19–36, T. 148 N., R. 92 W., Sec. 13, 20–22, 24–36; T. 148 N., R. 93 W., Sec. 24–25, 35–36, T. 149 N., R. 89 W., Sec. 7, 18; T. 149 N., R. 90 W., Sec. 3–24, 27–33; T. 149 N., R. 91 W., Sec. 1–4, 6, 9–15, 23–26, 34–36; T. 149 N., R. 92 W., Sec. 1–6, 10–12, 14–16; T. 149 N., R. 93 W., Sec. 1–2, T. 150 N., R. 90 W., Sec. 18–19, 29–31; T. 150 N., R. 91 W., Sec. 1–36, T. 150 N., R. 92 W., Sec. 13–14, 19–20, 23–36; T. 150 N., R. 93 W., Sec. 6–9, 13–36, T. 150 N., R. 94 W., Sec. 1–2, 12–15, 22, 24; T. 151 N., R. 91 W., Sec. 1–11, 14–23, 26–35, T. 151 N., R. 92 W., Sec. 1–3, 10–14, 23–26, 36; T. 151 N., R. 93 W., Sec. 5–8, 16–21, 30–31, T. 151 N., R. 94 W., Sec. 1–3, 10–15, 24–26, 35–36; T. 152 N., R. 91W., Sec. 19, 22–28, 30–35, T. 152 N., R. 92 W., Sec. 18–19, 21–28, 34–36; T. 152 N., R. 93 W., Sec. 1–16, 20–23, 27–34, T. 152 N., R. 94 W., Sec. 1, 36, T. 152 N., R. 99 W., Sec. 2–6, T. 152 N., R. 100 W., Sec. 1–12, T. 152 N., R. 100 W., Sec. 14–18, T. 152 N., R. 100 W., Sec. 20, 22; T. 152 N., R. 101 W., Sec. 1–2, 12–13; T. 152 N., R. 102 W., Sec. 6–7, T. 152 N., R. 103 W., Sec. 3–4, 9–16, 20–23, 28–30, T. 152 N., R. 104 W., Sec. 7–8, 13–15, 17–18, 20–25, 28–29; Sec. 32–33, T. 153 N., R. 92 W., Sec. 31–33, T. 153 N., R. 93 W., Sec. 5–9, 15–23, 26–30, 32–36; T. 153 N., R. 94 W., Sec. 1–14, 16, 24; T. 153 N., R. 95 W., Sec. 5–6, T. 153 N., R. 96 W., Sec. 1, 4–5; T. 153 N., R. 97 W., Sec. 1–2, 4–7, 11; T. 153 N., R. 98 W., Sec. 1–3, 11–15, 19–35, T. 153 N., R. 99 W., Sec. 22–29, 31–36, T. 153 N., R. 100 W., Sec. 4–9, 16–21, 27–30, 32–35; T. 153 N., R. 101 W., Sec. 1–11, 15–20, 30; T. 153 N., R. 102 W., Sec. 1, 12–13, 21–28, 33–36; T. 154 N., R. 93 W., Sec. 31, T. 154 N., R. 94 W., Sec. 15, 19–23, 25–36; T. 154 N., R. 95 W., Sec. 11, 13–14, 17–36, T. 154 N., R. 96 W., Sec. 2–3, 10–11, 13–16, 18–36; T. 154 N., R. 97 W., Sec. 13–16, 19–36; T. 154 N., R. 98 W., Sec. 25, 35–36; T. 154 N., R. 100 W., Sec. 19, 29–33, T. 154 N., R. 101 W., Sec. 22–29, 31–36.


Piping Plover Critical Habitat
County Boundaries
Map Location
North Dakota
N
E
S
W
10 0 10 20 Miles
Unit 11 (North Dakota - Missouri River & Reservoirs)
Critical habitat is only found in areas where the primary constituent elements are present.
Williston
River Mile 1540.0
Missouri River
River Mile 1586.6
Watford City
Minot
Lake Audubon
Lake Sakakawea
Underwood
Missouri River
River Mile 1389.0 (Garrison Dam)
Center
Bismarck
River Mile 1302.0
Mandan
Lake Oahe
River Mile 1232.0
Dickinson
Belfield
Mott
Hettinger
Bowman
52
83
200
25
6
94
21
85
12

**South Dakota**

*Projection:* UTM Zone 14, NAD 27, Clarke 1866, Meters.

*Unit SD–1:* Missouri River.

Approximately 159.7 mi (257 km) from the North Dakota/South Dakota border northeast of McLaughlin, Corson County, South Dakota, at RM 1232.0 downstream to RM 1072.3, just north of Oahe Dam (Oahe Reservoir) including the following TRS:

T. 6 N., R. 29 E., Sec. 1–6, 8–11, 14–16, 21–23, 25–27, 35–36; T. 6 N., R. 30 E., Sec. 22–34; T. 6 N., R. 31 E., Sec. 19; T. 7 N., R. 28 E., Sec. 1,T. 7 N., R. 28 E., Sec. 12–13, 36; T. 7 N., R. 29 E., Sec. 5–9, 15–17, 20–28, 31–32, 34–36,[3]; T. 7 N., R. 30 E., Sec. 19–20, 29–32; T. 8 N., R. 23 E., Sec. 1; T. 8 N., R. 24 E., Sec. 4–6; T. 8 N., R. 26 E., Sec. 4; T. 8 N., R. 28 E., Sec. 1, 11–14, 23–25; T. 8 N., R. 29 E., Sec. 4–9, 16–20, 29–31; T. 9 N., R. 23 E., Sec. 36; T. 9 N., R. 24 E., Sec. 12–15, 22–28, 31–34, T. 9 N., R. 25 E., Sec. 1–2, 7–18, 20–25, 27; T. 9 N., R. 26 E., Sec. 1–9, 10–23, 26, 28–30, 32–33; T. 9 N., R. 27 E., Sec. 1–12; T. 9 N., R. 28 E., Sec. 3–9, 13–20, 22–26, 35–36; T. 9 N., R. 29 E., Sec. 1–4, 18–20, 29–32; T. 9 N., R. 30 E., Sec. 6; T. 10 N., R. 26 E., Sec. 10, 13, 15–16, 19–20, 22–29, 32–36; T. 10 N., R. 27 E., Sec. 9, 15–16, 21–36; T. 10 N., R. 28 E., Sec. 1–6, 8–17, 19–21, 24, 29–33; T. 10 N., R. 29 E., Sec. 1, 4–9, T. 10 N., R. 29 E., Sec. 12–13, 16–22, 24–25, 27–30, 32–36; T. 10 N., R. 30 E., Sec. 1–12, 14–19, 20, 29, 30–31, T. 10 N., R. 31 E., Sec. 6; T. 11 N., R. 27 E., Sec. 36; T. 11 N., R. 28 E., Sec. 25, 27–36; T. 11 N., R. 29 E., Sec. 24–26, 31, 36; T. 11 N., R. 30 E., Sec. 1–2, 11–14, 23–26, 31–33, 35–36; T. 11 N., R. 31 E., Sec. 30–31; T. 12 N., R. 30 E., Sec. 1–4, 10–14, 22–28, 34–36; T. 12 N., R. 31 E., Sec. 1–7, 10–12, T. 13 N., R. 30 E., Sec. 1, 31–34; T. 13 N., R. 30 E., Sec. 36; T. 13 N., R. 31 E., Sec. 3–10, 16–17, 20–21, 27–28, 30–35; T. 14 N., R. 30 E., Sec. 36; T. 14 N., R. 31 E., Sec. 1–5, 9–11, 14–15, 22–23, 26–28, 31–35; T. 15 N., R. 30 E., Sec. 1; T. 15 N., R. 31 E., Sec. 4–6, 10–11,13–15, 23–27, 32–33, 35–36; T. 16 N., R. 28 E., Sec. 13–14, 21–24, 26–28; T. 16 N., R. 29 E., Sec. 1–3, 7–22, 24, 29–30; T. 16 N., R. 30 E., Sec. 1–13, 16–18, 36; T. 16 N., R. 31 E., Sec. 1–2, 6–8, 10–11, 14–19, 20–22, 27–34; T. 17 N., R. 29 E., Sec. 36; T. 17 N., R. 30 E., Sec. 1, 28, 31, 33–34; T. 17 N., R. 31 E., Sec. 6–8, 16–18, 20–21, 27–28, 33–34; T. 18 N., R. 29 E., Sec. 1–2, 12–13; T. 18 N., R. 30 E., Sec. 18–27, 35–36; T. 18 N., R. 31 E., Sec. 31; T. 19 N., R. 28 E., Sec. 2–6; T. 19 N., R. 29 E., Sec. 1–18, 20–26, 34–36, T. 19 N., R. 30 E., Sec. 4, 7–9, 16–21, 28–32; T. 20 N., R. 27 E., Sec. 25, 36; T. 20 N., R. 28 E., Sec. 24–27, 30–36; T. 20 N., R. 29 E., Sec. 19, 29–32, 34; T. 20 N., R. 30 E., Sec. 22, 24–27,. 32–34, 36; T. 20 N., R. 31 E., Sec. 4–6, 8–9, 16, T. 20 N., R. 31 E., Sec. 19–21, 28–32; T. 21 N., R. 30 E., Sec. 2–4,10–11, 14, 23–26, 36; T. 21 N., R. 31 E., Sec. 31; T. 22 N., R. 29 E., Sec. 1–2, 11–12; T. 22 N., R. 30 E., Sec. 5–8, 14–17, 21–23, 27–28, 33–34,[4]; T. 23 N., R. 29 E., Sec. 20–22, 27–28, 33–36; [5]; T. 23 N., R. 30 E., Sec. 29–32; T. 107 N., R. 71 W., Sec. 30–32; T. 111 N., R. 80 W., Sec. 1–3, 6; T. 111 N., R. 81 W., Sec. 1–4; T. 112 N., R. 79 W., Sec. 31; T. 112 N., R. 80 W., Sec. 4–9, 17–18, 23, 25–36; T. 112 N., R. 81 W., Sec. 1, 12–15, 22–28, 33–36; T. 113 N., R. 80 W., Sec. 3–4, 9–10, T. 113 N., R. 80 W., Sec. 4, 9, 16–21, 28–34; T. 113 N., R. 81 W., Sec. 5–8, 13, 15–17, 20–29, 34–36; T. 114 N., R. 80 W., Sec. 33–34; T. 114 N., R. 81 W., Sec. 4–5, 9–10,16–17, 20–21, 27–29, 31–33; T. 115 N., R. 80 W., Sec. 2–5, 7–10, 16–20; T. 115 N., R. 81 W., Sec. 6–7, 16–21, 25–30, 32–33, 35–36; T. 115 N., R. 82 W., Sec. 1–4, 9–16, 22–25; T. 116 N., R. 79 W., Sec. 4–9, 17–20, T. 116 N., R. 80 W., Sec. 24–27, 33–35; T. 116 N., R. 82 W., Sec. 33–36; T. 117 N., R. 79 W., Sec. 5–8, 17–18, 20, 29, 32–33,[6]; T. 118 N., R. 78 W., Sec. 3–10, 16–18, 20–21, 29–30; T. 118 N., R. 79 W., Sec. 1, 12, 20–32; T. 119 N., R. 79 W., Sec. 3–5; T. 119 N., R. 78 W., Sec. 7–9, 17–20, 30–31; T. 119 N., R. 79 W., Sec. 24–25, 36; T. 120 N., R. 78 W., Sec. 2–4, 9–11, 15–17, 20–22, 27–29, 32–34, [7]; T. 121 N., R. 78 W., Sec. 3–11, 15–18, 20–22, 26–28, 34–35; T. 122 N., R. 78 W., Sec. 3–5, 9, 15–16, 21–22, 27–28, 32–34; T. 123 N., R. 78 W., Sec. 6–8, 18–20, 29–33; T. 123 N., R. 79 W., Sec. 1–3, 11–13, 24–25; T. 124 N., R. 78 W., Sec. 31; T. 124 N., R. 79 W., Sec. 5–7, 18, 29–34; T. 124 N., R. 80 W., Sec. 12–14, 23–26, 35–36; T. 125 N., R. 78 W., Sec. 4–5, 7–8; T. 125 N., R. 79 W., Sec. 9–17, 20–22, 27–29, 32–33,[7]; T. 126 N., R. 78 W., Sec. 5–8, 17–18, 20–21, 27–29, 32–33; T. 126 N., R. 79 W., Sec. 1, 12; T. 127 N., R. 78 W., Sec. 31; T. 127 N., R. 79 W., Sec. 1–2, 11, 14, 23–26, 36; T. 128 N., R. 78 W., Sec. 16–19, 29–31; T. 128 N., R. 79 W., Sec. 5–9, 13, 16–17, 20–22, 24–29, 35–36; T. 128 N., R. 80 W., Sec. 1–3, 10–12.

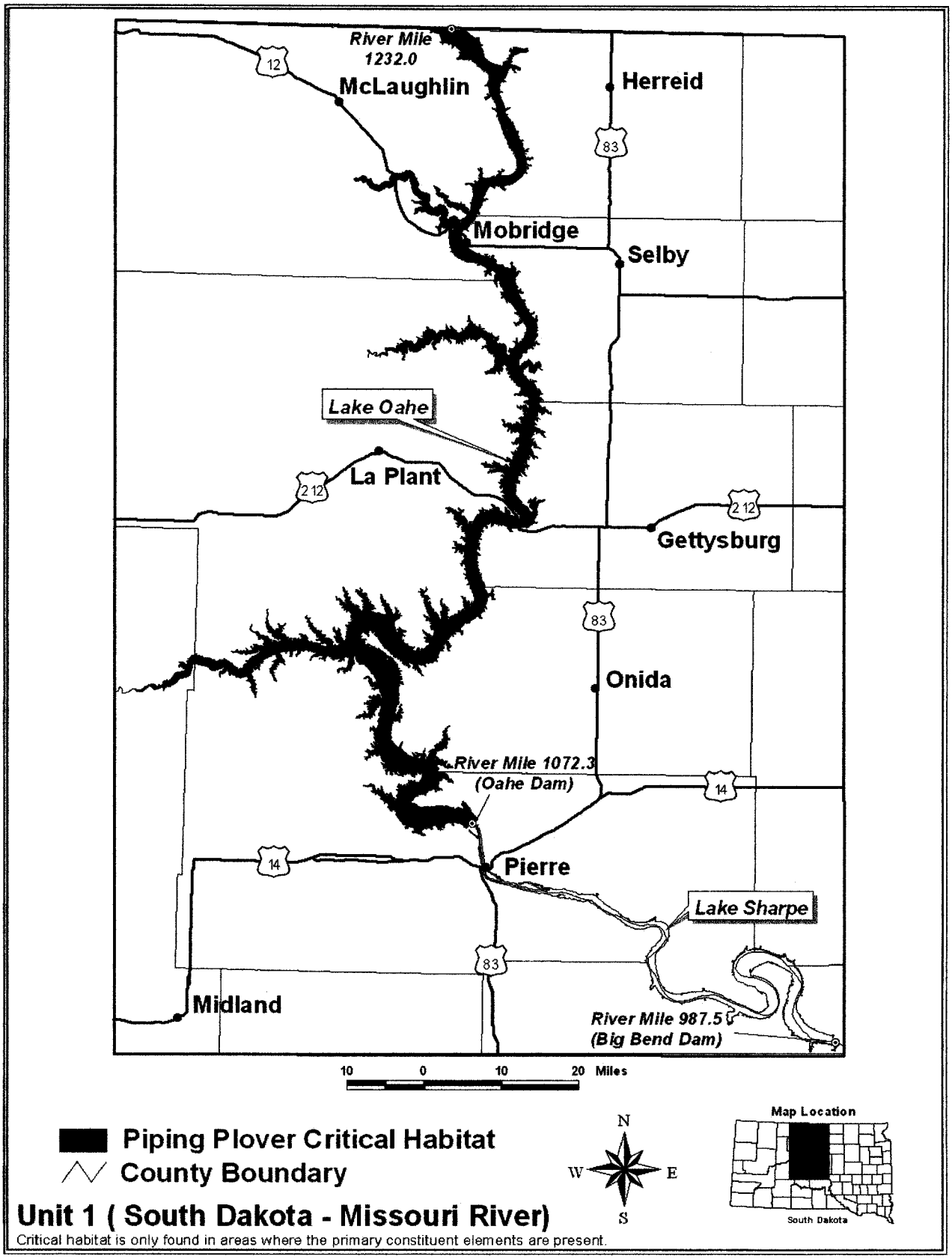
[3] Undefined—These are ''lands'' which were not surveyed during the original Government Land Office survey of South Dakota. They are now inundated and appear to fall in what was the described river channel at that time.

[4] See footnote 3.

[5] See footnote 3.

[6] See footnotes 1 and 3.

[7] See footnote 3.


River Mile 1232.0
McLaughlin
Herreid
Mobridge
Selby
Lake Oahe
La Plant
Gettysburg
Onida
River Mile 1072.3 (Oahe Dam)
Pierre
Lake Sharpe
Midland
River Mile 987.5 (Big Bend Dam)
12
83
212
14
10 0 10 20 Miles
Piping Plover Critical Habitat
County Boundary
N
W
E
S
Map Location
South Dakota
Unit 1 ( South Dakota - Missouri River)
Critical habitat is only found in areas where the primary constituent elements are present.

*Unit SD–2:* Missouri River.

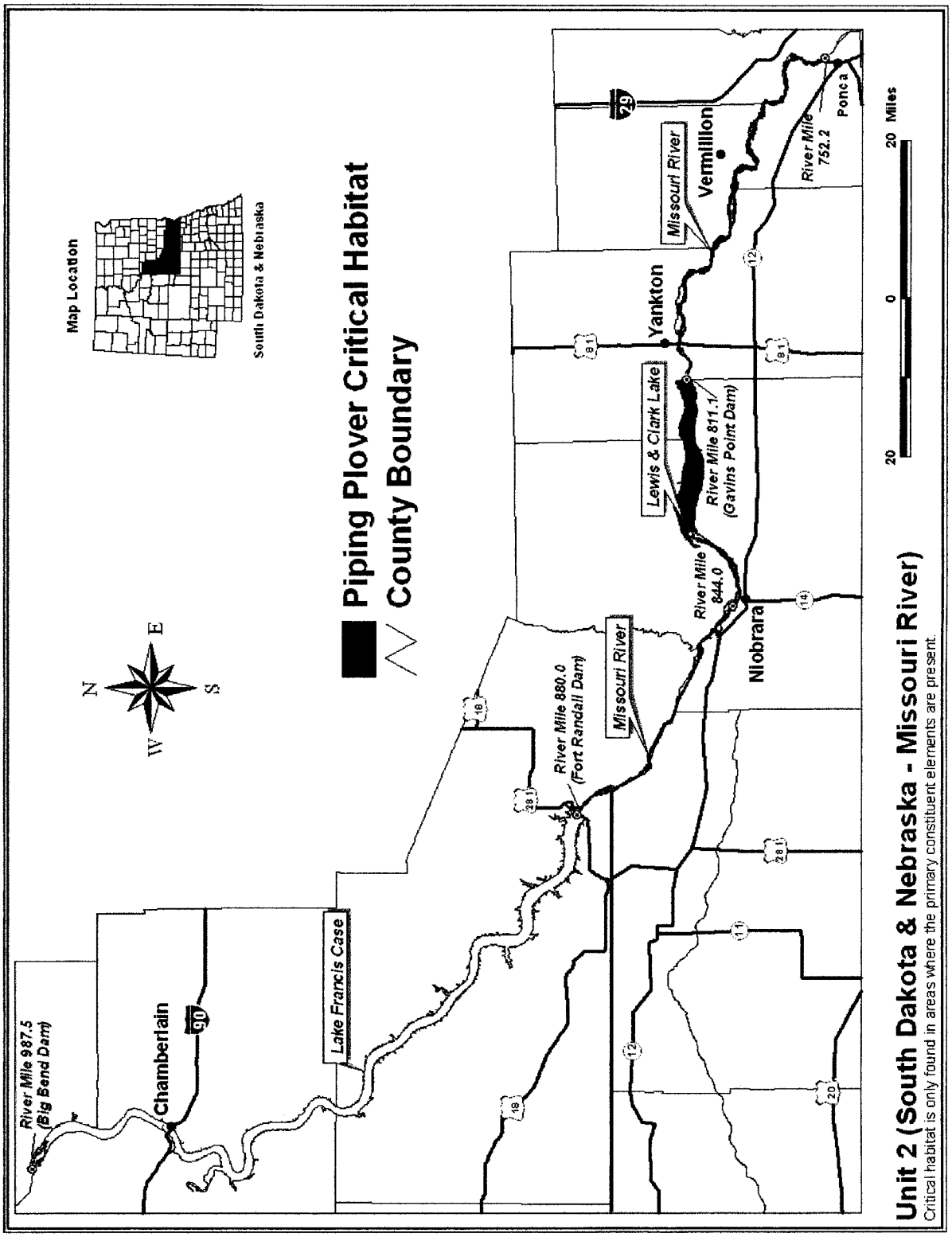
Approximately 127.8 mi (204.4 km) from RM 880.0, at Fort Randall Dam in Bon Homme (right bank) and Charles Mix Counties (left bank), South Dakota, downstream to RM 752.2 near Ponca in Dixon County, Nebraska (right bank), and Union County, South Dakota (left bank). One mainstem Missouri River reservoir, Lewis and Clark Lake, and two riverine reaches (Fort Randall and Gavins Point) are included in this unit. This unit consists of the following TRS:

T. 90 N., R. 49 W., Sec. 6, T. 90 N., R. 50 W., Sec. 1, T. 90 N., R. 50 W., Sec. 11–14, T. 90 N., R. 50 W., Sec. 23–25, T. 91 N., R. 49 W., Sec. 31, T. 91 N., R. 50 W., Sec. 7, T. 91 N., R. 50 W., Sec. 18–19, T. 91 N., R. 50 W., Sec. 25–26, T. 91 N., R. 50 W., Sec. 28–30, T. 91 N., R. 50 W., Sec. 35–36, T. 91 N., R. 50 W., Sec.[8], T. 91 N., R. 51 W., Sec. 3–6, T. 91 N., R. 51 W., Sec. 10–13, T. 91 N., R. 52 W., Sec. 1–3, T. 91 N., R. 52 W., Sec. 10–12, T. 92 N., R. 51 W., Sec. 31–32, T. 92 N., R. 52 W., Sec. 19–21, T. 92 N., R. 52 W., Sec. 26–30, T. 92 N., R. 52 W., Sec. 34–36, T. 92 N., R. 53 W., Sec. 7–8, T. 92 N., R. 53 W., Sec. 17–18, T. 92 N., R. 53 W., Sec. 20–24, T. 92 N., R. 54 W., Sec. 3, T. 92 N., R. 54 W., Sec. 10–12, T. 92 N., R. 60 W., Sec. 1–2, T. 92 N., R. 60 W., Sec. 10–11, T. 92 N., R. 60 W., Sec. 15–17, T. 92 N., R. 60 W., Sec. 19–21, T. 92 N., R. 61 W., Sec. 6–8, T. 92 N., R. 61 W., Sec. 15–17, T. 92 N., R. 61 W., Sec. 21–24, T. 92 N., R. 62 W., Sec. 1–2, T. 93 N., R. 54 W., Sec. 18–21, T. 93 N., R. 54 W., Sec. 27–28, T. 93 N., R. 54 W.,

Sec. 34, T. 93 N., R. 55 W., Sec. 13–14, T. 93 N., R. 55 W., Sec. 17–19, T. 93 N., R. 55 W., Sec. 23–24, T. 93 N., R. 56 W., Sec. 13–14, T. 93 N., R. 56 W., Sec. 17–21, T. 93 N., R. 56 W., Sec. 23–24, T. 93 N., R. 56 W., Sec. 26–28, T. 93 N., R. 57 W., Sec. 16–24, T. 93 N., R. 57 W., Sec. 28–29, T. 93 N., R. 58 W., Sec. 17–28, T. 93 N., R. 58 W., Sec. 30, T. 93 N., R. 58 W., Sec. 34–35, T. 93 N., R. 59 W., Sec. 10–11, T. 93 N., R. 59 W., Sec. 13–19, T. 93 N., R. 59 W., Sec. 21–27, T. 93 N., R. 60 W., Sec. 24–26, T. 93 N., R. 60 W., Sec. 35–36, T. 93 N., R. 62 W., Sec. 19–20, T. 93 N., R. 62 W., Sec. 26–30, T. 93 N., R. 62 W., Sec. 35–36, T. 93 N., R. 63 W., Sec. 6–10, T. 93 N., R. 63 W., Sec. 15, T. 93 N., R. 64 W., Sec. 1, T. 94 N., R. 64 W., Sec. 19–20, T. 94 N., R. 64 W., Sec. 27–30, T. 94 N., R. 64 W., Sec. 34–36, T. 94 N., R. 65 W., Sec. 2, T. 94 N., R. 65 W., Sec. 11–13, T. 94 N., R. 65 W., Sec. 24, T. 95 N., R. 65 W., Sec. 15–17, T. 95 N., R. 65 W., Sec. 8–9, T. 95 N., R. 65 W., Sec. 21–23, T. 95 N., R. 65 W., Sec. 26–27, T. 95 N., R. 65 W., Sec. 34–35.

**Note:** Map follows:

[8] Undefined—These are ''lands'' which were not surveyed during the original Government Land Office survey of South Dakota. They are now inundated and appear to fall in what was the described river channel at that time.




Dated: August 19, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02–21625 Filed 9–10–02; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT SEPTEMBER 11, 2002

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**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

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**Fish and Wildlife Service**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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**H.R. 223/P.L. 107–211**
To amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act. (Aug. 21, 2002; 116 Stat. 1050)

**H.R. 309/P.L. 107–212**
Guam Foreign Investment Equity Act (Aug. 21, 2002; 116 Stat. 1051)

**H.R. 601/P.L. 107–213**
To redesignate certain lands within the Craters of the Moon National Monument, and for other purposes. (Aug. 21, 2002; 116 Stat. 1052)

**H.R. 1384/P.L. 107–214**
Long Walk National Historic Trail Study Act (Aug. 21, 2002; 116 Stat. 1053)

**H.R. 1456/P.L. 107–215**
Booker T. Washington National Monument Boundary Adjustment Act of 2002 (Aug. 21, 2002; 116 Stat. 1054)

**H.R. 1576/P.L. 107–216**
James Peak Wilderness and Protection Area Act (Aug. 21, 2002; 116 Stat. 1055)

**H.R. 2068/P.L. 107–217**
To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, ''Public Buildings, Property, and Works''. (Aug. 21, 2002; 116 Stat. 1062)

**H.R. 2234/P.L. 107–218**
Tumacacori National Historical Park Boundary Revision Act of 2002 (Aug. 21, 2002; 116 Stat. 1328)

**H.R. 2440/P.L. 107–219**
To rename Wolf Trap Farm Park as ''Wolf Trap National Park for the Performing Arts'', and for other purposes. (Aug. 21, 2002; 116 Stat. 1330)

**H.R. 2441/P.L. 107–220**
To amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes. (Aug. 21, 2002; 116 Stat. 1332)

**H.R. 2643/P.L. 107–221**
Fort Clatsop National Memorial Expansion Act of 2002 (Aug. 21, 2002; 116 Stat. 1333)

**H.R. 3343/P.L. 107–222**
To amend title X of the Energy Policy Act of 1992, and for other purposes. (Aug. 21, 2002; 116 Stat. 1336)

**H.R. 3380/P.L. 107–223**
23 To authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park. (Aug. 21, 2002; 116 Stat. 1338)

**Last List August 12, 2002**

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