
# Federal Register

8–15–06 Tuesday
Vol. 71 No. 157 Aug. 15, 2006

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WHEN: Tuesday, September 12, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 413 and 414

**[Docket No.: FAA–FAA–2005–21332; Amendment Nos. 413–6 and 414–1]**

**RIN 2120–AI50**

## Safety Approvals

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

**ACTION:** Final rule.

**SUMMARY:** This action amends commercial space transportation regulations by adding procedures for obtaining a safety approval for a safety element. Also, this action adds procedures for including a safety approval in a license application. Once the FAA issues a safety approval, the holder could offer the approved safety element to prospective launch and reentry operators for use within a defined and proven envelope. Those operators would not need added FAA approval of that portion of their license application. The decision to apply for a safety approval is voluntary. The intent of this action is to facilitate the launch and reentry license application and approval processes.

**DATES:** This amendment becomes effective September 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** For questions about the safety approval process, you may contact either of the following persons:

- Charles P. Brinkman, Licensing and Safety Division (AST–200), FAA, Associate Administrator for Commercial Space Transportation, Room 331, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7715; or
- Gary Michel, Office of the Chief Counsel (AGC–200), FAA, Room 915, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3148.

For questions about technical standards, you may contact Jim Kabbara, Systems Engineering and Training Division (AST–300), FAA, Associate Administrator for Commercial Space Transportation, Room 331, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8379.

**SUPPLEMENTARY INFORMATION:**

### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

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(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

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

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

### Small Business Regulatory Enforcement Fairness Act

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

### Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as codified and amended at 49 U.S.C. Subtitle IX–Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101–70121 (the Act), authorizes the Department of Transportation and the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by United States citizens or within the United States.[1] The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States.[2] The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector.[3]

Authority for this particular rulemaking is derived from section 70105(a)(2) of the Act, which states the Secretary may establish procedures for safety approval of launch vehicles, reentry vehicles, safety systems, processes, services, or personnel for use in conducting licensed commercial space launch or reentry activities.[4] The 2004 amendments to the Act provided details regarding safety approvals for personnel to include explicit approval procedures for the purpose of protecting the health and safety of crews and space flight participants.[5]

### Background

Under the authority derived from the Act, on June 1, 2005, the FAA published the notice of proposed rulemaking (NPRM), "Safety Approvals; Proposed Rule" (70 FR 32192). This final rule adopts the provisions in that NPRM with some changes, which we describe later in this preamble. It also responds to the comments to that proposed rule.

The nature of the commercial space transportation industry makes safety approvals attractive to prospective

[1] 49 U.S.C. 70104, 70105.

[2] 49 U.S.C. 70105.

[3] 49 U.S.C. 70103.

[4] See Commercial Space Act of 1998, Public Law 105–303.

[5] See Commercial Space Launch Amendments Act of 2004, Public Law 108–492.

launch or reentry license[6] applicants, launch and reentry vehicle operators, and other industry representatives. Different operators often use major components, parts, or services that could potentially qualify for a safety approval on different launch vehicles. Personnel involved in operational safety support such as telemetry, tracking, and range safety may support multiple launch or reentry operators and could also qualify for a safety approval.

Historically, the launch operator has borne the monetary risk of proposing a new system, process, or service. Many launch operators have not thought the benefits worth the cost to prove the safety of a new safety element[7] through the licensing process because of the small number of launches. With the safety approval process in place, the risk of approval is transferred to the prospective safety approval applicant (i.e., the provider of the approved safety element). This optional process opens the door to new providers that may want to offer these safety elements for use in launch and reentry activities. The safety approval allows for the potential use of an approved safety element on more than one launch or reentry vehicle. Therefore, safety approvals have the potential to make the industry more willing to adopt innovative systems and processes because the cost of obtaining the approval would be shared, rather than borne by a single launch operator.

This rule may benefit the commercial space industry and the FAA by streamlining the processes for reviewing and issuing launch and reentry licenses. It will allow eligible persons to apply for a safety approval for an eligible safety element that can be used as part of prospective launch or reentry activities. A holder of a safety approval will be able to offer the approved safety element to prospective launch or reentry operators. Operators may include the approved element in their part 413 licensing application with minimal added documentation. The FAA may benefit from safety approvals because a portion of the documentation and analysis necessary to make a licensing determination on an application that includes such approvals will already have been done as part of the safety approval process.

[6] Commercial Space Launch Amendments Act of 2004 (70105a(i)(4)) states "the issuance of a permit shall be considered licensing." Therefore, when used in this regulation, the term "license" means any license or permit the FAA may issue under 14 CFR chapter III.

[7] For purposes of 14 CFR part 414, a safety element is any one of the following: launch vehicle, reentry vehicle, safety system, process, service, or any identified component thereof; or qualified and trained personnel, performing a process or function related to license launch activities or vehicles.

**General Discussion of Rule**

This regulation amends part 413 to incorporate procedures for including a safety approval in an application for a launch or reentry activity. It also establishes a new part 414, which includes the requirements and procedures for voluntarily obtaining a safety approval for the following safety elements: a launch vehicle, reentry vehicle, safety system, process, service, or any identified component thereof, or qualified and trained personnel.

This rule will enable launch and reentry vehicle operators to use an approved safety element within the scope specified in the safety approval without having to go through a re-examination of the element's fitness and suitability for a particular launch or reentry proposal. The approval allows these operators to rely on an approved element in constructing a launch vehicle or in conducting a safe launch. Use of a safety element for which a safety approval has been issued is not required as part of the part 413 application process. The safety approval, separate from any license, does not confer any authority to conduct activities for which a license is required. The FAA will evaluate the planned use of a safety approval for a proposed launch or reentry activity to ensure that use of the safety approval does not exceed its approved scope.

Where appropriate, the FAA will coordinate its review of applications for safety approvals with other government agencies and especially with the operators of Federal launch ranges. Currently, the FAA works closely with the U.S. Air Force because most FAA-licensed launches have occurred at ranges operated by the U.S. Air Force. However, other Federal agencies may have an interest in a safety element under consideration for a safety approval. The FAA expects to consult with these agencies to minimize the possibility of a discrepancy between its evaluation and any later evaluation by another Federal agency.

**Discussion of Comments**

Three commenters provided multiple comments to the NPRM—Mr. Hugh Q. Cook, commenting as a private citizen, Lockheed Martin Corporation and International Launch Services (LMC/ILS), and Eric Miller of Central Missouri State University. Each commenter expressed strong support for the rule and each made recommendations for improvements. Most of the comments were from Mr. Cook.

*Safety Approval Definition*

Mr. Cook suggested rewriting the definition of "safety approval" to remove "circular reasoning." Also, he said the FAA's emphasis in the preamble discussion that an approval is not a certification is an unnecessary distinction. This is particularly true, he said, given the U.S. space launch industry does not operate under a certification regime; and the fundamentals of licensing versus certification places responsibility for safe conduct of operations on the licensee.

The FAA agrees with Mr. Cook that the safety approval definition as written in the proposed rule could be clearer, so we revised the final rule version, accordingly. However, we do not agree that explaining the distinction between an approval and a certification is unnecessary. Although Mr. Cook is correct that the U.S. space industry does not currently operate under a certification regime, new entrants, particularly those proposing reusable launch vehicles that would operate more like aircraft, are very likely to be familiar with the aircraft certification process. Therefore, we believe it is important to point out that a safety approval is not the equivalent of a certification under a design standard. By making this distinction, the FAA seeks to avoid any misunderstanding that an approval means certification. Mr. Cook is also correct that the FAA's licensing regime places responsibility for safe conduct of operations on the licensee. However, we do not believe the distinction between an approval and a certification in any way conflicts with this position. The distinction simply reaffirms that a safety approval is limited to use within a defined parameter.

*Safety Approvals Are Voluntary*

Mr. Eric Miller commented that the rule would be more effective in ensuring public safety if the FAA makes the use of safety approvals mandatory for all persons conducting space flights.

We do not agree that it is necessary to make the use of safety approvals mandatory to increase the safety of space launches. This regulation will make safety approvals available for use by prospective launch and reentry operators. To conduct a launch or reentry activity, these operators must apply for a license under 14 CFR chapter III. To obtain a license under this chapter, applicants must demonstrate that the prospective activities will not endanger public health and safety and safety of property.

*Eligibility*

Mr. Cook said the statement in the NPRM regulatory text that "anyone" may apply for a safety approval is misleading and sets a "frivolous tone." He recommended that we identify persons likely to benefit from the regulation.

We appreciate Mr. Cook's concern. The intent of the NPRM language under § 414.9 was to convey that the restrictions that exist for licensing do not apply to safety approval applicants. We placed the specific eligibility requirements, including the persons who may be eligible to apply for a safety approval, in proposed § 414.15 (How will the FAA determine whether something is eligible and suitable for a safety approval?). We agree that placing these requirements in separate sections may be misleading. Therefore, in the final rule, we placed them in one section.[8] In addition, we removed the statement that "anyone may apply for a safety approval."

*The Application Process*

Mr. Cook said he found the statement that the FAA will incorporate prior findings from a past licensing determination in issuing a new license "troubling" because it implies that there is a different process and a higher standard for a new applicant to obtain a safety approval compared to a current licensee. Also, he believes this statement implies the FAA will not do a thorough review of previously approved parts, materials, and services, but will simply rubber-stamp them as a part of the licensing process.

The FAA did not intend to convey the inferences Mr. Cook has drawn. First, the process or standard for assessing and issuing a safety approval is the same for a new applicant as for an existing licensee. The statement that the FAA incorporates prior findings from a past licensing determination recognizes current FAA practice. This statement in no way means the FAA will automatically issue an approval for a safety element because the element was previously approved as part of a licensing process. As required by § 414.11(c)(1) of this final rule, all applicants must include in their application a Statement of Conformance letter. This letter must describe the specific criteria applicants used to demonstrate the adequacy of the safety element for which they seek a safety approval. It must also show that the safety element complies with the specific criteria. The FAA will review each application according to the procedures in part 414, subpart C of this final rule.

Mr. Cook said the FAA should not have commented on the "comparative merits of the safety approval procedure vis-a-vis the existing licensing procedure" as the merits of the two should speak for themselves.

We agree in part with Mr. Cook's comment that our discussion about the applicant's responsibility for determining the value of seeking a safety approval is not necessary. Perhaps we stated the obvious since applying for a safety approval is strictly voluntary so it is unlikely anyone would pursue one if it were not cost beneficial to do so. However, we believe that determining the value of a safety approval independent of the licensing process is an important enough point to make as part of the discussion of the application process.

Mr. Cook suggested the FAA allow a corporation to authorize someone other than an officer to certify a safety approval application.

The FAA agrees with Mr. Cook's comment. For license applications, the FAA has found that the individuals who sign and certify license applications are not typically officers of the corporation. Therefore, we added a similar provision in this final rule under § 414.11(d)(1) to allow an individual authorized to act for the corporation to sign and certify the accuracy of a safety approval application. In addition, in another rulemaking action, we proposed a similar change to § 413.7(c)(1)[9] to also allow an individual authorized to act for the corporation to sign and certify license applications.

*Timeframe for Application Review*

Mr. Cook suggested a goal of 30 days for the FAA to review and make a determination on a substantially complete application.

The FAA disagrees with Mr. Cook's comment that there should be a 30-day review period for safety approval applications. Until industry and the FAA gain experience with filing and processing these applications, it would not be prudent for us to consider setting a specific time frame for our review. Also, we do not believe that having a set review period for all applications without first considering the level of complexity for each is the most practical approach. Instead, the FAA and the applicant will discuss what is a reasonable time frame to complete review of a specific application during the pre-application consultation. The Act gives the FAA up to 180 days to make a licensing determination after receipt of an application. We believe making a safety approval determination could take this much time.

*Technical Criteria for Issuing a Safety Approval*

The rule includes a hierarchy of technical criteria for reviewing a safety approval. One such criterion in proposed § 414.27(b) is "government-developed or adopted standards." Mr. Cook suggested revising this section to read, "Government-developed or adopted standards, including approved tailoring applicable to a specific application for safety approval." He also suggested we define "approved tailoring" to include the necessity of publishing the details of the tailoring in an accessible form.

We appreciate Mr. Cook's suggestions; however, we do not believe a change to the rule is necessary. As written, the rule lists specific technical criteria[10] the FAA will use to make a safety approval determination. The criteria include government-developed or adopted standards and applicant developed standards, which are variations of tailored standards. Also, the rule requires applicants to allow the FAA to make their proposed safety approval criteria available to the public as part of the approval process.

Lockheed Martin Corporation and International Launch Services (LMC/ILS), commenting together, had a recommendation related to the statement in proposed § 414.27 that reads, "You must agree to allow the FAA to make proposed safety approval criteria available to the public as part of the approval process." LMC/ILS asserted that this statement would require the applicant to waive the customary protections associated with proprietary or otherwise sensitive information. They recommended revising the rule language to allow individual determinations on whether the FAA will make proposed safety approval criteria public and allow applicants to withdraw their application to avoid public release of their approval criteria.

The FAA does not agree with LMC/ILS's assertion. In the section-by-section discussion under proposed § 414.19 (How can I assure confidentiality of the information I submit on a safety approval application?), the FAA states, "Do not propose standards that you

[8] § 414.7 (Eligibility).

[9] "Experimental Permits for Reusable Suborbital Rockets" Notice of proposed rulemaking (70 FR 16251, March 31, 2006).

[10] See 414.27(d) in the proposed rule and 414.19(a) in the final rule.

consider secret, proprietary, and confidential." In the regulatory text itself, the FAA states, "If the proposed criteria for evaluating a safety approval is secret, as classified by the U.S. Government, or the applicant wants it to remain proprietary or confidential, it cannot be used as a basis for the issuance of a safety approval." [11]

The FAA intends, as part of our ongoing dialogue with the applicant, to discuss the criteria that would appear in the public record. Because the goal would be for the criteria to be performance-based, to the greatest extent possible, the FAA does not believe that safety approval applicants would need to waive protections in order to obtain a safety approval. The FAA believes it is essential to make public the basis for issuance of a safety approval. We also believe the right of the applicant to withdraw an application is implicit. However, stating this right in the regulations will avoid any confusion. Hence, in the final rule under § 414.15(d), we added the right of the applicant to withdraw the application before we make a final determination.

*Terms and Conditions of a Safety Approval*

Mr. Cook commented that the FAA introduced an important new term in the preamble discussion, "scope of the demonstration." He noted that in the regulatory text, we modified this term to "scope of the safety demonstration." Further, he said in other rulemakings the FAA established an equivalent definition of "demonstration" to the aerospace industry's definition of "verification." He requested that the FAA define what we mean by the term "scope of the (safety) demonstration."

The FAA believes the regulation as written makes clear what is meant by "scope of demonstration." In the NPRM preamble discussion under the heading "How do I prepare an application?", we explain that the scope of the safety approval would be based on the scope of the safety demonstration. The demonstration might consist of analysis, testing, actual use, observation, physical inspection, simulation, historical data, or other means of verifying performance. Different means of demonstration might be used for a safety approval of a design of a system than for a safety approval for personnel to perform a particular safety task.

In the NPRM preamble discussion, we give a specific example of what we mean by "the scope of the demonstration." The example reads as follows: for a radar tracking system integral to range safety, you might demonstrate the ability of the radar to track launch vehicles as a function of radar cross section, vehicle velocity, acceleration, and trajectory along with notable ambient effects, such as weather conditions. The demonstration and, therefore, the scope of the applicability of the safety approval would not be specific to a particular vehicle.

In another comment Mr. Cook said the statutory authority would not agree with the FAA's statement that a safety approval has no meaning independent of its use in facilitating the FAA licensing process. He said he believes the safety approval rulemaking "has profound meaning in the context of 'facilitate and promote'."

We do not agree with Mr. Cook that the statutory authority intends for a safety approval to have meaning independent of the licensing process. Section 70105(a)(2) of the Act states "* * * the Secretary may establish procedures for safety approvals of launch vehicles, reentry vehicles, * * * that may be used in conducting licensed commercial space launch or reentry activities." In other words, the intent of the statute is to make safety approvals available to facilitate the licensing process, not as an independent service. We do agree, however, that the Act encourages (i.e., facilitates and promotes) private sector launches, reentries, and associated services, which includes safety approvals.

*Modification, Suspension, Revocation of a Safety Approval*

In reference to proposed § 414.39, Mr. Cook raised the following two questions: (1) Who is responsible for alerting a launch operator that is affected by the revocation of a safety approval? (2) What is the effect on a launch license that is issued based on a licensing determination that relies on a revoked safety approval?

In response to the first question, the FAA does not believe it is necessary to include in the regulations that the licensee will be notified if we modify, suspend, or revoke a safety approval. This final rule contains the procedures for inclusion of a safety approval in a license application. Therefore, the FAA will know which of our licensees is using which safety approval(s). As a result, we will be able to make any necessary notifications to the affected licensee.

With regard to the second question, a revocation may or may not affect an existing license. In his comments on the regulatory text, Mr. Cook suggested licensees be afforded the opportunity to amend their license applications to demonstrate that the safety approval action taken under this section does not have a material effect on public safety or the safety of property. As we explained in the preamble to the proposed rule, the FAA would afford licensees such an opportunity unless an immediate threat to public health and safety or the safety of property requires more immediate action, including a license suspension. We do not believe the addition of regulatory text stating this adds any value. Because of the sporadic nature of launches, in many instances the FAA could work with the affected licensee to resolve any issues. However, as discussed in the section-by-section analysis in the proposed rule, if an immediate threat to public health and safety or safety of property presented itself as a result of an issue regarding a safety approval, the FAA might need to suspend a license to prevent a potentially dangerous launch or reentry.

**Changes to the NPRM**

We made substantial formatting changes to the regulatory text. Our intent is to further clarify the regulations and make them more concise, not change their intent. First, we changed the question and answer format of the section headings to regular headings that are more reflective of the section content. For example, § 414.1 in the NPRM is titled "What is the basis and scope of this rule?". We changed this section heading to "Scope" in the final rule. Second, in some instances we moved text into different sections under more appropriate headings and combined text from multiple sections under a single heading. For example, we moved text from proposed § 414.15 (How will the FAA determine whether something is eligible and suitable for a safety approval?) to two separate sections of the final rule. That is, we placed the specific requirements in proposed § 414.15 related to determining eligibility under "Eligibility" (§ 414.7) in the final rule. However, we moved the requirements in proposed § 414.15(e) about the criteria for the FAA's evaluation of a safety approval application to § 414.19 (Technical criteria for reviewing a safety approval application) in the final rule.

In the NPRM when we refer to safety elements that are eligible for a safety approval, we list each of the elements (launch vehicle, reentry vehicle, safety system, process, service, or any identified component thereof, or qualified and trained personnel). Since we recognize that these elements are the

[11] See § 414.19(e) of the NPRM and § 414.13 (Confidentiality) of this final rule.

only ones eligible for a safety approval, in the final rule we define the term "safety element" to mean any one of these elements.[12]

Under proposed § 414.31 (How would a license applicant incorporate a safety approval into a launch or reentry license application?), we inadvertently placed some requirements related to part 413 applicants in part 414. While we state in proposed § 414.31 that these requirements apply to part 413 applicants, we should have amended part 413 to include these requirements. This final rule corrects this oversight by amending the license application procedures in § 413.7 to add paragraph (d). This new paragraph includes the same requirements for part 413 applicants that are in proposed § 414.31.

In addition to these changes and as indicated under the "Discussion of Comments" heading, we made a few changes recommended by commenters. First, we added a provision that allows authorized individuals to sign and certify safety approval applications. Second, we added a provision, which states the applicant may withdraw the safety approval application before we make a final determination.

**Paperwork Reduction Act**

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Numbers 2120–0608 and 2120–0643. These prior approvals are applicable because this final rule merely permits consideration of a portion of the activity covered by the cited documents. In other words, a part of the information required for FAA-licensed activity is collected for the safety approval and does not need to be collected again as part of the license application.

**International Compatibility**

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

[12] See § 414.3 (Definitions) in the final rule.

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this rulemaking indicates that its economic impact is minimal because safety approvals under the rulemaking action are not mandatory so there would be no costs imposed on industry. The FAA anticipates that launch license applicants would only pursue a safety approval if they believe they can save money by using a safety approval. If not, they would continue to obtain approval through the licensing determination. The final rule might result in slight costs to the government, but more likely it will result in government cost savings.

Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemakings under the DOT Regulatory Policies and Procedures. We do not need to do a full evaluation where the economic impact of a rule is minimal.

**Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment**

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

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

The 1998 amendments to the Commercial Space Launch Act of 1984 added authority for establishing procedures for "safety approvals" of launch vehicles, reentry vehicles, safety systems, processes, services, or personnel that may be used in conducting licensed commercial space launch or reentry activities. (See Commercial Space Act of 1998, Pub. L. 105–303.) This rulemaking will establish those procedures. The rule will enable license applicants to use safety-approved elements for proposed launch or reentry activities without having to resubmit certain information. The existence of a safety approval could streamline the licensing process. The final rule defines the requirements for obtaining these voluntary safety approvals.

A key element of the final rule is that the safety approvals are strictly elective. A safety approval will enable the U.S. commercial space transportation industry to select "approved" systems, processes, services, and personnel, possibly reducing the information required for a license application. Because safety approvals under the final rulemaking are not mandatory, the FAA anticipates that applicants will only pursue a safety approval if they believe the benefits outweigh the costs.

The final rule does not impose any costs on the license applicant, because the applicant is free to continue to obtain approval through the licensing determination. There might even be cost savings to license applicants because the cost of using safety-approved elements could be less than the cost the licensee might incur in seeking approval directly through the licensing determination. This is because a safety approval could be used for multiple launch licenses without added FAA

approval of that portion of the license application other than an evaluation of its intended use relative to the proposed activity.

The final rule might result in additional cost to the Federal government. This might occur if a company obtains a safety approval from the FAA, but does not use it. In this case, the FAA will have spent the time for naught in issuing the safety approval. The FAA expects this to be unlikely, as companies will not seek to obtain safety approvals unless the likelihood of selling their approved product to a licensee is very high.

On the other hand, the final rule might result in cost savings to the government. If the safety approval is used for several licenses, then the FAA could apply findings related to safety approvals to different license applicants that propose to use the approved element.

In view of the possible minor additional cost to the Federal government and the anticipated benefits of the rule, the FAA has determined that this rule is cost-justified. Since seeking a safety approval and using it as a part of a launch or reentry activity is voluntary, the expected outcome will be a minimal impact with positive net benefits, and a regulatory evaluation was not prepared.

The FAA has, therefore, determined this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

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

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

The final rule does not impose costs on industry because it establishes a wholly voluntary process as an alternative to a part of the current licensing process.

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

**International Trade Impact Assessment**

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and has determined that since it will not impose standards on industry and because it establishes a wholly voluntary program, it will not create an unnecessary obstacle to the foreign commerce of the United States.

**Unfunded Mandates Assessment**

Title II of the Unfunded Mandate Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with a base year of 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million. This final rule does not contain such a mandate.

**Executive Order 13132, Federalism**

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

**Environmental Analysis**

FAA Order 1050.1E identities FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this final rulemaking action qualifies for the categorical exclusion identified in paragraph 308b and involves no extraordinary circumstances.

**Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects**

*14 CFR Part 413*

Confidential business information, Space transportation and exploration.

*14 CFR Part 414*

Airspace, Aviation safety, Space transportation and exploration.

**The Amendments**

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter III of Title 14, Code of Federal Regulations, as follows:

## PART 413—LICENSE APPLICATION PROCEDURES

■ 1. The authority citation for part 413 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121. 1

■ 2. Amend § 413.7 to add paragraph (d) to read as follows:

**§ 413.7 Application.**

* * * * *

(d) *Safety approval.* If the applicant proposes to include a safety element for which the FAA issued a safety approval under part 414 in the proposed license activity, the applicant must—

(1) Identify the safety approval in the application and explain the proposed use of the approved safety element.

(2) Show that the proposed use of the approved safety element is consistent with the designated scope specified in the safety approval.

(3) Certify that the safety element will be used according to any terms and conditions of the issued safety approval.

■ 3. Add part 414 to read as follows:

## PART 414—SAFETY APPROVALS

### Subpart A—General

Sec.



### Subpart B—Application Procedures



### Subpart C—Safety Approval Review and Issuance



### Subpart D—Appeal Procedures



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

### Subpart A—General

#### § 414.1 Scope.

This part establishes procedures for obtaining a safety approval and renewing and transferring an existing safety approval. Safety approvals issued under this part may be used to support the application review for one or more launch or reentry license requests under other parts of this chapter.

#### § 414.3 Definitions.

*Safety approval.* For purposes of this part, a safety approval is an FAA document containing the FAA determination that one or more of the safety elements listed in paragraphs (1) and (2) of this definition, when used or employed within a defined envelope, parameter, or situation, will not jeopardize public health and safety or safety of property. A safety approval may be issued independent of a license, and it does not confer any authority to conduct activities for which a license is required under 14 CFR Chapter III. A safety approval does not relieve its holder of the duty to comply with all applicable requirements of law or regulation that may apply to the holder's activities.

(1) Launch vehicle, reentry vehicle, safety system, process, service, or any identified component thereof; or

(2) Qualified and trained personnel, performing a process or function related to licensed launch activities or vehicles.

*Safety Element.* For purposes of this part, a safety element is any one of the items or persons (personnel) listed in paragraphs (1) and (2) of the definition of "safety approval" in this section.

#### § 414.5 Applicability.

This part applies to an applicant that wants to obtain a safety approval for any of the safety elements defined under this part and to persons granted a safety approval under this part. Any person eligible under this part may apply to become the holder of a safety approval.

#### § 414.7 Eligibility.

(a) There is no citizenship requirement to obtain a safety approval.

(b) You may be eligible for a safety approval if you are—

(1) A manufacturer or designer of a launch or reentry vehicle or component thereof;

(2) The designer or developer of a safety system or process; or

(3) Personnel who perform safety critical functions in conducting a licensed launch or reentry.

(c) A safety approval applicant must have sufficient knowledge and expertise to show that the design and operation of the safety element for which safety approval is sought qualify for a safety approval.

(d) Only the safety elements defined under this part are eligible for a safety approval.

### Subpart B—Application Procedures

#### § 414.9 Pre-application consultation.

The applicant must consult with the FAA before submitting an application. Unless the applicant or the FAA requests another form of consultation, consultation is oral discussion with the FAA about the application process and the potential issues relevant to the FAA's safety approval decision.

#### § 414.11 Application.

(a) The application must be in writing, in English, and filed in duplicate with the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, 800 Independence Avenue, SW., Washington, DC 20591.

(b) The application must identify the following basic information:

(1) Name and address of the applicant.

(2) Name, address, and telephone number of any person to whom inquiries and correspondence should be directed.

(3) Safety element (i.e., launch vehicle, reentry vehicle, safety system, process, service, or any identified component thereof; or personnel) for which the applicant seeks a safety approval.

(c) The application must contain the following technical information:

(1) A Statement of Conformance letter, describing the specific criteria the applicant used to show the adequacy of the safety element for which a safety approval is sought, and showing how the safety element complies with the specific criteria.

(2) The specific operating limits for which the safety approval is sought.

(3) The following as applicable:

(i) Information and analyses required under this chapter that may be applicable to demonstrating safe performance of the safety element for which the safety approval is sought.

(ii) Engineering design and analyses that show the adequacy of the proposed safety element for its intended use, such that the use in a licensed launch or reentry will not jeopardize public health or safety or the safety of property.

(iii) Relevant manufacturing processes.

(iv) Test and evaluation procedures.

(v) Test results.

(vi) Maintenance procedures.

(vii) Personnel qualifications and training procedures.

(d) The application must be in English, legibly signed, dated, and certified as true, complete, and accurate by one of the following:

(1) For a corporation, an officer or other individual authorized to act for the corporation in licensing or safety approval matters.

(2) For a partnership or a sole proprietorship, a general partner or proprietor, respectively.

(3) For a joint venture, association, or other entity, an officer or other

individual duly authorized to act for the joint venture, association, or other entity in licensing matters.

(e) Failure to comply with any of the requirements set forth in this section is sufficient basis for denial of a safety approval application.

**§ 414.13 Confidentiality.**

(a) To ensure confidentiality of data or information in the application, the applicant must—

(1) Send a written request with the application that trade secrets or proprietary commercial or financial data be treated as confidential, and include in the request the specific time frame confidential treatment is required.

(2) Mark data or information that require confidentiality with an identifying legend, such as "Proprietary Information," "Proprietary Commercial Information," "Trade Secret," or "Confidential Treatment Requested." Where this marking proves impracticable, attach a cover sheet that contains the identifying legend to the data or information for which confidential treatment is sought.

(b) If the applicant requests confidential treatment for previously submitted data or information, the FAA will honor that request to the extent practicable in case of any prior distribution of the data or information.

(c) Data or information for which confidential treatment is requested or data or information that qualifies for exemption under section 552(b)(4) of Title 5, U.S.C., will not be disclosed to the public unless the Associate Administrator determines that withholding the data or information is contrary to the public or national interest.

(d) If the proposed criteria for evaluating a safety approval is secret, as classified by the U.S. Government, or the applicant wants it to remain proprietary or confidential, it cannot be used as a basis for issuance of a safety approval.

**§ 414.15 Processing the initial application.**

(a) The FAA will initially screen an application to determine if the application is sufficiently complete to enable the FAA to initiate the reviews or evaluations required under this part.

(b) After completing the initial screening, the FAA will inform the applicant in writing of one of the following:

(1) The FAA accepts the application and will begin the reviews or evaluations required for a safety approval determination under this part.

(2) The FAA rejects the application because it is incomplete or indefinite making initiation of the reviews or evaluations required for a safety approval determination under this part inappropriate.

(c) The written notice will state the reason(s) for rejection and corrective actions necessary for the application to be accepted. The FAA may return a rejected application to the applicant or may hold it until the applicant provides more information.

(d) The applicant may withdraw, amend, or supplement an application anytime before the FAA makes a final determination on the safety approval application by making a written request to the Associate Administrator. If the applicant amends or supplements the initial application, the revised application must meet all the applicable requirements under this part.

**§ 414.17 Maintaining the continued accuracy of the initial application.**

The applicant is responsible for the continuing accuracy and completeness of information provided to the FAA as part of the safety approval application. If at any time after submitting the application, circumstances occur that cause the information to no longer be accurate and complete in any material respect, the applicant must submit a written statement to the Associate Administrator explaining the circumstances and providing the new or corrected information. The revised application must meet all requirements under § 414.11.

## Subpart C—Safety Approval Review and Issuance

**§ 414.19 Technical criteria for reviewing a safety approval application.**

(a) The FAA will determine whether a safety element is eligible for and may be issued a safety approval. We will base our determination on performance-based criteria, against which we may assess the effect on public health and safety and on safety of property, in the following hierarchy:

(1) FAA or other appropriate Federal regulations.

(2) Government-developed or adopted standards.

(3) Industry consensus performance-based criteria or standard.

(4) Applicant-developed criteria. Applicant-developed criteria are performance standards customized by the manufacturer that intends to produce the system, system component, or part. The applicant-developed criteria must define—

(i) Design and minimum performance;

(ii) Quality assurance system requirements;

(iii) Production acceptance test specifications; and

(iv) Continued operational safety monitoring system characteristics.

(b) The applicant must allow the FAA to make its proposed safety approval criteria available to the public as part of the approval process.

**§ 414.21 Terms and conditions for issuing a safety approval; duration of a safety approval.**

(a) The FAA will issue a safety approval to an applicant that meets all the requirements under this part.

(b) The scope of the safety approval will be limited by the scope of the safety demonstration contained in the application on which the FAA based the decision to grant the safety approval.

(c) The FAA will determine specific terms and conditions of a safety approval individually, limiting the safety approval to the scope for which the safety-approved launch or reentry element was approved. The terms and conditions will include reporting requirements tailored to the individual safety approval.

(d) A safety approval is valid for five years and may be renewed.

(e) If the FAA denies the application, the applicant may correct any deficiency the FAA identified and request a reconsideration of the revised application. The applicant also has the right to appeal a denial as set forth in subpart D of this part.

**§ 414.23 Maintaining the continued accuracy of the safety approval application.**

(a) The holder of a safety approval must ensure the continued accuracy and completeness of representations contained in the safety approval application, on which the approval was issued, for the entire term of the safety approval.

(b) If any representation contained in the application that is material to public health and safety or safety of property ceases to be accurate and complete, the safety approval holder must prepare and submit a revised application according to § 414.11 under this part. The safety approval holder must point out any part of the safety approval or the associated application that would be changed or affected by a proposed modification. The FAA will review and make a determination on the revised application under the terms of this part.

(c) If the FAA approves the revised application, the FAA will provide written notice to the holder, stating the terms and conditions to which the approval is subject.

**§ 414.25 Safety approval records.**

The holder of a safety approval must maintain all records necessary to verify that the holder's activities are consistent with the representations contained in the application for which the approval was issued for the duration of the safety approval plus one year.

**§ 414.27 Safety approval renewal.**

(a) *Eligibility.* A holder of a safety approval may apply to renew it by sending the FAA a written application at least 90 days before the expiration date of the approval.

(b) *Application.* (1) A safety approval renewal application must meet all the requirements under § 414.11.

(2) The application may incorporate by reference information provided as part of the application for the expiring safety approval or any modification to that approval.

(3) Any proposed changes in the conduct of a safety element for which the FAA has issued a safety approval must be described and must include any added information necessary to support the fitness of the proposed changes to meet the criteria upon which the FAA evaluated the safety approval application.

(c) *Review of application.* The FAA conducts the reviews required under this part to determine whether the safety approval may be renewed. We may incorporate by reference any findings that are part of the record for the expiring safety approval.

(d) *Grant of safety approval renewal.* If the FAA makes a favorable safety approval determination, the FAA issues an order that amends the expiration date of the safety approval or issues a new safety approval. The FAA may impose added or revised terms and conditions necessary to protect public health and safety and the safety of property.

(e) *Written notice.* The FAA will provide written notice to the applicant of our determination on the safety approval renewal request.

(f) *Denial of a safety approval renewal.* If the FAA denies the renewal application, the applicant may correct any deficiency the FAA identified and request a reconsideration of the revised application. The applicant also has the right to appeal a denial as set forth in subpart D of this part.

**§ 414.29 Safety approval transfer.**

(a) Only the FAA may approve a transfer of a safety approval.

(b) Either the holder of a safety approval or the prospective transferee may request a safety approval transfer.

(c) Both the holder and prospective transferee must agree to the transfer.

(d) The person requesting the transfer must submit a safety approval application according to § 414.11, must meet the applicable requirements of this part, and may incorporate by reference relevant portions of the initial application.

(e) The FAA will approve a transfer of a safety approval only after all the approvals and determinations required under this chapter for a safety approval have been met. In conducting reviews and issuing approvals and determinations, the FAA may incorporate by reference any findings made part of the record to support the initial safety approval determination. The FAA may modify the terms and conditions of a safety approval to reflect any changes necessary because of a safety approval transfer.

(f) The FAA will provide written notice to the person requesting the safety approval transfer of our determination.

(g) If the FAA denies a transfer request, the applicant may correct any deficiency the FAA identified and request a reconsideration of the revised application. The applicant also has the right to appeal a denial as set forth in subpart D of this part.

**§ 414.31 Monitoring compliance with the terms and conditions of a safety approval.**

Each holder of a safety approval must allow access by, and cooperate with, Federal officers or employees or other individuals authorized by the Associate Administrator to inspect manufacturing, production, testing, or assembly performed by a holder of a safety approval or its contractor. The FAA may also inspect a safety approval process or service, including training programs and personnel qualifications.

**§ 414.33 Modification, suspension, or revocation of a safety approval.**

(a) *The safety approval holder.* The safety approval holder may submit an application to the FAA to modify the terms and conditions of the holder's safety approval. The application must meet all the applicable requirements under this part. The FAA will review and make a determination on the application using the same procedures under this part applicable to an initial safety approval application. If the FAA denies the request to modify a safety approval, the holder may correct any deficiency the FAA identified and request reconsideration. The holder also has the right to appeal a denial as set forth in subpart D of this part.

(b) *The FAA.* If the FAA finds it is in the interest of public health and safety, safety of property, or if the safety approval holder fails to comply with any applicable requirements of this part, any terms and conditions of the safety approval, or any other applicable requirement, the FAA may—

(1) Modify the terms and conditions of the safety approval; or

(2) Suspend or revoke the safety approval.

(c) *Effective Date.* Unless otherwise stated by the FAA, any modification, suspension, or revocation of a safety approval under paragraph (b)—

(1) Takes effect immediately; and

(2) Continues in effect during any reconsideration or appeal of such action under this part.

(d) *Notification and Right to Appeal.* If the FAA determines it is necessary to modify, suspend, or revoke a safety approval, we will notify the safety approval holder in writing. If the holder disagrees with the FAA's determination, the holder may correct any deficiency the FAA identified and request a reconsideration of the determination. The applicant also has the right to appeal the determination as set forth in subpart D of this part.

**§ 414.35 Public notification of the criteria by which a safety approval was issued.**

For each grant of a safety approval, the FAA will publish in the **Federal Register** a notice of the criteria that were used to evaluate the safety approval application, and a description of the criteria.

## Subpart D—Appeal Procedures

**§ 414.37 Hearings in safety approval actions.**

(a) The FAA will give the safety approval applicant or holder, as appropriate, written notice stating the reason for issuing a denial or for modifying, suspending, or revoking a safety approval under this part.

(b) A safety approval applicant or holder is entitled to a determination on the record after an opportunity for a hearing.

(c) An administrative law judge will be designated to preside over any hearing held under this part.

**§ 414.39 Submissions; oral presentations in safety approval actions.**

(a) Determinations in safety approval actions under this part will be made on the basis of written submissions unless the administrative law judge, on petition or on his or her own initiative, determines that an oral presentation is required.

(b) Submissions must include a detailed exposition of the evidence or arguments supporting the petition.

(c) Petitions must be filed as soon as practicable, but in no event more than 30 days after issuance of decision or finding under § 414.37.

**§ 414.41 Administrative law judge's recommended decision in safety approval actions.**

(a) The Associate Administrator, who will make the final decision on the matter at issue, will review the recommended decision of the administrative law judge. The Associate Administrator will make such final decision within 30 days of issuance of the recommended decision.

(b) The authority and responsibility to review and decide rests solely with the Associate Administrator and may not be delegated.

Issued in Washington, DC, on August 8, 2006.

**Marion C. Blakey,**

*Administrator.*

[FR Doc. E6–13313 Filed 8–14–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Parts 315, 341, 346, 351, 352, 353, 359, and 360

### Regulations Governing U.S. Savings Bonds, Series A, B, C, D, E, F, G, H, J, and K, and U.S. Savings Notes; United States Retirement Plan Bonds; United States Individual Retirement Bonds; United States Savings Bonds, Series EE and HH; Definitive United States Savings Bonds, Series I; Offering of United States Savings Bonds, Series EE; United States Savings Bonds, Series HH; Offering of United States Savings Bonds, Series I

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule eliminates requirements to inscribe complete taxpayer identification numbers (TINs) on the face of: (1) Newly issued definitive Series EE and Series I savings bonds; (2) reissued or replaced definitive Series E, Series EE, Series H, Series HH, and Series I savings bonds; and (3) reissued or replaced Individual Retirement and Retirement Plan bonds. This change is being implemented to protect the privacy of savings bond owners. Purchasers of newly issued savings bonds will continue to be required to provide the TIN of the owner, first named coowner, or purchaser of a gift bond to be maintained as part of the registration of the bonds on the records of the Treasury Department. The TINs of the registered owner or first named coowner of a reissued or replaced bond will also be maintained as a part of the registration on the records of the Treasury Department.

**DATES:** *Effective:* August 15, 2006.

**ADDRESSES:** You can download this final rule at the following Internet addresses: *http://www.publicdebt.treas.gov* or *http://www.gpoaccess.gov/ecfr.*

**FOR FURTHER INFORMATION CONTACT:** Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Sharp, Attorney-Adviser, Dean Adams, Assistant Chief Counsel, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.sharp@bpd.treas.gov.*

**SUPPLEMENTARY INFORMATION:** Newly purchased definitive Series EE and Series I savings bonds are issued with the TIN of the owner, first-named coowner, or purchaser of a gift bond inscribed on the face of the bond. Reissued or replaced definitive Series E, Series EE, Series H, Series HH, and Series I savings bonds, Individual Retirement bonds, and Retirement Plan bonds also have the TIN inscribed on the face of the bond. Due to concerns about the privacy of bond owners, the Department of the Treasury is eliminating language requiring the inscription of the complete TIN of the owner, first-named coowner, or purchaser of a gift bond on the face of the bond. The TIN of the owner, first-named coowner, or purchaser of a gift bond will continue to be maintained on the records of the Treasury Department. This change will benefit savings bond owners by providing additional privacy protections against identity theft.

**Procedural Requirements**

This final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Because this final rule relates to matters of public contract and procedures for United States securities, notice and public procedure and delayed effective date requirements are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

**List of Subjects**

*31 CFR Part 315*

Banks and banking, Government securities, Federal Reserve system.

*31 CFR Part 341*

Bonds, Retirement.

*31 CFR Part 346*

Bonds, Retirement.

*31 CFR Part 351*

Bonds, Federal Reserve system, Government securities.

*31 CFR Part 352*

Bonds, Government securities.

*31 CFR Part 353*

Banks and banking, Government securities, Federal Reserve system.

*31 CFR Part 359*

Bonds, Federal Reserve system, Government securities, Securities.

*31 CFR Part 360*

Bonds, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

## PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

■ 1. The authority citation for Part 315 continues to read as follows:

**Authority:** 31 U.S.C. 3105 and 5 U.S.C. 301.

■ 2. Section 315.2 is amended by redesignating paragraphs (g) through (l) as paragraphs (h) through (m), redesignating paragraphs (m) through (q) as paragraphs (o) through (s), and adding new paragraphs (g) and (n) to read as follows:

**§ 315.2 Definitions.**

* * * * *

(g) *Inscription* means the information that is printed on the face of the bond.

* * * * *

(n) *Registration* means that the names of all persons named on the bond and the taxpayer identification number (TIN) of the owner, first-named coowner, or purchaser of a gift bond are maintained on our records.

* * * * *

■ 3. Section 315.7 is amended by revising the last sentence of paragraph (a) to read as follows:

**§ 315.7 Authorized forms of registration.**

(a) *General.* * * * A savings bond registered in a form not substantially in agreement with one of the forms authorized by this subpart is not considered validly issued.

* * * * *

## PART 341—REGULATIONS GOVERNING UNITED STATES RETIREMENT PLAN BONDS

■ 4. The authority citation for Part 341 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3106 *et seq.*, 3125, 3126.

■ 5. Section 341.2 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 341.2 Registration.**

* * * * * *

(b) *Inscription.* The inscription on the face of each bond will show the name, address, and date of birth of the registered owner, as well as information as to whether he is a self-employed individual or an employee, and the amount he contributed (if any) out of his own funds toward the purchase price of the bond. * * *

## PART 346—REGULATIONS GOVERNING UNITED STATES INDIVIDUAL RETIREMENT BONDS

■ 6. The authority citation for Part 346 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3106 *et seq.*, 3125, 3126.

■ 7. Section 346.2 is amended by revising paragraph (b) to read as follows:

**§ 346.2 Registration.**

* * * * *

(b) *Inscription.* The inscription on the face of each bond will show the name, address, and date of birth of the registered owner. The name of the beneficiary, if one is to be designated, will also be shown in the inscription.

## PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

■ 8. The authority citation for Part 351 continues to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 9. Section 351.3 is amended by adding the definitions of "Inscription" and "Registration", in alphabetical order, and removing the definitions of "Registration of a book-entry Series EE savings bond" and "Registration of a definitive Series EE savings bond", to read as follows:

**§ 351.3 What special terms do I need to know to understand this part?**

* * * * *

*Inscription* means the information that is printed on the face of the bond.

* * * * *

*Registration* means that the names of all persons named on the bond and the taxpayer identification number (TIN) of the owner, first-named coowner, or purchaser of a gift bond are maintained on our records.

* * * * *

■ 10. Revise § 351.43 to read as follows:

**§ 351.43 Are taxpayer identification numbers (TINs) required for the registration of a definitive Series EE savings bond?**

The registration of a definitive Series EE savings bond must include the TIN of the owner or first-named coowner. The TIN of the second-named coowner or beneficiary is not required but its inclusion is desirable. If the bond is being purchased as a gift or award and the owner's TIN is not known, the TIN of the purchaser must be included in the registration of the bond.

## PART 352–OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

■ 11. The authority citation for Part 352 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 12. Section 352.3 is amended by revising the first sentence of paragraph (c) to read as follows:

**§ 352.3 Registration and issue.**

* * * * *

(c) *Taxpayer identifying number.* The registration of a bond must include the taxpayer identifying number of the owner or first-named co-owner. * * *

## PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

■ 13. The authority citation for Part 353 continues to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

■ 14. Section 353.2 is amended by redesignating paragraphs (d) through (h) as paragraphs (e) through (i), redesignating paragraphs (i) through (m) as paragraphs (k) through (o), and adding new paragraphs (d) and (j) to read as follows:

**§ 353.2 Definitions.**

* * * * *

(d) *Inscription* means the information that is printed on the face of the bond.

* * * * *

(j) *Registration* means that the names of all persons named on the bond and the taxpayer identification number (TIN) of the owner, first-named coowner, or purchaser of a gift bond are maintained on our records.

* * * * *

■ 15. Section 353.5 is amended by revising the heading and the second sentence of paragraph (c) to read as follows:

**§ 353.5 General rules.**

* * * * *

(c) *Registration of bonds purchased as gifts.*

* * * Bonds so registered will not be associated with the purchaser's own holdings.

* * * * *

■ 16. Section 353.7 is amended by revising the last sentence of the introductory paragraph to read as follows:

**§ 353.7 Authorized forms of registration.**

* * * A savings bond registered in a form not substantially in agreement with one of the forms authorized by this subpart is not considered validly issued.

* * * * *

## PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

■ 17. The authority citation for Part 359 continues to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 18. Section 359.3 is amended by adding the definitions of "Inscription" and "Registration" in alphabetical order, and removing the definitions of "Registration of a book-entry Series EE savings bond" and "Registration of a definitive Series EE savings bond", to read as follows:

**§ 359.3 What special terms do I need to know to understand this part?**

* * * * *

*Inscription* means the information that is printed on the face of the bond.

* * * * *

*Registration* means that the names of all persons named on the bond and the taxpayer identification number (TIN) of the owner, first-named coowner, or purchaser of a gift bond are maintained on our records.

* * * * *

■ 19. Revise § 359.28 to read as follows:

**§ 359.28 Are taxpayer identification numbers (TINs) required for the registration of definitive Series I savings bonds?**

The registration of a definitive Series I savings bond must include the TIN of the owner or first-named coowner. If the bond is being purchased as a gift or award and the owner's TIN is not known, the TIN of the purchaser must be included in the registration of the bond.

## PART 360—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I

■ 20. The authority citation for Part 360 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

■ 21. Section 360.2 is amended by redesignating paragraphs (d) through (h) as paragraphs (e) through (i), redesignating paragraphs (i) through (m) as paragraphs (k) through (o), and adding new paragraphs (d) and (j) to read as follows:

**§ 360.2 Definitions.**

* * * * *

(d) *Inscription* means the information that is printed on the face of the bond.

* * * * *

(j) *Registration* means that the names of all persons named on the bond and the taxpayer identification number (TIN) of the owner, first-named coowner, or purchaser of a gift bond are maintained on our records.

* * * * *

■ 22. Section 360.5 is amended by revising the heading and the second sentence of paragraph (c) to read as follows:

**§ 360.5 General rules.**

* * * * *

(c) *Registration of bonds purchased as gifts.* * * * Bonds so registered will not be associated with the purchaser's own holdings.

* * * * *

■ 23. Section 360.6 is amended by revising the last sentence of the introductory paragraph to read as follows:

**§ 360.6 Authorized forms of registration.**

* * * A savings bond registered in a form not substantially in agreement with one of the forms authorized by this subpart is not considered validly issued.

* * * * *

Dated: August 8, 2006.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

[FR Doc. E6–13301 Filed 8–14–06; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[CGD01–06–097]**

### Special Local Regulation: Taste of Italy Fireworks, Norwich, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation.

**SUMMARY:** This document puts into effect the permanent regulations for the annual Taste of Italy Fireworks in Norwich, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the hazards presented by a fireworks display to the maritime community, thus providing for the safety of life and property on the affected waters.

**DATES:** This regulation is effective from 8 p.m. on September 9, 2006 to 10:45 p.m. on September 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** John Mauro, Chief Waterways Management Branch, First Coast Guard District, (617) 223–8355.

**SUPPLEMENTARY INFORMATION:** This document implements the permanent special local regulation governing the Taste of Italy Fireworks, Norwich, CT. 33 CFR 100.114(a)(9.5). A portion of the waters off of Norwich Harbor, Norwich, CT will be closed during the effective period to all vessel traffic, except the fireworks barge and local, state or Coast Guard patrol craft. The regulated area is that area of Norwalk Harbor in a 600-foot radius of the fireworks barge located at approximate position 41°31.706′ N., 072°04.718′ W. All coordinates are North American Datum 1983. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.114.

Dated: July 18, 2006.

**Timothy S. Sullivan,**

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

[FR Doc. E6–13311 Filed 8–14–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD01–06–095]**

**RIN 1625–AA00**

### Safety Zone; Celebrate Revere Fireworks, Broad Sound, Revere, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the "Celebrate Revere" Fireworks display on August 19, 2006 in Revere, Massachusetts, temporarily closing all waters of Broad Sound within a four hundred (400) yard radius of the fireworks launch site located at approximate position 42° 24.00′ N, 070° 59.00′ W. This zone is necessary to protect the maritime public from the potential hazards associated with a fireworks display. The safety zone temporarily prohibits entry into or movement within this portion of Broad Sound during its closure period, unless authorized by the Captain of the Port, Boston, MA.

**DATES:** This rule is effective from 8:30 p.m. EDT until 10 p.m. EDT on August 19, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01–06–095 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–5456.

**SUPPLEMENTARY INFORMATION:**

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A notice of proposed rulemaking (NPRM) was not published for this regulation because the logistics with respect to the fireworks presentation were not determined with sufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Broad Sound during the

fireworks display and to provide for the safety of life on navigable waters.

For the same reasons, the Coast Guard finds under 5 U.S.C. 553(d)(3), that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This zone should have a minimal negative impact on vessel transits in this portion of Broad Sound because vessels will be excluded from the area for only one and one half hours, and vessels can still safely operate in other areas of Broad Sound during the event.

**Background and Purpose**

The City of Revere is holding a fireworks display in honor of the "Celebrate Revere" event. This rule establishes a temporary safety zone on the waters of Broad Sound within a four hundred (400) yard radius of the fireworks launch site located at approximate position 42° 24.00′ N, 070° 59.00′ W. This zone is necessary to protect the maritime public from the potential dangers associated with this event, by prohibiting entry into or movement within the proscribed portion of Broad Sound during the fireworks display.

**Discussion of Rule**

This rule is effective from 8:30 p.m. EDT until 10:00 p.m. EDT on August 19, 2006. Marine traffic may transit safely outside of the safety zone in the majority of Broad Sound during the event. Given the limited time of the effective period of the zone and the size of Broad Sound compared to the small size of the zone itself, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to and during the effective period via Local Notice to Mariners and marine information broadcasts.

**Regulatory Evaluation**

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

Although this rule will prevent maritime traffic from transiting a portion of Broad Sound during this event, the effect of this rule will not be significant for several reasons: vessels will be excluded from the safety zone for only one and one half hours; vessels will not be able to transit Broad Sound in the safety zone itself, but they will be able to safely operate in other areas of Broad Sound during the effective period. Further, advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Broad Sound from 8:30 p.m. EDT until 10 p.m. EDT on August 19, 2006. This safety zone will not have a significant economic impact on a substantial number of small entities for the reason described under the Regulatory Evaluation section.

**Assistance for Small Entities**

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–5456.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34) (g) of the Instruction, from further environmental documentation. This rule is covered by paragraph (34) (g), because it would establish a safety zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–095 to read as follows:

**§ 165.T01–095 Safety Zone; Celebrate Revere Fireworks, Broad Sound, Revere, MA**

(a) *Location.* The following area is a safety zone: All waters of Broad Sound, from surface to bottom, within a four hundred (400) yard radius of the fireworks launch site located at approximate position 42° 24.00′ N, 070° 59.00′ W.

(b) *Effective Date.* This section is effective from 8:30 p.m. EDT until 10 p.m. EDT on August 19, 2006.

(c) *Definitions.* (1) Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP).

(2) [Reserved]

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the Captain of the Port (COTP), Boston or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative.

Dated: August 1, 2006.

**James L. McDonald,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. E6–13397 Filed 8–14–06; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R07–OAR–2006–0467; FRL–8209–9]

### Approval and Promulgation of Implementation Plans; State of Missouri

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve Missouri's nitrogen oxides ($NO_X$) plan for the eastern one-third of the state. The plan consists of three rules, a budget demonstration, and supporting documentation. The plan will contribute to attainment and maintenance of the 8-hour ozone standard in several downwind areas. Missouri's plan, which focuses on large electric generating units, large industrial boilers, large stationary internal combustion engines, and large cement kilns, was developed to meet the requirements of EPA's April 21, 2004, Phase II $NO_X$ State Implementation Plan (SIP) Call. EPA is taking final action to approve the plan as a SIP revision fulfilling the $NO_X$ SIP Call requirements. The initial period for compliance under the plan will begin in 2007, and the emission monitoring and reporting requirements for sources holding allowances under the plan began on May 1, 2006.

**DATES:** This rule is effective on September 14, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R07-OAR–2006–0467. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas

City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Michael Jay at (913) 551–7460, or by e-mail at *jay.michael@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.



## I. Background

By notice dated October 27, 1998 (63 FR 57356), we took final action to prohibit specified amounts of emissions of one of the main precursors of groundlevel ozone, $NO_X$, in order to reduce ozone transport across state boundaries in the eastern half of the United States. We set forth requirements for each of the affected upwind states to submit SIP revisions prohibiting those amounts of $NO_X$ emissions during the five-month period from May 1 through September 30 which significantly contribute to downwind air quality problems. We established statewide $NO_X$ emissions budgets for the affected states. The budgets were calculated by assuming the emissions reductions that would be achieved by applying available, highly cost-effective controls to source categories of $NO_X$, i.e., the amounts of reductions determined by EPA for large, fossil-fuel-fired electric generating units (EGUs), large, fossil-fuel-fired industrial boilers, combustion turbines, and combined cycle systems (non-EGUs), large stationary internal combustion (IC) engines, and cement kilns. States have the flexibility to adopt the appropriate mix of controls for their state to meet the $NO_X$ emissions reductions requirements of the $NO_X$ SIP Call.

A number of parties, including certain states as well as industry and labor groups, challenged our $NO_X$ SIP Call rule. A subsequent ruling by the Court of Appeals for the District of Columbia Circuit on March 3, 2000, vacated the inclusion of the entire state of Missouri. *Michigan* v. *EPA*, 213 F.3d 663 (DC Cir. 2000). In response to the Court's decision, we issued the February 22, 2002, proposed rule to include only specified counties in the eastern one-third of Missouri in the $NO_X$ SIP Call (67 FR 8413).

On April 21, 2004, we finalized our responses to the Court's decision in a final rulemaking, "Interstate Ozone Transport: Response to Court Decisions on the $NO_X$ SIP Call, $NO_X$ SIP Call Technical Amendments, and Section 126 Rules," also referred to as "Phase II of the $NO_X$ SIP Call" (69 FR 21604). This rulemaking made a number of revisions to the 1998 rule. Most relevant to this rulemaking, it finalized our earlier proposal to include only the eastern one-third of Missouri in the $NO_X$ SIP Call. Accordingly, consistent with the Court's finding in *Michigan*, Missouri's $NO_X$ emissions budget was revised to include only the eastern one-third of the state.

The $NO_X$ SIP Call requires that states revise their SIPs to assure that sources in the state reduce their $NO_X$ emissions sufficiently to eliminate the amounts of $NO_X$ emissions that contribute significantly to ozone nonattainment, or that interfere with maintenance, downwind, as required under the Clean Air Act (CAA) section 110(a)(2)(D)(i)(I). States must demonstrate that their SIP includes sufficient measures to eliminate the significant amount of emissions by providing documentation in the form of a budget demonstration that details how the reductions are to be achieved. The total amount of $NO_X$ emissions from all $NO_X$ sources remaining after the state prohibits the significant amount of $NO_X$ emissions, as identified in the $NO_X$ SIP Call, represents the emissions budget for the state.

The $NO_X$ SIP Call provided states the flexibility to decide which source categories to regulate in order to meet the emissions budget. In order to provide assistance to the states, we suggested imposing a variety of control strategies that provide for a highly cost effective means for states to meet their $NO_X$ emissions budgets. These strategies include imposing $NO_X$ emissions caps and providing for an allowance trading program for large EGUs and large non-EGUs, as well as emission reduction requirements for cement kilns and large IC engines. EPA's model $NO_X$ budget trading rule for SIPs, 40 CFR Part 96, Subparts A through I, sets forth a $NO_X$ allowance trading program for large EGUs and large non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading as a way to achieve the required emission reductions for large EGUs and large non-EGUs. The October 27, 1998, **Federal Register** document contains a full description of the EPA's model $NO_X$ budget trading program (See 63 FR 57514–57538 and 40 CFR Part 96, Subparts A through I). It should be noted that Missouri currently has in place a SIP-approved statewide $NO_X$ Rule, 10 CSR 10–6.350, and is also in the process of adopting additional rules to meet the requirements of the Clean Air Interstate Rule (CAIR). The statewide $NO_X$ rule and the rules under development to meet CAIR are designed to meet different EPA requirements.

## II. Summary of State Submittal

### *A. What Are the Basic Components of the State's Plan?*

The main components of Missouri's plan include three $NO_X$ rules and a budget demonstration with supporting materials. The rules include: 10 CSR 10–6.360, pertaining to large EGUs and large fossil-fuel-fired industrial boilers (industrial boilers), 10 CSR 10–6.380 for cement kilns, and 10 CSR 10–6.390 for large stationary internal combustion engines. The purpose of these rules is to prohibit $NO_X$ emissions as identified in the $NO_X$ SIP Call that significantly contribute to downwind ozone nonattainment. In the $NO_X$ SIP Call the required emissions reductions were determined based on the implementation of available, highly cost-effective controls for selected source categories. Therefore, Missouri has developed and adopted three rules generally covering the source categories (i.e., large EGUs, large industrial boilers, cement kilns, and large stationary IC engines) for which EPA found that cost-effective controls were available.[1] EPA has reviewed the three rules and has found that Missouri's rules will achieve the emission reduction requirements of the $NO_X$ SIP Call and thus eliminate Missouri's significant contribution to downwind 8-hour ozone nonattainment. A more detailed description of each rule follows under II(B). The purpose of the budget demonstration is to provide an

[1] Although in the $NO_X$ SIP Call, EPA found generally that highly cost effective reductions were achievable at large industrial boilers, combustion turbines, and combined cycle systems, the fine grid portion of Missouri does not include existing large combustion turbines and combined cycle systems. The language of the applicability provisions for non-EGUs in Missouri's trading rule expressly covers only large non-EGUs that are industrial boilers.

accounting mechanism for ensuring that Missouri has adopted control measures that prohibit the significant amounts of $NO_X$ emissions targeted by CAA section 110(a)(2)(D)(i)(I). A more detailed discussion of the demonstration is provided below under II(C).

*B. What Do the Rules Require?*

1. What Are the Requirements of the EGU and Non-EGU Rule?

Missouri adopted 10 CSR 10–6.360 "Control of $NO_X$ Emissions From Electric Generating Units and Non-Electric Generating Boilers." The rule effectively adopts the essential elements of EPA's $NO_X$ Budget Trading model rule set forth in the October 1998 **Federal Register** document for applicable sources found in the eastern one-third of the state covered by the $NO_X$ SIP Call. The Missouri rule affects large EGUs (in general, fossil-fuel-fired boilers, combustion turbines, and combined cycle systems that serve a generator with a nameplate capacity greater than 25 megawatts (MWe) producing electricity for sale) and large industrial boilers (generally, industrial fossil-fuel-fired boilers with a maximum design heat input greater than 250 million British thermal units per hour (mmBtu/hr)).[2]

The emissions cap on large EGUs for the eastern one-third of Missouri, as described in the Phase II notice, is set at 13,400 tons per ozone season, and was based on a baseline heat input (mmBtu/hr) and emissions rate of 0.15 $NO_X$ lbs/mmBtu. The EGU emissions budget is equivalent to the number of allowances that the state has authority to distribute. One percent of this budget, 134 tons, has been included in an "energy efficiency and renewable generation projects set-aside." The purpose of this set-aside is to provide an incentive to save or generate electricity through the implementation of projects that reduce the consumption of fossil-fuel. The rule contains a list of large EGUs and the number of remaining allowances that will be provided for each unit during the control periods beginning in the year 2007.

The level of reduction for large industrial boilers was based on emissions decreases from uncontrolled levels. In accordance with the $NO_X$ SIP Call, Missouri based the number of $NO_X$ allowances for each unit on a 60 percent reduction from each unit's estimated 2007 levels of emissions, which were adjusted for projected growth for large industrial boilers. Missouri identified three existing units in the eastern one-third of the state as meeting the applicability requirement for large industrial boilers and, based on reductions from their uncontrolled emissions adjusted for projected growth, established 59 tons as the large industrial boiler portion of the trading budget. The rule specifically allocates allowances to these three large industrial boilers. The $NO_X$ trading budget for Missouri is the sum of the large EGU budget (13,400) and the large industrial boiler budget (59) and totals 13,459 tons.

Under 10 CSR 10–6.360, Missouri allocates $NO_X$ allowances to both its large EGUs and large industrial boilers. Each $NO_X$ allowance permits a unit to emit one ton of $NO_X$ during the ozone season control period. $NO_X$ allowances may be bought or sold. Unused $NO_X$ allowances may also be banked for future use, with certain limitations. Missouri's rule requires each large EGU and large industrial boiler to hold allowances to cover its emissions after each control period. For each ton of $NO_X$ emitted in a control period, EPA will remove one allowance from the unit's $NO_X$ Allowance Tracking System account after the end of the control period. Once the allowance has been used for compliance, no unit can use the allowance again. Monitoring requirements specify that owners and operators will be required to continuously monitor their $NO_X$ emissions by using systems that meet the requirements of 40 CFR part 75, subpart H. The monitoring requirements also include quarterly emission reporting.

The compliance supplement pool (CSP) is a pool of allowances that can be used in the beginning of the program to provide certain $NO_X$ Budget units additional compliance flexibility. The CSP was created to address concerns raised by commenters on the $NO_X$ SIP Call proposal regarding electric reliability during the initial years of the program. Missouri may distribute its 5,630 ton allowance pool based on early reductions, a demonstrated need, or both. A unit making an application to the CSP based on early reductions must demonstrate that reductions were made beyond all applicable requirements sometime during the ozone seasons of 2002 through 2006. Missouri's CSP may be used to account for emissions during the 2007 and 2008 control periods.

2. What Are the Requirements of the Cement Kiln Rule?

Missouri adopted 10 CSR 10–6.380, "Control of $NO_X$ Emissions From Portland Cement Kilns." The rule effectively adopts the $NO_X$ SIP Call's recommended approach of obtaining a 30 percent reduction from uncontrolled levels from large Portland cement kilns found in the $NO_X$ SIP Call region of the eastern one-third of the state. The rule applies only to kilns with process rates of at least the following:

Long dry kilns—12 tons per hour (TPH)
Long wet kilns—10 TPH
Preheater kilns—16 TPH
Precalciner and preheater/precalciner kilns—22 TPH

In the $NO_X$ SIP Call, EPA cited its peer reviewed analysis, "EPA's Alternative Control Techniques (ACT)" (EPA–453/R–94–004, March 1994) as demonstrating that cost-effective controls in the form of low-$NO_X$ burners and mid-kiln firing are available to the cement kiln industry and can achieve a 30 percent reduction from uncontrolled levels of emissions. Consistent with EPA's approach in the NOX SIP Call, Missouri's rule provides that compliance can be achieved by the installation and operation of low-$NO_X$ burners or mid-kiln firing or by alternative measures that are all designed to achieve the 30 percent cost-effective reduction.

3. What Are the Requirements of the Large Stationary Internal Combustion Engine Rule?

Missouri adopted 10 CSR 10–6.390, "Control of $NO_X$ Emissions From Large Stationary Internal Combustion Engines." The rule effectively adopts the $NO_X$ SIP Call's recommended approach of the establishment of emissions levels that obtain an 82 percent reduction from large natural gas-fired stationary IC engines and a 90 percent reduction from large diesel and dual fuel stationary IC engines found in the $NO_X$ SIP Call region of the eastern one-third of the state.

*C. How Does Missouri Address Its $NO_X$ SIP Call Budget?*

Missouri's budget for the $NO_X$ SIP Call was contained in the Phase II rulemaking in April 2004. Today's rulemaking finalizes EPA's proposal to adopt corrections to the April 2004 budget for Missouri that were detailed in the June 5, 2006, proposal, as no comments were received on any of the proposed revisions. Based on EPA's approach in the proposal, the $NO_X$ SIP

[2] It should be noted that as described in the proposal, EPA interprets "nameplate capacity" to be the amount, specified by the manufacturer of the generator, as of initial installation and interprets "maximum design heat input" to be the amount, specified by the manufacturer of the unit, as of initial installation based on the physical design and physical characteristics of the equipment. Consequently, nameplate capacity and maximum design heat input are determined on a one-time basis and are not changed by subsequent modification of the generator or unit respectively.

Call 2007 budget for the eastern one-third of Missouri is 60,235 tons per ozone season and represents the sum of EGU, Non-EGU Point, Area, Off-Road and Mobile source emissions. A breakdown of the emissions budget can be found in Table I.

As explained in more detail in the $NO_X$ SIP Call, the $NO_X$ SIP Call requires that states revise their SIPs to assure that sources in the state reduce their $NO_X$ emissions sufficiently to eliminate the amounts of $NO_X$ emissions that contribute significantly to ozone nonattainment, or that interfere with maintenance, downwind. The amount of $NO_X$ emissions reductions required is the amount of emissions reductions that would be achieved by applying available, highly cost-effective controls to large EGUs, large non-EGUs, large stationary IC engines, and cement kilns. However, EPA structured the rule to give the upwind states a choice of which mix of measures to adopt in order to eliminate the significant amount of $NO_X$ emissions. To this end, EPA developed an emissions budget that was based on the aforementioned application of highly cost-effective controls. The emissions budget represents the amount of $NO_X$ emissions remaining after the state prohibits the significant amount. EPA finds that Missouri has demonstrated compliance with the budget demonstration, and thus the $NO_X$ SIP Call, by adopting control measures that are modeled after EPA's recommended approach for controlling large EGUs, large non-EGUs, large IC engines, and cement kilns, and that implementation of these rules will achieve the emissions reductions necessary to eliminate the "significant contribution" to downwind ozone nonattainment identified under CAA section 110(a)(2)(D)(i)(I), as implemented by the $NO_X$ SIP Call.

TABLE I.—CORRECTED $NO_X$ BUDGET FOR MISSOURI

| Source category | 2007 Budget emissions (tpos) |
|---|---|
| Large EGUs (>25 MW) | 13,400 |
| Other EGUs | 241 |
| Other Non EGUs | 5,903 |
| Large non-EGUs (including large industrial boilers) (>250 MMBtu) | 59 |
| Cement Kilns | 7,483 |
| Area | 2,199 |
| On Road Mobile | 21,318 |
| Off-Road Mobile | 9,632 |
| Total | 60,235 |

## III. What Action Is EPA Taking?

EPA is taking final action to approve Missouri's request to revise the SIP to include their $NO_X$ plan that includes three $NO_X$ rules and a budget demonstration to meet the requirements of the $NO_X$ SIP Call. EPA proposed to approve the rules and budget demonstration on June 5, 2006 (71 FR 32291). The comment period closed on EPA's proposal on July 5, 2006. No comments were received. EPA is finalizing the approval as proposed, based on the rationale stated in the proposal and in this final action. Also, as explained in the proposal, EPA's approval is premised on Missouri's commitment to include in the Missouri trading rule any large industrial combustion turbines and large industrial combined cycle systems which may be constructed in the future.

*Statutory and Executive Order Reviews*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 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 October 16, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: August 8, 2006.

**William A. Spratlin,**

*Acting Regional Administrator, Region 7.*

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

## PART 52—[AMENDED]

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

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

### Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by adding entries for "10–6.360," "10–6.380," and "10–6.390" to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| | Missouri Department of Natural Resources | | | |
| * | * | * | * | * |
| Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri | | | | |
| * | * | * | * | * |
| 10–6.360 ..... | Control of $NO_X$ Emissions From Electric Generating Units and Non-Electric Generating Boilers. | 10/30/05 | 8/15/06 [*insert FR page number where the document begins*]. | |
| 10–6.380 ..... | Control of $NO_X$ Emissions From Portland Cement Kilns ..... | 10/30/05 | 8/15/06 [*insert FR page number where the document begins*]. | |
| 10–6.390 ..... | Control of $NO_X$ Emissions From Large Stationary Internal Combustion Engines. | 10/30/05 | 8/15/06 [*insert FR page number where the document begins*]. | |
| * | * | * | * | * |

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[FR Doc. E6–13347 Filed 8–14–06; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AU21**

## Endangered and Threatened Wildlife and Plants; Special Rule for the Southwest Alaska Distinct Population Segment of the Northern Sea Otter

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), under the Endangered Species Act (Act), as amended, create a special rule for the southwest Alaska distinct population segment (DPS) of the northern sea otter (*Enhydra lutris kenyoni*). This DPS of the northern sea otter is listed as threatened under the Act. This special rule allows for the limited, noncommercial import and export of items that qualify as authentic native articles of handicrafts and clothing that were derived from sea otters legally taken for subsistence purposes by Alaska Natives from the listed population. This special rule also allows for cultural exchange by Alaska Natives and activities conducted by persons registered as an agent or tannery under existing law. We also amend our definition of "Authentic native articles of handicrafts and clothing" by striking the stipulation that such items were commonly produced on or before December 28, 1973. This definition change is appropriate in light of a court ruling on the Service's definition of "Authentic native articles of handicrafts and clothing" and consistent with our current definition of "Authentic native articles of handicrafts and clothing" under the Marine Mammal Protection Act (MMPA) of 1972.

**DATES:** This rule is effective on September 14, 2006.

**ADDRESSES:** The complete file for this final rule is available for inspection, by appointment, during normal business hours at the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** Charles Hamilton (see **ADDRESSES**), telephone, 907–786–3800; facsimile, 907–786–3816, e-mail, *Charles_Hamilton@fws.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 9, 2005, we published a final rule (70 FR 46366) to list the southwest Alaska DPS of the northern sea otter as threatened under the Act (Act), as amended (16 U.S.C. 1531 et seq.). Section 4(d) of the Act specifies that, for species listed as threatened, the Secretary shall develop such regulations as determined necessary and advisable for the conservation of the species. Our regulations at 50 CFR 17.31 provide that all the prohibitions for endangered wildlife under 50 CFR 17.21, with the exception of § 17.21(c)(5), will generally also be applied to threatened wildlife. Prohibitions include, among others, take, import, export, and shipment in interstate or foreign commerce in the course of a commercial activity. The

general provisions for issuing a permit for any activity otherwise prohibited with regard to threatened species are found at 50 CFR 17.32.

The Service may, however, also develop a special rule for a threatened species that specifies prohibitions and authorizations that are necessary and advisable for the conservation of that particular species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into the special rule, but the rule will include special provisions tailored to the specific conservation needs of the listed species. On August 9, 2005, we proposed a special rule for the Southwest Alaska DPS of the northern sea otter (70 FR 46387).

Section 10(e) of the Act provides an exemption for Alaska Natives that allows for the taking and importation of listed species if such taking is primarily for subsistence purposes. Nonedible by-products of species taken in accordance with the exemption, when made into authentic native articles of handicraft and clothing, may be transported, exchanged, or sold in interstate commerce. The Act defines authentic native articles of handicraft and clothing as items composed wholly or in some significant respect of natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices [16 U.S.C. 1539(e)(3)(ii)]. That definition also provides that traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. These exemptions are similar to those under the MMPA (16 U.S.C. 1361 et seq.), which also provides for the conservation of sea otters and which likewise includes special provisions for subsistence harvest and the creation and sale of authentic native articles of handicrafts or clothing by Alaska Natives. For more information on the definition of authentic native articles of handicrafts and clothing, see the Definition Change section of this document.

Both the Act and the MMPA recognize the intrinsic role that marine mammals have played and continue to play in the subsistence, cultural, and economic lives of Alaska Natives. The Service, in turn, recognizes the important role that Alaska Natives can play in the conservation of marine mammals. Amendments to the MMPA in 1994 acknowledged this role by authorizing the Service to enter into cooperative agreements with Alaska Natives for the conservation and co-management of subsistence use of marine mammals (16 U.S.C. 1388). Since 1997, the Service has entered into annual cooperative agreements with The Alaska Sea Otter and Steller Sea Lion Commission (TASSC) under this section of the MMPA. The TASSC was established in 1988 as the Alaska Sea Otter Commission to represent the interests of subsistence users and sea otter hunters on issues relating to the subsistence harvest of sea otters in Alaska. Through these cooperative agreements, the Service has worked with TASSC to better understand the status and trends of sea otters throughout Alaska. For example, Alaska Natives collect and contribute biological specimens from subsistence-harvested animals for biological analysis. Analysis of these samples allows us to monitor the health and status of sea otter stocks. Additionally, some communities that harvest sea otters conduct skiff surveys of sea otters in their local areas. The results of these surveys may serve to complement the Service's own surveying and monitoring program, and provide us with a better understanding of sea otter distribution and abundance. Further, the Service and TASSC are exploring the development of harvest management programs that are consistent with both sound wildlife management techniques and the socioeconomic requirements of Alaska Native subsistence hunters. We recognize the unique contributions Alaska Natives are able to provide to the Service's understanding of sea otters, and their interest in ensuring that northern sea otter stocks are conserved and managed for healthy populations throughout the range in coastal Alaska.

As discussed in our proposed and final rules listing this DPS of the northern sea otter as threatened (69 FR 6600, 70 FR 46366), since 1989, the annual subsistence harvest of sea otters from the southwest Alaska DPS has averaged fewer than 100 otters per year. During that time period, nearly 80 percent of the harvest occurred in the Kodiak archipelago. Areas that have experienced the most severe population declines within the southwest Alaska DPS have had little or no subsistence harvest. In our final rule to list the southwest Alaska DPS of the northern sea otter as threatened, we found that the current level and geographic distribution of the subsistence harvest was neither negatively nor materially impacting the DPS. Thus, at this time, the harvest of northern sea otters from this DPS and associated creation, sale, and shipment of authentic handicrafts and clothing are not threats to the DPS. Nor does the Service find that Alaska Native activities associated with subsistence harvests negatively affect our efforts at recovery for this DPS. The Service will continue to monitor the subsistence harvest of sea otters from the southwest Alaska DPS, and will periodically reevaluate the impact of the subsistence harvest on the conservation of the species.

The Service, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, and Secretarial Order 3225, acknowledges our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. During the public comment period following our proposal to list the southwest Alaska DPS of the northern sea otter as threatened (69 FR 6600), Alaska Native tribes and tribally-authorized organizations were among those that provided comments on the listing action. Alaska Natives noted to the Service that prohibitions on export and import under the Act could limit their ability to participate in cultural exchanges that foster the sharing and exchange of ideas, information, gifts, clothing, or handicrafts between Indians, Aleuts, and Eskimos residing in Alaska and Native inhabitants of Russia, Canada, and Greenland. Further, Alaska Natives noted their concern that foreign visitors to the United States might be restricted from leaving the country with their lawfully acquired and possessed authentic Native articles of handicrafts or clothing derived from sea otters from the southwest Alaska DPS, thus limiting Alaska Natives' ability to sell authentic native handicrafts to foreign visitors or tourists.

We are mindful of the unique exemptions from the prohibitions against take, import, and interstate sale of authentic native handicrafts and clothing provided to Alaska Natives under the Act. These exemptions are similar to the exemptions provided Alaska Natives under the MMPA. Furthermore, as discussed above, the Service has determined that, not only is the listed population of northern sea otters subjected to little or no impact from Alaska Native harvest, but TASSC and its constituent members are working with the Service to better understand this DPS and the possible causes for its decline. The Service recognizes that this DPS, and northern sea otters throughout Alaska, could benefit from continued involvement of

the Alaska Native community in the conservation of sea otters. Therefore, we have developed this special rule to provide for the conservation of sea otters, while at the same time accommodating Alaska Natives' subsistence, cultural, and economic interests. This rule aligns the provisions of the Act relating to the creation, shipment, and sale of authentic native handicrafts and clothing by Alaska Natives with what is already allowed under the MMPA.

Under this special rule, except for persons and activities covered by the specific provisions relating to authentic native handicrafts and clothing, cultural exchange, and limited types of travel, all of the prohibitions under 50 CFR 17.31 apply. Thus, import, export, take, possession of unlawfully taken sea otters, interstate or foreign commerce in the course of a commercial activity, and sale would be generally prohibited unless the activity qualifies for a permit for purposes of science, enhancement of propagation or survival, economic hardship, zoological exhibition, education, or other special purpose, or the activity qualifies for incidental take authorization, and the person has received the necessary approval. Who may qualify for such permits and the criteria we use to evaluate applications are found at 50 CFR part 13 and 50 CFR 17.32. The deviations in this rule from the standard provisions found at 50 CFR 17.31 and 17.32 apply only to cultural exchange, limited types of travel, or to activities associated with the creation and sale of authentic native articles of handicrafts and clothing from sea otters taken legally by Alaska Natives.

This special rule is also limited to activities that are not already exempted under the Act. The Act itself provides a statutory exemption to Alaska Natives for the harvesting of sea otters from the wild as long as the taking is for primarily subsistence purposes. The Act then specifies that sea otters taken under this provision can be used to create handicrafts and clothing and that these items can be sold in interstate commerce. Thus this special rule does not regulate the taking or importation of northern sea otters nor the sale in interstate commerce of authentic native articles of handicrafts and clothing by qualifying Alaska Natives; these have already been exempted by statute. The special rule addresses only activities relating to cultural exchange and limited types of travel, and to the creation and shipment of authentic native handicrafts and clothing that are currently allowed under section 101 of the MMPA that are not already clearly exempted under the Act. As discussed earlier, neither the activities already exempted under the Act nor the associated activities that are allowed under this special rule have been identified as threats to the DPS.

One of the activities addressed in this special rule is cultural exchange between Alaska Natives and Native inhabitants of Russia, Canada, and Greenland with whom Alaska Natives share a common heritage. The MMPA allows the import and export of marine mammal parts and products that are components of a cultural exchange, which is defined as the sharing or exchange of ideas, information, gifts, clothing, or handicrafts. Cultural exchange has been an important exemption for Alaska Natives under the MMPA, and this special rule serves to ensure that such exchanges are not interrupted.

The limited, noncommercial import and export of authentic native articles of handicrafts and clothing that are created from sea otters taken by Alaska Natives may also continue. The special rule clarifies that all such imports and exports involving DPS sea otters need to conform to what is currently allowed under the MMPA, comply with our import and export regulations found at 50 CFR part 14, and be noncommercial in nature. Service regulations define commercial as related to the offering for sale or resale, purchase, trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to the quantity or weight. There is a presumption that eight or more similar unused items are for commercial use. The Service or the importer/exporter/owner may rebut this presumption based upon the particular facts and circumstances of each case (see 50 CFR 14.4).

Finally, this rule adopts the registered agent and tannery process from the current MMPA regulations. In order to assist Alaska Natives in the creation of authentic native articles of handicrafts and clothing, the Service's MMPA implementing regulations at 50 CFR 18.23(b) and (d) allow persons who are not Alaska Natives to register as an agent or tannery. Once registered, agents are authorized to receive or acquire marine mammal parts or products from Alaskan Natives or other registered agents. They are also authorized to transfer (not sell) hides to registered tanners for further processing. A registered tannery may receive untanned hides from Alaska Natives or registered agents for tanning and return. The tanned skins may then be made into authentic articles of clothing or handicrafts by Alaska Natives. Registered agents and tanneries must maintain strict inventory control and accounting methods for any marine mammal part, including skins, they receive and provide accountings of such activities and inventories to the Service. These restrictions and requirements for agents and tanners allow the Service to monitor the processing of such items while ensuring that Alaska Natives can exercise their rights under the exemption. Adopting the registered agent and tannery process will align Act provisions relating to the creation of handicrafts and clothing by Alaska Natives with the current process under the MMPA.

Any person engaging in activities under this special rule would also want to ensure that their actions are consistent with the other conservation laws that apply to the northern sea otter, including other provisions of the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). For example, the exemption for Alaska Natives in section 10(e)(1) of the Act applies to "any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska" as well as to "any non-native permanent resident of an Alaskan native village." However, the Alaska Native exemption under section 101 of the MMPA is limited to only an "Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean." Because the MMPA is more restrictive, only a person who qualifies under the MMPA Native exemption may legally take sea otters for subsistence purposes, as a take by certain persons under the broader Act Native exemption would not be exempted under the MMPA. This special rule is intended to reconcile Alaska Native subsistence activities under the Act with Alaska Native subsistence activities that have been conducted for more than 30 years under the MMPA, which is more restrictive in some areas than the Act. Therefore, all persons, including those who qualify under the Alaska Native exemption of the Act, should consult the MMPA and our regulations at 50 CFR part 18 before engaging in any activity that may result in a prohibited act to ensure that their activities will be consistent with both laws.

Northern sea otters from the DPS are also listed under Appendix II of CITES. The CITES regulates the import and export of listed specimens, which include live and dead animals and plants as well as parts and items made from the species. The CITES applies to

the transport of legally possessed specimens from this DPS of sea otters over an international border, including driving from Alaska through Canada to a destination elsewhere in the United States. Appendix II specimens may not be exported from a member country without the prior grant of an export permit. Some limited exceptions to this permit requirement exist. For example, member countries may exempt personal and household effects from the permitting requirements. Personal and household effects must be personally owned for noncommercial purposes, and the quantity must be necessary or appropriate for the nature of the trip or stay or for household use. Persons who may cross an international border with a specimen of this DPS should check with the Service and the country of transit or destination in advance as to applicable requirements. Thus, a person engaging in activities involving DPS sea otters must comply with the requirements of the MMPA and CITES, including obtaining any required CITES documents, as well as the requirements of the Act, all of which will work together to conserve animals in the DPS.

This rulemaking revises our regulations at 50 CFR part 17 to include a special rule that allows for activities associated with the use of animals taken by Alaska Natives for subsistence purposes. The special rule encourages cooperative management efforts between the Service and Alaska Natives by recognizing and providing for the cultural, social, and economic activities of Alaska Natives. It supports conservation of the DPS by discouraging excessive harvests and by encouraging self-regulation of the northern sea otter harvest by subsistence hunters in ways that meet the Service's goal for recovery of the DPS. The taking of northern sea otters and the creation, shipment, and interstate sale of authentic native handicrafts and clothing derived from such taking are already exempted under the Act, and neither the take nor the activities associated with the creation and sale of handicrafts and clothing or with cultural exchange have been identified as threats to the DPS. The Service recognizes the important contributions Alaska Natives may make to our recovery effort for this species, including, for example, information gained from biological samples derived from subsistence-harvested animals. Therefore, we find that the regulations are necessary and advisable for the conservation of the southwest Alaska DPS of the northern sea otter.

**Definition Change**

This rule also adopts a change to the definition of "Authentic native articles of handicrafts and clothing" similar to that adopted on August 17, 2005, under 50 CFR 18.3 (70 FR 48321). Specifically, this change eliminates the requirement in 50 CFR 17.3 for authentic native articles of handicrafts and clothing to have been commonly produced on or before December 28, 1973. The reasons for this change to the definition at 50 CFR 17.3 are similar to those provided in the final rule published on August 17, 2005, and are explained below.

The Service's definition of "Authentic native articles of handicrafts and clothing" at 50 CFR 17.3 included a requirement that such items were commonly produced on or before December 28, 1973 (the effective date of the Act), and is similar to the previous definition for that term in 50 CFR 18.3 (Service regulations implementing the MMPA), which included a requirement that such items were commonly produced on or before December 21, 1972 (the effective date of the MMPA). These definitions reflected the Service's determination at the time that the exemptions provided Alaska Natives under both the Act and the MMPA were to protect traditional ways of subsistence rather than to provide a means of initiating commercial activities (55 FR 14973, April 20, 1990). However, in 1990, a number of parties challenged our definition at 50 CFR 18.3 as violating the MMPA. On July 17, 1991, in *Didrickson* v. *U.S. Department of the Interior,* the U.S. District Court for the District of Alaska ruled in favor of the Plaintiffs. The Court ruled that the Service's definition was inconsistent with the language and overall regulatory scheme of the MMPA. This decision was appealed to the Ninth Circuit Court of Appeals, which, on December 28, 1992, affirmed the District Court's ruling. The Circuit Court examined the statutory definition of "Authentic native articles of handicrafts and clothing" and found that there was no statutory requirement that those items be made or sold prior to the date of the MMPA. The cut-off date in the definition at 50 CFR 17.3 was similarly based on the effective date of the Act. The statutory definition of "Authentic native articles of handicrafts and clothing" in the Alaska Native exemption of the Act is identical to the definition in the MMPA. We believe that the analysis of the court in its ruling on our previous definition at 50 CFR 18.3 also applies to our definition at 50 CFR 17.3. Therefore, this final rule changes our definition at 50 CFR 17.3 to delete the provision that the item be commonly produced on or before December 28, 1973.

**Previous Federal Action**

On August 9, 2005, the Service published a final rule (70 FR 46366) listing the southwest Alaska DPS of northern sea otter as threatened under the Act. On that same day the Service also published a proposed rule for this DPS of northern sea otter under Section 4(d) of the Act (70 FR 46387). In that proposed rule, we requested all interested parties to submit comments and suggestions and opened a 60-day public comment period, which closed on October 11, 2005. Simultaneous with our notification of listing the southwest Alaska DPS of northern sea otter as threatened under the Act, we provided information regarding the proposed rule to Federal agencies, State agencies, and Alaska Native Tribes and tribal organizations to request comments.

In accordance with Secretarial Order 3225 regarding the Act and subsistence uses in Alaska, we engaged in government-to-government consultation with Alaska Native organizations (ANOs). Specifically, we attended board meetings of TASSC and the Aleutian Pribilof Islands Association, Inc.; the former is a tribally-authorized ANO that represents the interests of sea otter hunters throughout the State of Alaska, while the latter is a Federally recognized ANO of the Aleut people in Alaska. During these Board meetings, we provided information on both the listing action and the proposed special rule. We also provided written notification to Tribal Organizations in Alaska regarding both the listing of the DPS of northern sea otters as well as the proposed special rule. We also provided a teleconference opportunity, in conjunction with the TASSC Board meeting, during which Alaska Natives and ANOs could provide us with information regarding the proposed rule.

**Summary of Comments and Recommendations**

During the public comment period on the proposed special rule, we received a total of 3 comments by electronic mail and 1 comment by regular mail as well as approximately 100 e-mails that were irrelevant to the proposed rule. We received comments from Alaska Native Tribes, ANOs, wildlife protection organizations, and a private citizen. Two commenters opposed the proposed rule, one commenter provided qualified support of the proposed rule, and one commenter supported the proposed rule without providing specific comments.

We address the specific comments received on the proposed rule below.

*Comment:* One commenter opposed the take of northern sea otters by Alaska Natives for any purpose.

*Response:* Section 10(e) of the Act provides an exemption for Alaska Natives to allow for taking of species listed under the Act for subsistence purposes. This exemption is provided by statute. This rule does not affect the existing exemption or the ability of Alaska Natives to take southwest Alaska DPS northern sea otters.

*Comment:* The Service has misapplied the exemption afforded Alaska Natives under the Act allowing take for subsistence purposes because northern sea otters are not being taken for subsistence purposes but "rather for the sole purpose of the creation of handicrafts."

*Response:* We disagree. The taking of sea otters from the DPS by Alaska Natives as it is currently conducted qualifies as take that is primarily for subsistence purposes. The existing regulations define subsistence as "the use of endangered or threatened wildlife for food, clothing, shelter, heating, transportation and other uses necessary to maintain the life of the taker of the wildlife, or those who depend upon the taker to provide them with such subsistence, and includes selling any edible portions of such wildlife in native villages and towns in Alaska for native consumption within native villages and towns" (50 CFR 17.3). The use of northern sea otter harvested by Alaska Natives is consistent with this definition, with pelts being used to make authentic Native handicrafts and clothing. These, in turn, may be used by the hunter, or gifted, traded, or sold once the pelt is made into an authentic Native handicraft or clothing. In addition, the exemption provides that the taking must be "primarily" for subsistence purposes and does not require that the taking be solely for subsistence purposes. It is correct, however, that any proposed taking by an Alaska Native that does not fit the requirements of the exemption would have to be separately authorized under the Act or otherwise would be a violation of law.

*Comment:* The Service is authorizing take through this regulation without showing how the regulation is "necessary and advisable to provide for the conservation of [the] species," as required under section 4(d) of the Act.

*Response:* As explained in the preamble, this special rule does not authorize the taking of northern sea otters from the DPS. Rather, that taking is authorized under Section 10(e) of the Act, which provides an exception for taking and importation of threatened or endangered species by Alaska Natives if the taking is primarily for subsistence purposes and as long as the taking is not accomplished in a wasteful manner. That exception also allows the sale in interstate commerce of authentic native articles of handicrafts and clothing made from specimens taken under the exception. Because the Service is not authorizing take under this regulation, there is no need to show that take of sea otters from the DPS by Alaska Natives is necessary and advisable to provide for the conservation of the species. This rule allows those activities that are currently authorized under the MMPA and that are not covered by the Act's statutory exception, and the rule explains how the activities authorized under the rule—cultural exchange, limited types of travel, and the activities related to the creation and shipment of authentic native handicrafts and clothing—meet the standard as necessary and advisable to provide for the conservation of the species.

*Comment:* The Service has failed to support their statement that the harvest by Alaska Natives from the DPS is not negatively or materially impacting the DPS.

*Response:* Our analysis indicates that there is no relationship between the magnitude and geographic distribution of the sea otter harvest and the observed population decline in southwest Alaska (Table 1). For example, areas with some of the most severe population declines, *i.e.*, in excess of 90 percent, such as the Near Islands and Rat Islands in the western Aleutians, have no human settlements or subsistence harvest at all. With the exception of the Kodiak Archipelago where the harvest rate is 1.022 percent, the average reported harvest rates are less than one-tenth of one percent of the estimated population size. Based on these harvest levels for this DPS, which overall, including the Kodiak Archipelago, are 0.178–0.204 percent, or 2 orders of magnitude below the maximum net productivity rate of 20 percent used in our stock assessment reports (67 FR 62979, October 9, 2002), we have concluded that the subsistence harvest is not materially or negatively impacting the DPS.

TABLE 1.—REPORTED SEA OTTER HARVEST BY GEOGRAPHIC SURVEY AREA IN SOUTHWEST ALASKA

| Geographic area | Estimated abundance | Average reported harvest (1996–2005) | Average harvest rate (%) |
|---|---|---|---|
| Aleutian Islands | 3,311–8,742 | 0.6 | 0.007–0.018 |
| North Alaska Peninsula | 11,253 | 3.8 | 0.034 |
| South Alaska Peninsula | 8,568 | 5.5 | 0.064 |
| Kodiak Archipelago | 6,284 | 64.2 | 1.022 |
| Kamishak Bay | 6,918 | 0 | 0 |
| All Areas | 36,334–41,765 | 74.1 | 0.178–0.204 |

*Comment:* The Service has not complied with section 7(a)(2) of the Act, which requires Federal agencies to consult in order to insure that an agency action is not likely to jeopardize the continued existence of any endangered species or any threatened species or result in the destruction or adverse modification of designated critical habitat.

*Response:* The Service is not required to consult on this rule under section 7(a)(2) of the Act. The development of protective regulations for a threatened species are an inherent part of the section 4 listing process. The Service must make this determination considering only the "best scientific and commercial data available." A necessary part of this listing decision is also determining what protective regulations are "necessary and advisable to provide for the conservation of [the] species." Determining what prohibitions and authorizations are necessary to conserve the species, like the listing determination of whether the species meets the definition of threatened or endangered, is not a decision that

Congress intended to undergo section 7 consultation.

*Comment:* The proposed rule is subject to the requirements of the National Environmental Policy Act (NEPA).

*Response:* The rule is exempt from NEPA procedures. In 1983, upon recommendation of the Council on Environmental Quality, the Service determined that NEPA documents need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. The Service subsequently expanded this determination to section 4(d) rules. A 4(d) rule provides the appropriate and necessary prohibitions and authorizations for a species that has been determined to be threatened under section 4(a) of the Act. NEPA procedures would confuse matters by overlaying its own matrix upon the section 4 decisionmaking process. The opportunity for public comment—one of the goals of NEPA—is also already provided through section 4 rulemaking procedures. This determination was upheld in *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service*, No. 04–04324 (N.D. Cal. 2005).

*Comment:* One commenter supported the proposed rule but sought clarification regarding the scope of the proposed regulation in conjunction with the Alaska Native subsistence take exemption under the Act.

*Response:* As explained in the preamble, this rule will align activities that may be conducted with southwest Alaska DPS sea otters taken a by Alaska Natives for subsistence purposes under the Act with those activities that are already exempted under the MMPA. Alaska Native subsistence users will be able to continue to conduct the full range of activities that they currently are able to conduct under the MMPA.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, this final rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. There are no compliance costs to any sector of the economy. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the promulgation of this special rule. The only expenses related to this will be to the Federal Government to write the rule and required Record of Compliance, and to publish the final rule in the **Federal Register**.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule will not raise a novel legal issue.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities, and also amended the RFA to require a certification statement. Based on the information that is available to us at this time, we are certifying that this special rule to allow for the limited, noncommercial import and export of items that qualify as authentic native articles of handicrafts and clothing that were derived from sea otters legally taken for subsistence purposes by Alaska Natives from the listed population; the cultural exchange by Alaska Natives with Native inhabitants of Russia, Canada, or Greenland; and limited types of travel, as well as activities conducted by persons registered as an agent or tannery under existing law, will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR 121.201 (also found at *http://www.sba.gov/size/*), which the RFA requires all Federal agencies to follow. To determine if potential economic impacts to these small entities would be significant, we considered the types of activities that might trigger regulatory impacts if the activities were to be allowed as proposed. However, because this special rule maintains the status quo regarding activities that had previously been authorized or exempted under the MMPA, we are certifying that this rule does not have a significant economic impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

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.

*Unfunded Mandates Reform Act*

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.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a significant regulatory action under the Unfunded Mandates Reform Act.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because, if implemented, this special rule will maintain the status quo regarding activities currently allowed under the MMPA. A takings implication assessment is not required.

*Federalism*

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This final rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The regulation will not impose new record-keeping or reporting requirements on State or local governments, individuals, and businesses, or organizations. We may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*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, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Alaska Native tribes. Because this rule aligns activities that are allowed under the Act with activities that are currently allowed under the MMPA, we have determined that there are no negative effects to Alaska Natives.

*Energy Supply, Distribution or Use (Executive Order 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 rule is not a significant regulatory action under Executive Order 12866 and it is not expected to have any effect on energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.3, revise the definition for "Authentic native articles of handicrafts and clothing" as follows:

**§ 17.3 Definitions.**

* * * * *

*Authentic native articles of handicrafts and clothing* means items made by an Indian, Aleut, or Eskimo that are composed wholly or in some significant respect of natural materials and are significantly altered from their natural form and are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass-copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern techniques at a tannery registered pursuant to § 18.23(c) of this subchapter (in the case of marine mammals) may be used as long as no large-scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as cooperatives, is permitted as long as no large-scale mass production results;

* * * * *

■ 3. Amend § 17.40 by adding paragraph (p) to read as follows:

**§ 17.40 Special rules—mammals.**

* * * * *

(p) Northern sea otter (*Enhydra lutris kenyoni*).

(1) *To what population of sea otter does this special rule apply?* The regulations in paragraph (p) of this section apply to the southwest Alaska distinct population segment (DPS) of the northern sea otter as set forth at § 17.11(h) of this part.

(2) *What provisions apply to this DPS?* Except as noted in paragraph (p)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to the southwest Alaska DPS of the northern sea otter.

(3) *What additional activities are allowed for this DPS?* In addition to the activities authorized under paragraph (p)(2) of this section, you may conduct any activity authorized or exempted under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) with a part or product of a southwest Alaska DPS northern sea otter, provided that:

(i) The product qualifies as an authentic native article of handicrafts or clothing as defined in § 17.3 of this part; and

(A) It was created by an Indian, Aleut, or Eskimo who is an Alaskan

Native, and

(B) It is not being exported or imported for commercial purposes; or

(ii) The part or product is owned by an Indian, Aleut, or Eskimo who is an Alaskan Native and resides in Alaska, or by a Native inhabitant of Russia, Canada, or Greenland, and is part of a cultural exchange; or

(iii) The product is owned by a Native inhabitant of Russia, Canada, or Greenland, and is in conjunction with travel for noncommercial purposes; or

(iv) The part or product has been received or acquired by a person registered as an agent or tannery under § 18.23 of this subchapter.

(4) *What other wildlife regulations may apply?* All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

Dated: July 7, 2006.

**Matt Hogan,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E6–13322 Filed 8–14–06; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 051104293 5344 02; I.D. 080806F]**

### Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Connecticut

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

**ACTION:** Closure of commercial fishery

**SUMMARY:** NMFS announces that the summer flounder commercial quota available to Connecticut has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Connecticut for the remainder of calendar year 2006, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise Connecticut that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Connecticut.

**DATES:** Effective 0001 hours, August 12, 2006, through 2400 hours, December 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281–9341

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2006 calendar year was set equal to 14,154,000 lb (6,420 mt) (70 FR 77061, December 29, 2005). The percent allocated to vessels landing summer flounder in Connecticut is 2.25708 percent, resulting in a commercial quota of 319,467 lb (144,910 kg). The 2006 allocation was reduced to 314,649 lb (142,725 kg) due to research set-aside.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Connecticut has harvested its quota for 2006.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 12, 2006, further landings of summer flounder in Connecticut by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2006 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 12, 2006, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year, or until additional quota becomes available through a transfer.

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 10, 2006.

**James P. Burgess,**

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

[FR Doc. 06–6928 Filed 8–10–06; 1:20 pm]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 060606151–6208–02; I.D. 051906A]**

**RIN 0648–AU33**

### Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 43

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements Framework Adjustment 43 (Framework 43) to the NE Multispecies Fishery Management Plan (FMP), which addresses the incidental catch of NE multispecies by vessels fishing for Atlantic herring by establishing a Herring Exempted Fishery. Vessels issued a Category 1 Atlantic herring fishing permit (Category 1 vessels) are authorized to possess incidentally caught haddock until the catch of haddock reaches the level specified as an incidental haddock catch cap; upon attainment of the haddock catch cap, all herring vessels are limited to 2,000 lb (907 kg) of herring per trip, if any of the herring on board was caught within the Gulf of Maine/Georges Bank (GOM/GB) Herring Exemption Area defined in Framework 43. Herring Category 1 vessels are also authorized to possess up to 100 pounds (45 kg) of other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake), and are required to provide advance notification of their intent to land for purposes of enforcement. Atlantic herring processors and dealers that sort herring catches as part of their operations are required to cull and report all haddock.

**DATES:** Effective August 15, 2006.

**ADDRESSES:** Copies of supporting documents, including the Regulatory Impact Review, Final Regulatory Flexibility Analysis (RIR/FRFA), and Essential Fish Habitat Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The RIR/FRFA is also accessible via the Internet at *http://www.nero.gov.*

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, (978) 281–9259, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

## Background

A proposed rule for this action was published in the **Federal Register** on June 21, 2006 (71 FR 35600), with public comment accepted through July 6, 2006. The final measures, with two exceptions, are unchanged from those that were proposed, and are summarized below. A complete discussion of the development of the measures appears in the preamble to the proposed rule and is not repeated here.

## Management Measures

This action: (1) Authorizes the possession of haddock by Category 1 vessels up to the amount established as a cap on total haddock catch by such vessels; (2) establishes a cap on the amount of haddock that can be caught by Category 1 vessels that is equal to 0.2 percent of the total combined target total allowable catch (TAC) for GOM and GB haddock (the haddock catch cap specified is applicable to the NE multispecies fishing year (May 1—April 30), which differs from the herring fishing year (January 1—December 31)); (3) establishes a Herring Exempted Fishery and defines a GOM/GB Herring Exemption Area in which any herring permitted vessel that catches any herring from this area is limited to 2,000 lb (907 kg) per trip when the haddock catch cap is attained; (4) authorizes Category 1 vessels to possess an incidental catch of up to 100 lb (45 kg) of regulated NE multispecies other than haddock (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake); (5) suspends the minimum fish size for NE multispecies possessed by Category 1 vessels; (6) prohibits Category 1 vessels from selling haddock for human consumption and prohibits dealers from purchasing haddock from such vessels for human consumption; (7) requires herring processors that cull landings to report all culled haddock, and retain such haddock for 12 hr for inspection by enforcement officials; and (8) requires Category 1 vessels to provide advance notification of landing via the Vessel Monitoring System (VMS).

This final rule clarifies the applicability of the haddock processor requirements to at-sea processors by specifying that they must retain all culled haddock for 12 hr after landing. The proposed rule required all processors to cull and retain haddock for 12 hours. The final rule will apply this to at-sea processors by requiring them to retain all culled haddock for 12 hours after landing.

This final rule also clarifies the scope of the prohibition on discarding haddock at sea by Category 1 vessels. The proposed rule included a provision that would have prohibited Category 1 vessels from discarding haddock at sea without an explicit description or definition of what constitutes "discarding haddock at sea." As a result of comments received on this measure concerning how the fishery operates and potential safety concerns, and in light of the enforceability of this measure, this action clarifies that prohibition. This final rule specifies that the prohibition on discarding haddock at sea applies only to haddock pumped into the hold or brought onto the deck of a Category 1 vessel. The reasons for this clarification are more fully discussed in the response to comment 1.

These changes from the proposed rule to this final rule are logical outgrowths of the proposed rule and are authorized under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act because they are necessary to ensure that Framework 43 measures are effectively carried out.

## Comments and Responses

Three comments were received on the proposed measures, from the Maine Department of Marine Resources (MEDMR), the East Coast Pelagic Association (ECPA), and Oceana.

*Comment 1:* All three organizations commented on the proposed requirement that would have prohibited Category 1 vessels from discarding haddock at sea. The ECPA raised concerns, stating that vessels that pump catch aboard could experience compromised safety if they were required to bring every codend on board to sort it for haddock. If the vessel's hold is already full, bringing additional catch on board to sort it could cause stability problems. The ECPA claimed that the proposed provision would fail to comply with national standards 9 and 10, which require, respectively, that, to the extent practicable, management measures minimize bycatch and promote safety at sea. The MEDMR echoed these concerns. In contrast, Oceana argued that the proposed measure, that would require vessels to retain all haddock that they catch, would allow fishermen to sample the catch and release codends if the catch contains haddock or other species. Oceana wants the provision to either require retention of haddock or limit or prohibit the dumping of codends.

*Response:* NMFS acknowledges that the proposed rule's prohibition on discarding haddock at sea was broadly worded, which prompted comments concerning safety and operational issues. To address these comments and clarify what constitutes discarding haddock at sea, NMFS has modified the regulations prohibiting the discard of any haddock that is pumped into the hold or brought onto the deck of a Category 1 vessel. The key issue in determining the scope of the prohibition on discarding haddock at sea is determining what is the most practicable and enforceable way to account for haddock caught in the herring fishery. A herring vessel might have valid operational and safety reasons for not being able to bring a codend on board in certain cases. In such circumstances, it is not possible to determine if the net contains haddock, and if so, how much. From the perspective of enforceability, it is unlikely a case could be made that the vessel failed to retain haddock. From the perspective of data collection, it is unlikely that haddock bycatch could be effectively monitored and estimated. However, once the net and the codend are brought on deck, or once the fish is pumped from the net into the hold, it is possible to determine how much haddock is among the catch. This can be done through culling the catch on board, having observers take samples, or, in cases where the catch is delivered to a processing facility, requiring the processor to cull and retain the haddock, as this action will require. Therefore, the most practicable and enforceable application of the prohibition on discarding haddock is to limit it to prohibiting the discard of haddock pumped into the hold or brought onto the deck of a Category 1 vessel.

NMFS is concerned about reported industry practices in which vessels may continue fishing and bring in large hauls of fish when there is a relatively small amount of space left in the hold to accommodate those fish. This type of behavior forces a vessel to waste herring as well as any bycatch in the codend and, further, it does not allow for effective or accurate monitoring of haddock bycatch, which is essential for determining whether the haddock bycatch quota is reached. And, as noted by the commenters, such behavior could compromise the safety of the fishing operations. NMFS agrees with the commenters that safety at sea is very important. As a result, NMFS strongly encourages the industry members to modify their fishing strategies to avoid unsafe and wasteful practices.

*Comment 2:* Oceana proposed that the 0.2-percent haddock catch cap should be lowered because of the way in which it was established. The Council

originally proposed to set the cap at 1 percent, and then decided to pro-rate it, based on an assumed level of observer coverage of 20 percent. The 0.2-percent haddock catch cap was arrived at by multiplying the 20-percent observer coverage times the 1-percent cap originally proposed. Oceana stated that the Northeast Fisheries Science Center has indicated that the level of observer coverage in the near-term is likely to be less than 20 percent. As a result, Oceana believes that NMFS must reduce the haddock catch cap accordingly, to reflect the reduced level of observer coverage. Oceana argues that the cap must be reduced because the Council adopted a "methodology" to set the cap, which relied on multiplying the percentage coverage times 1 percent to determine the actual cap.

*Response:* Oceana's request is based on an erroneous assumption about the measure. While the Council may have initially considered the percent observer coverage as the basis for the 0.2-percent cap, it ultimately specified it as an absolute value. The 0.2-percent cap has been determined to provide sufficient protection to the haddock stocks by constraining any bycatch in the herring fishery to biologically insignificant levels. At the same time, this small allowance enables the valuable herring fishery to operate under a reasonable level of constraint.

*Comment 3:* Oceana is concerned that, because the haddock catch cap is calculated by multiplying 0.2 percent times the total of the combined TACs for GOM and GB haddock, the haddock catch cap will increase if the combined TACs increase. Instead of allowing this to happen, Oceana wants NMFS to change the cap-calculation, preferably by reducing the cap over time.

*Response:* As noted above, Framework 43 specifies an absolute value for calculating the catch cap and NMFS cannot unilaterally change it in this action. However, the suggestion by Oceana runs contrary to the philosophy of the cap. The cap is predicated upon the assumption that the herring fishery can catch a certain percentage of haddock yet still not do any damage to the sustainability of the haddock stock. If the haddock stocks increase, the bycatch cap would increase, and if the haddock stocks decrease, the bycatch cap would decrease. Such a system is adequate to ensure that haddock catch in the herring fishery remains at levels that are not of biological concern and that are also in line with the expected encounter rate of haddock by the herring fishery.

*Comment 4:* Oceana commented that this action should require at-sea observer coverage, shoreside monitoring, and a real-time system to publicly report bycatch.

*Response:* The measures established by Framework 43 include reporting by vessels, dealers, and law enforcement agents; requiring certain herring processors to cull landings made by limited access herring vessels and retain haddock for inspection by enforcement officials; and a requirement for all limited access directed fishery holders to provide advance notification of landings via VMS. These are the same reporting measures as those that were used under the emergency measures that were put in place in 2005, and NMFS considers them adequate to monitor and estimate bycatch of haddock and other species. As was done under the emergency action, NMFS will publicly report haddock catch through the landings reports on its website as soon as that information is available.

*Comment 5:* Oceana expressed concern that the requirements for processors to cull, report, and retain for inspection haddock catch for 12 hr could be ineffective when applied to at-sea processors because of the location of the processor at sea.

*Response:* The current regulations that govern shoreside processors also apply to at-sea processors. To maintain that consistency, NMFS has clarified the regulatory language in the final rule to specify that at-sea processors must retain all culled haddock for 12 hr after landing. This would provide the same opportunity for inspection, regardless of whether the processor is an at-sea or a shoreside processor.

*Comment 6:* Oceana commented that Framework 43 should establish a real-time method of reporting all species landed and discarded under this framework. Oceana viewed this as an expansion of the reporting requirements.

*Response:* The Northeast Region mandatory reporting requirements currently require the owner/operator of any federally permitted herring vessel to report all species landed or discarded through the fishing vessel trip reports (FVTRs), regardless of species fished for or harvested. NMFS believes that the system of reporting established under this framework is adequate to keep track of bycatch in this fishery and to ensure the integrity of the haddock bycatch cap.

*Comment 7:* Oceana noted that, in its view, NMFS did not publish the proposed rule for Framework 43 in an expeditious manner, after submission of the Framework by the Council on February 23, 2006. As a result, final measures could not be in place prior to the expiration of the emergency action, and this limited the effectiveness of the Framework for 2006. In Oceana's view, the agency must explain why it unlawfully delayed the rule and how it would prevent similar delays in the future.

*Response:* NMFS reviews all Council submissions as carefully and quickly as possible to determine that the submission complies with all legal requirements sufficiently to support publication of the proposed rule. Following public comment, NMFS considers all of the issues raised by the commenters, prepares responses to each comment, and makes the decision to approve or disapprove the action.

*Comment 8:* ECPA claimed that the status of the haddock full retention measure, as included in the proposed rule, is not clear in the record, and that the "Council staff clearly indicated that language in the framework was to be based on measures found in the previous emergency action," and that "the emergency action contained no catch retention measures." As a result, ECPA asserts that neither the Council members or members of the public realized that the full retention measure would be part of Framework 43.

*Response:* The framework was based on measures found in the emergency action, as well as additional elements added by the Council during its deliberations. The full retention/no discarding of haddock measure was included in the framework, by the Council, and was discussed and approved by the Council, although the scope of the meaning of full retention/no discarding of haddock was not clearly discussed in the framework, as noted in the response to comment 1. The Council was aware that the emergency measure did not contain the full retention/no discarding of haddock provision, yet they still voted to include it in the framework. Furthermore, during the review of Framework 43, NMFS confirmed with Council staff that the Council had intended to include the full retention/no discarding of haddock provision.

**Changes From the Proposed Rule**

NMFS has made several changes to the proposed rule as a result of public comment. These changes are listed below in the order that they appear in the regulations.

In § 648.14, paragraph (a)(169) has been added in response to comments from the public to clarify the applicability of the requirement to at-sea processors.

Paragraph (bb)(19) has been reserved because the language that currently appears on that paragraph is redundant.

In § 648.15, paragraph (d) has been modified to clarify the applicability of the provision.

**Classification**

The Administrator, Northeast Region, NMFS, has determined that Framework 43 is necessary for the conservation and management of the herring fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This action relieves participants in the herring fishery from the existing restrictions that prohibit any possession of NE multispecies by Category 1 herring vessels and, as a result, this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). It allows Category 1 herring vessels to possess haddock up to the amount specified as a haddock catch cap, to possess up to 100 lb (45 kg) of other NE regulated multispecies, and to be exempt from the minimum size requirement for all NE multispecies in their possession.

The NE Multispecies fishing regulations currently in effect prohibit Category 1 herring vessels from possessing any NE multispecies. As a result, the owners of midwater trawl vessels are delaying the start of the summer herring fishery on GB because of their concern that the retention of any amount of NE multispecies would be a violation of the regulations. The Council became aware of this issue in July 2004, when NMFS's Office of Law Enforcement (OLE) observed prohibited juvenile haddock in catches being landed by midwater trawl vessels fishing for herring on GB. The Council established a Bycatch Committee later that year to look into the matter and make recommendations to the Council. The Bycatch Committee met several times to consider the issue, and recommended to the Council on March 30, 2005, that herring vessels should be allowed to catch haddock until the catch reached a specified level. Also on March 30, 2005, the Council voted to formally request emergency action by NMFS to address this unforeseen event. The Council discussed the issue further at subsequent meetings and voted on November 17, 2005, to establish the Council meeting that day as the initial meeting to develop permanent measures to address the issue in Framework 43. The Council adopted the Framework 43 measures for submission to NMFS on February 2, 2006.

NMFS established emergency measures through a rule published on June 13, 2005 (70 FR 34055), and extended those measures for 180 days on December 8, 2005 (70 FR 72934). The emergency rule expired on June 6, 2006. The Council moved expeditiously to develop permanent measures to address this previously unforeseen management issue, but was unable to finalize Framework 43 in time to avoid a hiatus between the emergency regulations and the measures proposed in Framework 43.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the initial regulatory flexibility analysis (IRFA) and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see **ADDRESSES**).

**Final Regulatory Flexibility Analysis**

*Statement of Objective and Need*

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

During the 2005 fishing year, 115 vessels had Category 1 permits (the class to which this rule applies), with 38 of these vessels averaging more than 2,000 lb (907 kg) of herring per trip. There are no large entities, as defined in section 601 of the Regulatory Flexibility Act, participating in this fishery. Therefore, there are no disproportionate economic impacts between large and small entities.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The collection-of-information requirement in this final rule (requiring Category 1 vessels to provide notification to NMFS of their intent to land at least 6 hr prior to landing) has been approved by OMB as follows: Haddock Bycatch Notification of Landing, Office of Management and Budget (OMB) control number 0648–0202, (5 min/response).

*Minimizing Significant Economic Impacts on Small Entities*

Three alternatives were considered in the development of this action. The first would have continued the program put into place by the emergency action. Specifically, this would have established a 1,000-lb (453-kg) incidental catch possession limit on haddock, and a 100-lb (45.3-kg) incidental catch possession limit on other regulated multispecies, with no limit on the total amount of haddock or other regulated multispecies that could be caught. The second alternative is the one proposed in this action. The third alternative is no action, under which the herring vessels would not be allowed to possess any multispecies.

Compared to the no-action alternative, the other alternatives significantly minimize the economic impacts on herring vessels. Both the proposed action and the non-selected alternative prevent direct economic loss resulting from herring harvest that would be foregone by vessel owners concerned about haddock bycatch and the potential for resulting regulatory violations under the no-action alternative. By allowing for the incidental catch of groundfish, both the proposed action and the other alternative would enable herring vessels to continue fishing even if they encounter groundfish. This is particularly important in herring Management Area 3 (GB), where herring vessels encountered haddock in 2004. Up to this point, the herring fishery has not fully harvested the allowed catch from Area 3 and the resource in that area can support increased landings. If no action is taken and vessels decline to fish in Area 3, estimate foregone revenues would be $2,123,727, presuming they could have landed the same amount as preliminary reported herring landings during 2005 (13,029 mt) at an average price of $163 per mt. Foregone revenues could be as high as $8,150,000 based on the potential utilization of the entire available TAC from Area 3 (50,000 mt). This assumes that the herring fleet would not fish in Area 3 at all for fear of being in violation of the prohibition on the possession of haddock and other regulated groundfish and, therefore, represents an upper bound to the range of expected impacts. The proposed action would have less impact on small entities than either of the other alternatives because it would not impose a 1,000-lb (453-kg) possession limit for haddock, but would rely on the overall incidental catch cap. This provides more flexibility to

individual vessels that may encounter varying amounts of haddock.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 10, 2006.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

■ For reasons set forth in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, the definition of "Exempted gear" is revised to read as follows:

**§ 648.2 Definitions.**

* * * * *

*Exempted gear,* with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies, and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls (with a properly configured grate as defined under this part), and surfclam and ocean quahog dredges.

* * * * *

■ 3. In § 648.14, paragraphs (bb)(19) and (23) are removed and reserved; paragraphs (a)(169) and (bb)(20) are revised; and paragraphs (a)(166) through (168), (bb)(24), (bb)(25) and (bb)(26) are added to read as follows:

**§ 648.14 Prohibitions.**

(a) * * *

(166) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies, or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) for, or intended for, human consumption landed by a Category 1 herring vessel as defined in § 648.2.

(167) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a Category 1 herring vessel, and to retain such catch for at least 12 hr, with the vessel that landed the haddock clearly identified by name.

(168) Sell, purchase, receive, trade, barter, or transfer, or attempt to sell, purchase, receive, trade, barter, or transfer to another person any haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) separated out from a herring catch offloaded from a Category 1 herring vessel as defined in § 648.2.

(169) While operating an at-sea herring processor, fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a Category 1 herring vessel, and to retain such catch for at least 12 hr after landing, with the vessel that offloaded the haddock clearly identified by name.

* * * * *

(bb) * * *

(20) If the vessel has been issued a Category 1 herring permit and is fishing for herring, fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing or crossing the VMS demarcation line on its return trip to port.

(21) Possess, land, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the GOM/GB Herring Exemption Area defined in § 648.86(a)(3)(ii)(A)(*1*) following the effective date of the determination that the haddock cap has been reached pursuant to § 648.86(a)(3), unless all of the herring possessed or landed by a vessel was caught outside of that area.

* * * * *

(24) If a Category 1 herring vessel, discard haddock at sea that has been brought on deck or pumped into the hold.

(25) If fishing with midwater trawl or a purse seine gear, fail to comply with the requirements of § 648.80 (d) and (e).

(26) Transit the GOM/GB Herring Exemption Area when that area is limited to the 2,000 lb (907 kg) limit specified in § 648.86(a)(3)(ii)(A)(1) with more than 2,000 lb (907 kg) of herring, unless all the herring on board was caught outside of that area and all fishing gear is stowed and not available for immediate use as required by § 648.23 (b).

* * * * *

■ 4. In § 648.15, paragraphs (d) and (e) are added to read as follows:

**§ 648.15 Facilitation of enforcement.**

* * * * *

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that receive herring from Category 1 herring vessels, and that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a Category 1 herring vessel. Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Law enforcement officials must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at § 648.7.

(e) *Prohibition on discarding haddock by Category 1 herring vessels.* A Category 1 herring vessel may not discard any haddock that has been brought on the deck or pumped into the hold.

■ 5. In § 648.80, paragraphs (d), (e), and (g)(3) are revised to read as follows:

**§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

(d) *Midwater trawl gear exempted fishery.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with the following restrictions:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20′ N. lat.; and

(ii) The vessel is issued a letter of authorization for a minimum of 7 days.

(3) The vessel carries a NMFS-approved sea sampler/observer, if requested by the Regional Administrator;

(4) The vessel does not fish for, possess or land NE multispecies, except that Category 1 herring vessels may possess and land haddock or other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated NE multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE multispecies that is separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Category 1 vessels may not discard haddock that has been brought on the deck or pumped into the hold.

(5) To fish for herring under this exemption, vessels issued a Category 1 herring permit defined in § 648.2 must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All Category 1 herring vessels on a declared herring trip must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

(e) *Purse seine gear exempted fishery.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator and complies with the following:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(ii) The vessel must carry a NMFS-approved sea sampler/observer, if requested to do so by the Regional Administrator;

(3) The vessel is issued a letter of authorization for a minimum of 7 days, and cancels it only as instructed by the Regional Administrator; and

(4) The vessel does not fish for, possess or land NE multispecies, except that Category 1 herring vessels may possess and land haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated multispecies that is separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Category 1 vessels may not discard haddock that has been brought on the deck or pumped into the hold.

(5) To fish for herring under this exemption, vessels issued a Category 1 herring permit as defined in § 648.2 must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All Category 1 herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

(g) * * *

(3) Pair trawl prohibition. No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling, except as authorized under paragraph (d) of this section.

* * * * *

■ 6. In § 648.83, paragraph (b)(4) is added to read as follows:

**§ 648.83 Multispecies minimum fish sizes.**

* * * * *

(b) * * *

(4) Category 1 herring vessels may possess and land haddock and other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in §§ 648.86(a)(3) and 648.86 (j). Such fish may not be sold for human consumption.

■ 7. In § 648.85, paragraph (d) is added to read as follows:

**§ 648.85 Special management programs.**

* * * * *

(d) *Incidental catch allowance for Category 1 herring vessels.* The incidental catch allowance for Category 1 herring vessels is defined as 0.2 percent of the combined target TAC for Gulf of Maine haddock and Georges Bank haddock (U.S. landings only) specified according to " 648.90(a) for a particular multispecies fishing year.

■ 8. In § 648.86, paragraphs (a)(3) and (k) are added to read as follows:

**§ 648.86 Multispecies possession restrictions.**

* * * * *

(a) * * *

(3)(i) *Incidental catch allowance for herring Category 1 vessels.* Category 1 herring vessels defined in § 648.2 may possess and land haddock on all trips that do not use a NE multispecies DAS, subject to the requirements specified in § 648.80(d) and (e).

(ii) *Haddock incidental catch cap.* (A)(*1*) When the Regional Administrator has determined that the incidental catch allowance in § 648.85(d) has been caught, all vessels issued a herring permit or fishing in the Federal portion of the GOM/GB Herring Exemption Area, as defined below, are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907 kg) per trip in or from the GOM/GB Herring Exemption Area, unless all herring possessed and landed by the vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in paragraph (a)(3)(ii)(A)(3) of this section while transiting the Exemption Area. Upon this

determination, the haddock possession limit is reduced to 0 lb (0 kg) for all Category 1 herring vessels regardless of where they were fishing. In making this determination, the Regional Administrator shall use haddock landings observed by NMFS-approved observers and law enforcement officials, and reports of haddock catch submitted by vessels and dealers pursuant to the reporting requirements of this part. The GOM/GB Herring Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GB/GOM HERRING EXEMPTION AREA

| Point | N. lat. | W. long. |
|---|---|---|
| 1 | 41°33.05′ | 70°00′ |
| 2 | 41°20′ | 70°00′ |
| 3 | 41°20′ | 69°50′ |
| 4 | 41°10′ | 69°50′ |
| 5 | 41°10′ | 69°30′ |
| 6 | 41°00′ | 69°30′ |
| 7 | 41°00′ | 68°50′ |
| 8 | 39°50′ | 68°50′ |
| 9 | 39°50′ | 66°40′ |
| 10 | 40°30′ | 66°40′ |
| 11 | 40°30′ | 64°44.34′ |
| 12 | 41°50′ | 66°51.94′ |
| 13 | 41°50′ | 67°40′ |

GB/GOM HERRING EXEMPTION AREA—Continued

| Point | N. lat. | W. long. |
|---|---|---|
| 14 | 44°00′ | 67°40′ |
| 15 | 44°00′ | 67°50′ |
| 16 | 44°10′ | 67°50′ |
| 17 | 44°27′ | 67°59.18′ |
| 18 | (1) | (1) |
| 19 | 41°33.05′ | 70°00′ |

[1] ME, NH, MA Coastlines.

(*2*) The haddock incidental catch cap specified is for the NE multispecies fishing year (May 1—April 30), which differs from the herring fishing year (January 1—December 31). If the haddock catch cap is attained by the Category 1 herring fishery, the 2,000-lb (907-kg) limit on herring possession and landings in the GOM/GB Herring Exemption Area will be in effect until the end of the NE multispecies fishing year. For example, the 2006 haddock catch cap is specified for the period May 1, 2006—April 30, 2007, and the 2007 haddock catch cap applies to the period May 1, 2007—April 30, 2008. If the catch of haddock by Category 1 vessels reaches the 2006 catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2007), the 2,000-lb (907-kg) limit on possession or landing herring in the GOM/GB Herring Exemption Area extends through April 30, 2007, at which time the 2007 catch cap will go into effect.

(*3*) A vessel may transit the GOM/GB Herring Exemption Area with more than 2,000 lb (907 kg) of herring when the haddock catch cap in § 648.86 (a)(3)(ii)(A)(1) has been caught, providing that all of the herring possessed or landed by the vessel was caught outside of the GOM/GB Herring Exemption Area and all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(B) [Reserved]

* * * * *

(k) *Other regulated NE multispecies possession restrictions for herring vessels. Incidental catch allowance for herring Category 1 vessels.* Category 1 herring vessels defined in § 648.2 may possess and land up to 100 lb (45 kg) of other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) on all trips that do not use a multispecies DAS, subject to the requirements specified in § 648.80(d) and (e). Such fish may not be sold for human consumption.

[FR Doc. 06–6932 Filed 8–10–06; 2:58 pm]
BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 71, No. 157
Tuesday, August 15, 2006

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.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 437

### Business Opportunity Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Extension of period to submit rebuttal comments in response to the Notice of Proposed Rulemaking.

**SUMMARY:** In a **Federal Register** notice published on April 12, 2006, 71 FR 19054, the FTC requested comment on its Notice of Proposed Rulemaking in connection with the Business Opportunity Rule. The Notice required that comments be submitted on or before June 16, 2006, and rebuttal comments be submitted on or before July 7, 2006. On June 1, 2006, 71 FR 31124, the Commission extended the comment period to July 17, 2006, and the rebuttal comment period until August 7, 2006. In response to a request received on July 24, 2006, the Commission has extended the rebuttal comment period until September 29, 2006.

**DATES:** Rebuttal comments addressing the Business Opportunity Rule Notice of Proposed Rulemaking must be submitted on or before September 29, 2006.

**ADDRESSES:** Interested parties are invited to submit written rebuttal comments. Rebuttal comments should refer to "Business Opportunity Rule, R511993" to facilitate the organization of rebuttal comments. A rebuttal comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex W), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any rebuttal comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your rebuttal comments in electronic form, as prescribed below. Rebuttal comments containing confidential material, however, must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c).[1]

Rebuttal comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/ftc-bizopNPR/* and following the instructions on the web-based form. To ensure that the Commission considers an electronically filed rebuttal comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-bizopNPR/* weblink. If this notice appears at www.regulations.gov, you may also file an electronic rebuttal comment through that website. The Commission will consider all rebuttal comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov/opa/2006/04/newbizopprule.htm* to read the Notice of Proposed Rulemaking and the news release describing this proposed Rule.

**FOR FURTHER INFORMATION CONTACT:** Steven Toporoff, (202) 326–3135, or Karen Hobbs, (202) 326–3587, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, H–286, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On April 12, 2006, 71 FR 19054, the FTC requested comment on its Notice of Proposed Rulemaking ("NPR" or "Notice") in connection with the Business Opportunity Rule. The Notice required that comments and rebuttal comments be submitted on or before June 16, 2006, and July 7, 2006, respectively. On June 1, 2006, 71 FR 31124, the Commission extended the comment period to July 17, 2006, and the rebuttal comment period until August 7, 2006.

On July 24, 2006, the Commission received a letter from the Direct Selling Association ("DSA") noting the thousands of comments submitted concerning the proposed Rule and requesting that the Commission extend the rebuttal comment period "for 60 days beyond the time it takes for the FTC to make all comments available electronically."

The Commission has received more than 15,000 comments in response to the NPR. Given this volume, posting comments will extend beyond the end of the current rebuttal comment period, which closed on August 7, 2006. Accordingly, an extension is warranted in order to ensure that comments are posted and that the public has sufficient time to prepare rebuttals.

Please note that the rebuttal period is limited to comments that specifically identify a previously submitted comment and provide new data or arguments as to why the original comment, in whole or in part, is inaccurate. Although anyone can submit a rebuttal comment, regardless of whether the rebuttal commenter filed an original comment, original comments or comments that merely repeat what was previously submitted in an original comment will not be accepted into the record as rebuttal comments.

Accordingly, the Commission has determined to extend the rebuttal comment period set forth in the Notice until September 29, 2006.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E6–13398 Filed 8–14–06; 8:45 am]

BILLING CODE 6750–01–P

[1] The rebuttal comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the rebuttal to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Parts 3200 and 3280

[WO–310–06–1310–GEOT]

RIN 1004–AD86

### Minerals Management Service

### 30 CFR Parts 202, 206, 210, 217, and 218

[WO–310–06–1310–GEOT]

RIN 1010–AD32

### Implementation of the Geothermal Sections of the Energy Policy Act of 2005; Public Meeting

**AGENCY:** Bureau of Land Management and Minerals Management Service, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** A public meeting is being held by the Bureau of Land Management and the Minerals Management Service to receive comments from the public and industry related to the two sets of draft rules that were written in response to the Energy Policy Act of 2005, which mandated comprehensive changes to leasing and royalty policies to encourage geothermal energy use without imposing additional administrative burdens on industry or governmental agencies.

**DATES:** The meeting date is scheduled as follows: August 31, 2006; 1–4 p.m., Reno, Nevada.

**ADDRESSES:** The meeting will be held at the following location: Reno Hilton Hotel, 2500 East 2nd Street, Reno, Nevada 89595.

**FOR FURTHER INFORMATION CONTACT:** Kermit Witherbee, National Geothermal Program Lead for the BLM at (202) 452–0385 or Herb Black, Geologist, Solid Minerals and Geothermal Compliance and Asset Management, for MMS at (303) 231–3769.

**SUPPLEMENTARY INFORMATION:** The meeting will begin with an overview of the revisions proposed by BLM (71 FR 41542, July 21, 2006) and MMS (71 FR 41516, July 21, 2006) to their respective geothermal rules as mandated by the Energy Policy Act. Participants who request to speak will be given a set amount of time to address the proposed rules.

**Philip Allard,**

*Acting Assistant Director, Minerals, Realty and Resource Protection.*

**Lonnie Kimball,**

*Acting Associate Director for Mineral Revenue, Minerals Management Service.*

[FR Doc. 06–6888 Filed 8–14–06; 8:45 am]

BILLING CODE 4310–84–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2006–0547; FRL–8210–1]

### Approval and Promulgation of Air Quality Implementation Plans; Michigan; Control of Gasoline Volatility

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Michigan on May 26, 2006 and July 14, 2006, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in the Southeast Michigan area which includes Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. Michigan has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve Michigan's fuel requirements into the Michigan SIP because EPA has found that the requirements are necessary for Southeast Michigan to achieve the 8-hr ozone national ambient air quality standard (NAAQS). This action is being taken under section 110 of the CAA.

**DATES:** Comments must be received on or before September 14, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0547, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* mooney.john@epa.gov.
- *Fax:* (312)886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2006–0547. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77

West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays. We recommend that you telephone Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886–6061 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:



## I. What Should I Consider as I Prepare My Comments for EPA?

### *A. Submitting CBI*

Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

### *B. Tips for Preparing Your Comments*

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

## II. Description of the SIP Revision and EPA's Action

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

On April 1995, the Detroit-Ann Arbor consolidated metropolitan statistical area (CMSA) made up of Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties was redesignated as an attainment area for the 1-hour ozone NAAQS. At the time the area was redesignated to attainment, EPA approved, as a revision to the Michigan SIP, contingency measures including a 7.8 psi low-RVP fuels program. During the summer of 1995 monitors in the Detroit-Ann Arbor CMSA recorded violations of the 1-hour ozone NAAQS.

On January 6, 1996, Michigan Governor John Engler sent a letter to EPA selecting the 7.8 psi low-RVP fuels program as one of the contingency measures to be implemented in the Detroit area to address the recent NAAQS violation. On May 16, 1996, the State submitted the low-RVP portion of their fuels program to EPA for approval. The program required gasoline sold in the Detroit-Ann Arbor CMSA meet a standard of 7.8 psi from June 1 to September 15.

On May 5, 1997, EPA approved the State's SIP revision to establish a low-RVP program in the Detroit-Ann Arbor CMSA. As detailed in the final approval at 62 FR 24341, EPA found the State's demonstration sufficient to satisfy the necessity requirement of Section 211(c)(4)(C) of the CAA. Additionally, EPA found that the State's description of the program and associated enforcement procedures were sufficient for approval.

On June 15, 2004, the EPA designated eight counties in Southeast Michigan as nonattainment for the 8-hour ozone standard (Detroit-Ann Arbor CMSA—Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties). These counties were initially classified under the CAA as Moderate, but EPA later reclassified them as Marginal on September 22, 2004. See 69 FR 56697 (September 22, 2004) for further details. As part of this reclassification, the Michigan Department of Environmental Quality (MDEQ) and the Southeast Michigan Council of Governments (SEMCOG) committed to a schedule to identify and implement controls that will help the area attain by the Marginal attainment date of June 15, 2007.

To bring this area into attainment, the State is adopting and implementing a broad range of ozone control measures including control of emissions from cement manufacturing, control of emissions from the use of consumer/commercial products, and the implementation of a 7.0 psi low-RVP fuels program.

The State's legislative amendments changed the RVP of a compliant fuel and became effective on April 6, 2006. The legislative authority, as amended, requires that, beginning June 1, 2007 through September 15, 2007, and for that period of time each subsequent year, no gasoline may be sold with an RVP greater that 7.0 psi in Wayne, Macomb, Washtenaw, Livingston, Monroe, Oakland, St. Clair and Lenawee counties. The State's low-RVP requirements can be found in the Motor Fuels Quality Act (1984 PA 44) as amended by 2006 PA 104 (Act 104) on April 2, 2006.

The MDEQ submitted this amended low-RVP legislation to EPA as a revision to the SIP on May 26, 2006. MDEQ also submitted a letter dated July 14, 2006 requesting that two provisions of the amended Motor Fuels Quality Act, Sections 9(k) and 9(l), not be incorporated into the Michigan SIP. In addition, Michigan submitted additional technical support for the SIP revision, including materials supporting the State's request to waive the CAA preemption of State fuel controls pursuant to section 211(c)(4) of the CAA. By this low-RVP legislation, Michigan is ensuring that these emission reductions are critical to Michigan's attainment of the 8-hour ozone standard in the Southeast Michigan area.

### *B. What Is Reid Vapor Pressure?*

Reid Vapor Pressure, or RVP, is a measure of a gasoline's volatility at a

certain temperature and is a measurement of the rate at which gasoline evaporates and emits VOCs; the lower the RVP, the lower the rate of evaporation. The RVP of gasoline can be lowered by reducing the amount of its more volatile components, such as butane. Lowering RVP in the summer months can offset the effect of high summer temperatures upon the volatility of gasoline, which, in turn, lowers emissions of VOC. Because VOC is a necessary component in the production of ground level ozone in hot summer months, reduction of RVP will help areas achieve the NAAQS for ozone and thereby produce benefits for human health and the environment.

The primary emission reduction benefits from low-RVP gasoline used in motor vehicles comes from reductions in VOC evaporative emissions; exhaust emission reductions are much smaller. Because oxides of nitrogen ($NO_X$) are a product of combustion from motor vehicles, they will not be found in evaporative emissions, and low-RVP gasoline will have little or no effect on $NO_X$.

*C. What Are the Relevant Clean Air Act Requirements?*

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions approving certain state fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulations respecting a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the Federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve an otherwise preempted state fuel standards in a SIP:

> only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable.

EPA's August, 1997 "Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs" gives further guidance on what EPA is likely to consider in making a finding of necessity. Specifically, the guidance recommends breaking down the necessity demonstration into four steps: (1) Identify the quantity of reductions needed to reach attainment; (2) identify other possible control measures and the quantity of reductions each measure would achieve; (3) explain in detail which of those identified control measures are considered unreasonable or impracticable; and (4) show that, even with the implementation of all reasonable and practicable measures, the state would need additional emission reductions for timely attainment, and that the state fuel measure would supply some or all of such additional reductions.

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the requirements of the CAA, EPA regulations, and conforms to EPA's completeness criteria in 40 CFR part 51, Appendix V. Further, EPA has looked at Michigan's demonstration that the low-RVP fuel control is necessary in accordance with Section 211(c)(4)(C) of the CAA and agrees with the State's conclusion that a fuel measure is needed to achieve the 8-hour ozone NAAQS.

The SIP submittal contains: (1) 7.0 low vapor pressure gasoline waiver request for southeast Michigan; (2) Motor Fuels Quality Act, 1984 PA 44, as amended by the Michigan Legislature and approved by the Governor on April 2, 2006; (3) Southeast Michigan Ozone control measure evaluation matrix; (4) Ozone attainment strategy for southeast Michigan dated June 30, 2005; and (5) the public hearing record dated May 19, 2006.

*D. How Has the State Met the Test Under Section 211(c)(4)(C)?*

CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a State from prescribing or attempting to enforce any control or prohibition respecting any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control if the Administrator has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

EPA has adopted Federal RVP controls under sections 211(c) and 211(h). See 56 FR 64704 (December 12, 1991). These regulations are found in 40 CFR 80.27. The State of Michigan is generally required under the Federal rule to meet a 9.0 psi RVP standard. See 40 CFR 80.27(a)(2). However, EPA approved a SIP revision establishing a 7.8 psi low-RVP program in the Detroit-Ann Arbor CMSA on May 5, 1997. See 62 FR 24341.

As stated previously, a State may prescribe and enforce an otherwise preempted low-RVP requirement only if the EPA approves the control into the State's SIP. In order to approve a preempted state fuel control into a SIP, EPA must find that the state control is necessary to achieve a NAAQS because no other measures that would bring about timely attainment exist or that such measures exist but are either not reasonable or practicable. Thus, to determine whether Michigan's low-RVP rule is necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the emission reductions needed to achieve the 8-hour ozone NAAQS.

Photochemical modeling results submitted by the State in the document titled "Ozone Attainment Strategy for Southeast Michigan" shows that the southeast Michigan area will not attain the 8-hour ozone NAAQS by 2007 with emission reductions from national controls alone. The MDEQ and SEMCOG concluded that additional reductions should be obtained.

MDEQ used a weight-of-evidence approach that considered such factors as modeling, monitoring, emission changes, and historical experience in developing the area's attainment strategy and to estimate the amount of emission reduction needed for attainment. Based on this weight-of-evidence, MDEQ projected that a reduction of 13 to 15 tons of VOC per day will be needed to reach attainment of the 8-hour ozone NAAQS.

With this estimate of the VOC reductions necessary to achieve the 8-hour ozone NAAQS, the State evaluated an extensive list of non-fuel alternative controls to determine if reasonable and practicable controls could be adopted and used to attain the 8-hour ozone NAAQS by 2007, the required attainment date for Marginal ozone nonattainment areas.

The State evaluated a wide range of control measures, considering the following factors: VOC emission reduction potential; ability to implement the control measure expeditiously; time to secure the emission reduction and contribute to expeditious attainment; enforceability; potential impact on other air quality

issues; cost; degree of confidence in achieving the reduction and improving air quality; ease of implementation; and experience in other states. Michigan summarized the results of this evaluation in a document entitled "Southeast Michigan Ozone control measure evaluation matrix," and provided a more detailed discussion on each measure in the Ozone attainment strategy for southeast Michigan dated June 30, 2005 (See May 26, 2006 submittal from the State of Michigan, which is in the docket for this rulemaking).

After evaluating a wide range of other controls for their reasonableness and practicability, three measures did rise to the top: the reduction of VOC emission from cement manufacturing, the adoption of Ozone Transport Commission (OTC) rules for consumer and commercial products, and the lowering of gasoline vapor pressure from 7.8 psi to 7.0 psi during the summer months. Michigan determined that the rest of the control measures would not bring about timely attainment, were technically impossible to implement, and were either unreasonable or impracticable.

In the case of cement manufacturing, there is a single, very large VOC source in Monroe County. The State's analysis indicates that the application of controls at this single facility could yield emission reductions comparable to those from other source categories in the range of 5–7 tpd, in a time period compatible with the State's commitment to attain the 8-hour NAAQS as expeditiously as possible. Michigan's evaluation also showed that sizable VOC reductions in the range of 8 tpd could be achieved through the adoption of OTC rules for consumer and commercial products. The State concluded, however, that, although some of those reductions could come early, the majority of the benefits of such a requirement would not be achieved until after the 2007 attainment date.

While the State's analysis showed that controls on cement manufacturing and consumer/commercial products would result in significant VOC reductions, these reductions would not sufficient to ensure compliance with the 8-hour ozone NAAQS by 2007.

The State's analysis identified that adoption of all measures determined to be reasonable and practicable would result in approximately 13 to 15 tpd of emission reductions, but not in the timeframe needed to attain the 8-hour ozone NAAQS by 2007. Thus, even with implementation of all reasonable and practicable non-fuel control measures, additional VOC reductions are necessary.

Michigan's 7.0 psi low-RVP fuels requirement is calculated to achieve approximately 5.6 to 7.1 tpd of VOC reductions beginning the summer of 2007. EPA believes these emission reductions are necessary to achieve the ozone NAAQS in Southeast Michigan. EPA is basing today's action on the information available to us at this time, which indicates that adequate reasonable and practicable non-fuel measures that would achieve these needed emission reductions, and protect Michigan's air quality in a timely manner are not available to the State. Hence, EPA finds that the RVP standards are necessary for attainment of the applicable ozone NAAQS, and is proposing to approve them as a revision to the Michigan SIP.

Finally, the proposed rule changes for Michigan's 7.0 psi RVP fuel program are not within the scope of the earlier May 5, 1997, "necessity" demonstration, under section 211(c)(4)(C), for Michigan's 7.8 psi RVP program. Under Michigan's 7.8 psi RVP fuel program, a smaller geographic area was covered than for the proposed 7.0 psi RVP program, because the Detroit-Ann Arbor 8-hour ozone nonattainment area includes one more county than the 1-hour ozone nonattainment area did. This change to the covered geographic area, therefore, affects our finding made at the time of the original SIP approval for 7.8 psi RVP, regarding the availability of non-fuel measures to bring about timely attainment.

*E. What Are the Relevant Energy Policy Act Requirements?*

The Energy Policy Act of 2005 (EPAct) amends the CAA by requiring EPA, in consultation with the Department of Energy (DOE), to determine the total number of fuels approved into all SIPs under section 211(c)(4)(C), as of September 1, 2004, and to publish a list that identifies these fuels, the States and Petroleum Administration for Defense Districts (PADD) in which they are used. It also places three additional restrictions on EPA's authority to waive preemption by approving a State fuel program into the SIP. These restrictions are as follows:

- First, EPA may not approve a State fuel program into the SIP if it would cause an increase in the "total number of fuels" approved into SIPs as of September 1, 2004.
- Second, in cases where EPA approval would not increase the total number of fuels on the list because the total number of fuels in SIPs at that point is below the number of fuels as of the September 1, 2004, then EPA approval requires a finding, after consultation with DOE, that the new fuel will not cause supply or distribution problems or have significant adverse impacts on fuel producibility in the affected or contiguous areas.
- Third, with the exception of 7.0 psi RVP, EPA may not approve a state fuel unless that fuel is already approved in at least one SIP in the applicable PADD.

*F. How Has the State Met the Relevant Energy Policy Act Requirements?*

In a **Federal Register** notice published on June 6, 2006 (71 FR 32532), we proposed an interpretation of the EPAct provisions which is based on a fuel type interpretation. We also determined and published a draft list of the total number of fuels approved into all SIPs, under section 211(c)(4)(C) of the CAA, as of September 1, 2004. Under the proposed interpretation, we will approve a 7.0 psi RVP state fuel program even if we have not previously approved 7.0 psi RVP into a SIP in the applicable PADD as of September 1, 2004. (71 FR 32534). Our approval of a 7.0 psi RVP program, however, is subject to the other EPAct restrictions, described earlier above. More specifically, our approval of a 7.0 psi RVP program must not cause an increase to the total number of fuels approved into all SIPs as of September 1, 2004. Also, if our approval will not increase the total number of fuels on the list, because the total number of fuels in SIPs is below the number of fuels we approved as of the September 1, 2004, we must make a finding, after consultation with DOE, that the 7.0 psi RVP program will not cause supply or distribution problems or have significant adverse impacts on fuel producibility in the affected or contiguous areas.

Under our proposed interpretation, Michigan's 7.0 psi RVP requirement for Southeast Michigan is not a "new fuel type." EPA's approval of Michigan's 7.0 psi RVP will not increase the total number of fuels approved into all SIPs, as of September 1, 2004, because 7.0 psi RVP is on the draft list of fuels.[1] Further, because the total number of fuels approved into all SIPs at this time is not below the number of fuels on the draft list of fuels, which we have just published on June 6, 2006 (71 FR 32532), we do not believe that we need to make a finding on the effect of a 7.0 psi RVP fuel requirement in Southeast

[1] The draft list of fuels includes 7.0 psi RVP programs, which have been approved into the Alabama, Arizona, Kansas, Missouri, and Texas SIPs.

Michigan on fuel supply and distribution in either Southeast Michigan or the contiguous areas. Nevertheless, EPA notes that an April 15, 2005 study prepared for the American Petroleum Institute titled "Potential Effects of the 8-Hour Ozone Standard on Gasoline Supply, Demand and Production Costs" concluded that the petroleum industry was capable of supplying 7.0 psi summertime gasoline to Southeast Michigan without fuel supply or distribution disruptions.

In today's action, we are proposing approval of Michigan's 7.0 psi RVP program as consistent with the provisions of EPAct, and assuming that we will finalize our interpretation of the EPAct provisions, as proposed. Accordingly, in our final action approving Michigan's 7.0 psi RVP program, we will address the issue of whether our approval of Michigan's program is consistent with the final adopted interpretation of EPAct.

*G. Why Is EPA Taking This Action?*

EPA is proposing to approve a SIP revision at the request of the MDEQ. To ensure that it secures the needed approval under section 211(c)(4)(C) of the CAA, Michigan submitted this action for EPA approval to make it part of the SIP.

**III. Proposed Action**

EPA is proposing to approve a SIP revision submitted by the State of Michigan on May 26, 2006 and July 14, 2006, establishing a 7.0 psi RVP fuel requirement for gasoline distributed in Southeast Michigan which includes Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. EPA is proposing this approval on the condition that the Agency's final interpretation of the EPAct provisions and our determination of the total number of fuels approved under section 211(c)(4)(C) of the CAA as of September 1, 2004, based on this interpretation, and the resulting draft list of these fuels does not change from what we proposed on June 6, 2006 (71 FR 32532).

EPA is proposing to approve Michigan's fuel requirements into the SIP because EPA has found that the requirements are necessary for Southeast Michigan to achieve the NAAQS for ozone.

**IV. Statutory and Executive Order Reviews**

*Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

*Paperwork Reduction Act*

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Regulatory Flexibility Act*

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Unfunded Mandates Reform Act*

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

*Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant regulatory action," 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).

*National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 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 impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air 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 program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 3, 2006.

**Jo-Lynn Traub,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E6–13345 Filed 8–14–06; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Part 107**

**[Docket No. PHMSA–2006–25589 (HM–208F)]**

**RIN 2137–AE11**

## Hazardous Materials Transportation; Registration and Fee Assessment Program

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

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

**SUMMARY:** This rule proposes to amend the statutorily mandated registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. For those registrants not qualifying as a small business or not-for-profit organization, we are proposing to increase the fee to $1,975 (plus a $25 administrative fee) for registration year 2007–2008 and increase the fee to $2,975 (plus a $25 administrative fee) for registration year 2008–2009 and following years. The fee increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately $28,000,000 in accordance with the Administration's Fiscal Year 2007 budget proposal to Congress. PHMSA is also proposing to eliminate the expedited telephonic registration option. The number of telephonic registrations has steadily decreased with the addition of the internet registration option, therefore, we believe that this registration option is no longer necessary.

**DATES:** Submit comments by October 16, 2006.

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

—*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

—*Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

—*Fax:* 1–202–493–2251.

—*Mail:* Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

—*Hand Delivery:* To the Docket Management System; Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* You must include the agency name (Pipeline and Hazardous Materials Safety Administration) and docket number (PHMSA–xx–xxxx (HM–208F)) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation we received your comments, you should include a self-addressed stamped postcard. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

*Docket:* You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, PHMSA, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, PHMSA, (202) 366–8553.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Since 1992, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has conducted a national registration program under the mandate in 49 U.S.C. 5108 for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce. The purposes of the registration program are to gather information about the transportation of hazardous materials, and fund the Hazardous Materials and Emergency Preparedness (HMEP) grants program. The HMEP grants program supports hazardous materials emergency response planning and training activities by States, local governments, and Indian tribes. *See* 49 U.S.C. 5108(b), 5116. PHMSA has discretion to require additional persons to register, beyond those offerors and transporters of the categories and quantities of hazardous materials listed in 49 U.S.C. 5108(a)(1), and to set the annual registration fee between the statutorily mandated minimum and maximum amounts. *See* 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

To meet Congressionally authorized funding of $14.3 million for the HMEP grants program, in 2000, we expanded the base of registrants and adopted a two-tier fee schedule under which the registration fee was set at $275 for persons qualifying as small businesses under Small Business Administration (SBA) criteria, and $1,975 for other persons (plus a $25 processing fee in all cases). (69 FR 7297) Due to a surplus, in 2003, we temporarily adjusted the registration fee to $125 (plus a $25 processing fee) for small businesses and not-for-profit organizations and $275 (plus a $25 processing fee) for all other registrants. (68 FR 1342) In 2006, the fees increased to $250 (plus a $25 processing fee) for small businesses and not-for-profit organizations and $975 (plus a $25 processing fee) for all other registrants.

Congress reauthorized the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) in 2005 through the "Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005" (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), P.L. 109–59, 119 Stat. 1144, August 10, 2005). The Act makes available approximately $28,000,000 for the HMEP grants program and lowers the maximum registration fee from $5,000 to $3,000. Consistent with SAFETEA–LU, the Administration's Fiscal Year 2007 budget proposal to Congress requests $28,000,000 in support of HMEP activity.

### II. HMEP Grants Program

#### *A. Purpose and Achievements of the HMEP Grants Program*

The HMEP grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance to States and Indian tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.* The grants are used to develop, improve, and implement emergency plans; to train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; to determine flow patterns of hazardous materials within a State and between States; and to determine the need within a State for regional hazardous materials emergency response teams.

The HMEP grants program encourages the growth of the hazardous materials planning and training programs of State, local, and tribal governments by limiting the Federal funding to 80

percent of the cost a State or Indian tribe incurs to carry out the activity for which the grant is made. *See* 49 U.S.C. 5116(e). HMEP grants supplement the amount already being provided by the State or Indian tribe. By accepting an HMEP grant, the State or tribe makes a commitment to not only maintain its previous level of support, but also to increase the previous level by an amount representing 20 percent of the funds expended on grant-supported activities each year. *See* 49 U.S.C. 5116(a)(2)(A), 5116(b)(2)(A) and 5116(e).

Since 1993, PHMSA has awarded all States and territories and 45 Native American tribes planning and training grants totaling $125 million. These grants helped to:

- Train 1,843,000 hazardous materials responders;
- Conduct 7,545 commodity flow studies;
- Write or update more than 41,344 emergency plans;
- Conduct 9,452 emergency response exercises; and
- Assist 18,907 local emergency planning committees (LEPCs).

Since the beginning of the program, HMEP grantees have used program funds to support the following related activities in the total amounts indicated:

- $3.2 million for the development and periodic updating of a national curriculum used to train public sector emergency response and preparedness teams. The curriculum guidelines, developed by a committee of Federal, State, and local experts, include criteria for establishing training programs for emergency responders at five progressively more skilled levels: (1) First responder awareness, (2) first responder operations, (3) hazardous materials technician, (4) hazardous materials specialist, and (5) on-scene commander.
- $2.5 million to monitor public sector emergency response planning and training for hazardous materials incidents, and to provide technical assistance to State or Indian tribe emergency response training and planning for hazardous materials incidents.
- $6 million for periodic updating and distribution of the North American Emergency Response Guidebook. This guidebook provides immediate information on initial response to hazardous materials incidents, and is distributed free of charge to the response community.
- $2 million for the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

*B. Increased Funding of the HMEP Grants Program*

An estimated 800,000 shipments of hazardous materials make their way through the national transportation system each day. It is impossible to predict when and where a hazardous materials incident may occur or what the nature of the incident may be. This potential threat requires state and local agencies to develop emergency plans and train emergency responders on the broadest possible scale.

The HMEP training grants are essential for providing adequate training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. There are over 2 million emergency responders requiring initial training or periodic recertification training, including 250,000 paid firefighters, 850,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers. Due to the high turnover rates of emergency response personnel, there is a continuing need to train a considerable number of recently recruited responders at the most basic level.

In addition, training at more advanced levels is essential to ensure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The availability of increased funding for the HMEP grants program will encourage State, tribal, and local agencies to provide more advanced training.

The increased funding for HMEP grants will enable PHMSA to help meet previously unmet needs of State, local and tribal governments by providing for the following activities authorized by law:

- $21,800,000 for training and planning grants, an increase of $9 million;
- A new $4,000,000 grant program for non-profit hazmat employee organizations to train hazmat instructors who will train hazmat employees;
- $1,000,000 for grants to support certain national organizations to train instructors to conduct hazardous materials response training programs, an increase of $750,000;
- $625,000 for revising, publishing, and distributing the North American Emergency Response Guidebook, an increase of $125,000;
- $200,000 for continuing development of a national training curriculum; and
- $150,000 for monitoring and technical assistance.

**III. Summary of Proposal to Increase HMEP Funding**

A registration fee system should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor reflecting the differences in level of risk to the public and the financial impact associated with the business activities of large and small businesses; and (3) ensure adequate funding for the HMEP grants program. Under Federal hazmat law, we have the discretion to increase registration fees for both small and large businesses. We considered several alternatives for increasing the funds available for the HMEP grants program. One option was to increase the fee for all businesses offering for transportation or transporting the covered hazardous materials. Another option was to maintain the fee for small businesses and not-for-profit organizations while adjusting the fee for larger businesses.

Due to a surplus, in 2003, we temporarily adjusted the registration fee to $125 (plus a $25 processing fee) for small businesses and not-for-profit organizations and $275 (plus a $25 processing fee) for all other registrants. (68 FR 1342) This reduction has reduced the current surplus to approximately $8.5 million.

To achieve the statutorily mandated goal of funding the HMEP grants program activities at approximately $28,000,000, we are proposing to adjust registration fees for persons other than small businesses to $1,975 (plus $25 processing fee) for registration year 2007–2008 and to $2,975 (plus $25 processing fee) for registration year 2008–2009 and following.

We believe adjusting the fee solely for larger, for-profit businesses is the best approach to meet the objectives listed above. Although there are exceptions, small businesses and not-for-profit organizations generally offer for transportation or transport fewer and smaller hazardous materials shipments as compared to larger companies. Raising the registration fee only for other-than-small businesses rather than for all businesses correlates the fee structure to the level of risk associated with shipments offered for transportation and transported by larger companies. Even at the fee levels proposed for registration year 2008–2009, the two fee levels will only differ by a factor of 10.

Moreover, increasing the registration fees only for other-than-small businesses will affect significantly fewer entities and will affect entities that can more easily absorb the increase. Since 2000, PHMSA has received

approximately 41,500 registrations for each registration year. Small businesses or not-for-profit organizations make up 84%, or 34,775, of the registrants, while large businesses make up 16%, or 6,725, of the registrants.

We are also considering raising the current baseline penalty assessment of $1,000, for failing to register as an offeror or carrier of hazardous materials, for other-than-small businesses who fail to register and pay a registration fee. We would adjust the baseline penalty assessment to keep it proportional to the increased registration fee. We request comments on raising this baseline penalty assessment for other-than-small businesses.

**IV. Expedited Registration Process**

Since the beginning of the registration program in 1992, we have provided a 24 hour, seven days-a-week expedited telephonic registration option. Person utilizing this option are provided a temporary registration number and must pay an additional $50 expedited processing fee. With the addition of the internet registration option, the number of registrants utilizing the expedited registration option has steadily decreased to a low of less than 100 persons since January 2006. Therefore, we are proposing to eliminate the expedited registration option.

**V. Multi-Year Registrations**

We allow a person to register for up to three years in one registration statement (49 CFR 107.612(c)). We have received approximately 300 advance registrations for the 2007–2008 registration year and one advance registration for the 2008–2009 registration year from other-than-small businesses that have paid the fee previously established for those years. We apply fees according to the fee structure ultimately established by regulation for the registration year rather than according to the fee set at the time of payment. Thus, if we adopt the increase in registration fees proposed in this NPRM, additional fees would be required for registrations paid in advance at the lower levels in effect at the time of payment. When we lowered the fees for all registrants in 2003, we provided over 7,100 refunds amounting to over $2.3 million within the first year to registrants who had overpaid the newly established fees. If we adopt this proposal, we will notify each registrant who will be required to pay additional fees for the 2007–2008 and following registration years.

**VI. Indian Tribes Exception**

The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 amends § 5108(i)(2)(b) of the Federal hazmat law to add Indian tribes to the list of governmental agencies specifically excepted from the registration requirements. As a matter of policy, we have not been enforcing the registration requirements against Indian tribes, which were specifically included among the grant recipients. We are proposing to incorporate this specific exception into the HMR.

**VII. Rulemaking Analyses and Notices**

*A. Statutory/Legal Authority for This Rulemaking*

This proposed rule is published under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*, as amended by P.L. 109–59) and 49 U.S.C. 44701. Section 5108 of the Federal hazmat law authorizes the Secretary of Transportation to establish a registration program to collect fees to fund HMEP grants. The HMEP grants program, as mandated by 49 U.S.C. 5116, authorizes Federal financial and technical assistance to States and Indian tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.*

Congress reauthorized the Federal hazmat law in 2005 through the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005. This Act makes available funding for the HMEP grants program at approximately $28,000,000, an increase of nearly $14 million. In addition, the Act lowers the maximum fee to $3,000.

*B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This proposed rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The cost to industry of increasing registration fees will be $14 million per year. The increased funding for the HMEP grants program will provide essential training of persons throughout the Nation who are responsible for responding to emergencies involving the release of hazardous materials. In addition, training at more advanced levels is essential to assure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The increased funding for the HMEP grants will enable us to help meet previously unmet needs of State, local and tribal governments by providing funding for activities such as: (1) Planning and training grants for local emergency planning committees; (2) a new program for non profit hazmat employee organizations to train hazmat instructors that will train hazmat employees; (3) support to certain national organizations to train instructors to conduct hazardous materials response training programs; (4) revising, publishing, and distributing the North American Emergency Response Guidebook; (5) continuing development of a national training curriculum; and (6) monitoring and technical assistance.

While the safety benefits resulting from improved emergency response programs are difficult to quantify, we believe these benefits significantly outweigh the annual cost of funding the grants program. The importance of planning and training cannot be overemphasized. To a great extent, we are a nation of small towns and rural communities served by largely volunteer fire departments. In many instances, communities' response resources already are overextended in their efforts to meet routine emergency response needs. The planning and training programs funded by the HMEP grants program enable state and local emergency responders to respond quickly and appropriately to hazardous materials transportation accidents, thereby mitigating potential loss of life and property and environmental damage. The regulatory evaluation to the final rule issued under Docket HM–208 (57 FR 30620) showed that the benefits to the public and to the industry from the emergency response grant program would at least equal, and likely exceed, the annual cost of funding the grant program. Based on estimates of annual damages and losses resulting from hazardous materials transportation accidents, the analysis concluded that the HMEP program would be cost-beneficial if it were only 3% effective in reducing either the frequency or severity of the consequences of hazardous materials transportation accidents. Achieving this level of effectiveness is well within the success rates of training and planning programs to reduce errors and increase the proficiency and productivity of response personnel. A

regulatory evaluation for this proposed rule is available for review in the public docket.

*C. Executive Order 13132*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule preempts State, local, and Indian tribe requirements, but does not propose any regulation having substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*D. Executive Order 13175*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have adverse tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies*

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to businesses not falling within the small entities category. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

*F. Unfunded Mandates Reform Act of 1995*

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

*G. Paperwork Reduction Act*

Under 49 U.S.C. 5108(i), the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this proposed rule.

*H. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

*I. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. PHMSA is proposing in this rule changes to the requirements in the HMR on the registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed increase in registration fees will provide additional funding for the HMEP program to help mitigate the safety and environmental consequences of hazardous materials transportation accidents.

*J. Privacy Act*

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

**List of Subjects in 49 CFR Part 107**

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and record keeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR part 107 as follows:

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; Sec 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.606, redesignate paragraphs (a)(4), (a)(5), and (a)(6) as (a)(5), (a)(6), and (a)(7) respectively, and add a new paragraph (a)(4) to read as follows:

**§ 107.606 Exceptions.**

(a) * * *

(4) An Indian tribe.

* * * * *

3. In § 107.612, revise paragraph (d)(3) to read as follows:

**§ 107.612 Amount of fee.**

* * * * *

(d) * * *

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (d)(1) or (d)(2) of this section must pay an annual registration fee of:

(i) For registration year 2006–2007, $975 and the processing fee required by paragraph (d)(4) of this section;

(ii) For registration year 2007–2008, $1,975 and the processing fee required by paragraph (d)(4) of this section;

(iii) For registration year 2008–2009 and following, $2,975 and the processing fee required by paragraph (d)(4) of this section.

* * * * *

**§ 107.616 [Amended]**

4. In § 107.616, paragraph (a) is amended by, in the first sentence, eliminating the phrase "Except as provided in paragraph (d) of this section," and paragraph (d) is removed.

Issued in Washington, DC on August 9, 2006, under authority delegated in 49 CFR part 106.

**Robert McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. E6–13312 Filed 8–14–06; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 49 CFR Part 389

**[Docket No. MARAD–2005–22050]**

**RIN 2133–AB67**

## Determination of Availability of Coastwise-Qualified Launch Barges

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Proposed rule; Notice of opening of reply comment period.

**SUMMARY:** The Maritime Administration is establishing regulations governing administrative determinations of availability of coastwise-qualified launch barges to be used in the transportation and launching of offshore

oil drilling or production platform jackets in specified projects. This rulemaking implements provisions of the Coast Guard and Maritime Transportation Act of 2004, which, among other things, requires the Secretary of Transportation (acting through the Maritime Administrator) to adopt procedures to determine if coastwise-qualified vessels are available for platform jacket transport and launching, and, if not, to allow the use of non-coastwise qualified foreign built vessels.

The notice of proposed rulemaking for this action was published in the **Federal Register** on August 15, 2005 (70 FR 47771) with comments due by October 14, 2005. The opening comment period was extended on October 19, 2005 (70 FR 60770) and closed on December 13, 2005.

The Maritime Administration is hereby giving notice that we received and have granted a request by a commenting party to open a reply comment period for this rulemaking. Reply comments are responses to comments that were filed during the previous comment periods for this rulemaking.

**DATES:** Reply comments are due October 16, 2006.

**ADDRESSES:** You may submit reply comments [identified by DOT DMS Docket Number MARAD 2005–22050] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday; except Federal Holidays.

**Privacy Act**

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

By order of the Maritime Administrator.

Dated: August 9, 2006.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. E6–13391 Filed 8–14–06; 8:45 am]

BILLING CODE 4910–81–P

# Notices

Federal Register
Vol. 71, No. 157
Tuesday, August 15, 2006

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

### Submission for OMB Review; Comment Request

August 10, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food and Nutrition Service**

*Title:* The Pennsylvania Rural Eligibility Pilot Evaluation.

*OMB Control Number:* 0584–NEW.

*Summary of Collection:* The Pennsylvania Rural Eligibility Pilot is a pilot of the Summer Food Service Program (SFSP). Congress created the SFSP in 1968 as the Special Food Service Program for Children. In 1975, separate Child Care Food Program and a Summer Food Service Program were authorized. SFSP was authorized to provide free and reduced price meals to children in residential Summer camps and sites serving areas of poor economic conditions, where at least one-third of the children qualify and are eligible to participate. The Pennsylvania Rural Area Eligibility Pilot will address the concern that some poor rural children may not be reached by the SFSP, Public Law 108–265 established a pilot for the SFSP in rural areas of Pennsylvania for Calendar 2005 and 2006.

*Need and Use of the Information:* The information collected from the pilot will be used by managers and administrators of the USDA, in particular the Child Nutrition Program of the Food and Nutrition Service and the Pennsylvania Department of Education Food and Nutrition Division, for the purpose of planning, organizing, and delivering SFSP services. The information collected from the pilot will include the number of sponsors offering meals through SFSP; the number of sites offering meals through SFSP; the geographic location of the sites; and services provided to eligible children.

*Description of Respondents:* Not-for-profit institutions; State, Local, or Tribal Government.

*Number of Respondents:* 306.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 77.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–13360 Filed 8–14–06; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2006–0022]**

### Codex Alimentarius Commission: Meeting of the Codex Committee on Fish and Fishery Products

**AGENCY:** Office of the Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on September 6, 2006. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 28th Session of the Codex Committee on Fish and Fishery Products (CCFFP) of the Codex Alimentarius Commission (Codex), which will be held in Beijing, China from September 18–22, 2006. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties with the opportunity to obtain background information on the 28th Session of the CCFFP and to address items on the agenda.

**DATES:** The public meeting is scheduled for Wednesday, September 6, 2006 from 1 p.m. to 4 p.m.

**ADDRESSES:** The public meeting will be held in room 3B–047, of the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740. Documents related to the 28th Session of the CCFFP will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The Food Safety and Inspection Service (FSIS) invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

*Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal.

Go to *http://www.regulations.gov* and, in the "Search for Open Regulations" box, select "Food Safety and Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select the FDMS Docket Number FSIS–2006–0022 to submit or view public comments and to view supporting and related materials available electronically.

*Mail, including floppy disks or CD-ROM's, and hand- or courier-delivered items:* Send to Docket Clerk, USDA, FSIS, 300 12th Street, SW., Room 102 Cotton Annex Building, Washington, DC 20250–3700.

*Electronic mail:* *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number FSIS–2006–0022.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be posted to the regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

In addition, the U.S. Delegate to the CCFFP, Mr. Philip Spiller of FDA, invites U.S. interested parties to submit their comments electronically to the following e-mail address: *melissa.ellwanger@fda.hhs.gov.*

*Pre-Registration:* To gain admittance to this meeting, individuals must present a photo ID for identification and also *are required to pre-register.* In addition, no cameras or videotaping equipment will be permitted in the meeting room. To pre-register, please send the following information to this e-mail address— *melissa.ellwanger@fda.hhs.gov* by *September 5, 2006:*

—Your Name,
—Organization,
—Mailing Address,
—Phone number,
—E-mail address.

**FOR FURTHER INFORMATION ABOUT THE 28TH SESSION OF THE CCFFP CONTACT:** Melissa Ellwanger, Assistant to the U.S. Delegate to the CCFFP, FDA, Center for Food Safety and Applied Nutrition, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835; Phone: (301) 436–1401; Fax: (301) 436–2549. E-mail: *melissa.ellwanger@fda.hhs.gov.*

**FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT:** Amjad Ali, International Issues Analyst, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250; Phone: (202) 205–7760; Fax: (202) 720–3157.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in trade.

The Codex Committee on Fish and Fishery Products was established to elaborate codes, standards and related texts for fish and fishery products. The Committee is hosted by Norway.

*Issues To Be Discussed at the Public Meeting*

The following items on the Agenda for the 28th Session of the Committee will be discussed during the public meeting:

- Matters referred to the Committee from the other Codex bodies.
- Proposed Draft Amendment to the Standard for Canned Sardine and Sardine Type Products: *Clupea bentincki.*
- Draft Standard for Sturgeon Caviar.
- Proposed Draft Code of Practice for Fish and Fishery Products (sections 2 Definitions, 7 Live and [Raw] Bivalve Molluscs, 10 Quick Frozen Fish and Fishery Products (sections on Molluscan Shellfish and Coated Shrimp only), 11 Processing of Salted Fish, 12 Processing of Smoked Fish, 13 Processing of Lobsters & Crabs).
- Proposed Draft Standard for Live and Raw Bivalve Molluscs.
- Proposed Draft Standard for Quick Frozen Scallop Adductor Muscle Meat.
- Proposed Draft Standard for Smoked Fish.
- Proposed Draft Code of Practice for the Processing of Scallop Meat.
- Discussion Paper on the Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery Products.
- Discussion Paper on an Amendment to the Labeling Section in the Standard for Canned Sardines and Sardine-Type Products.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Norwegian Secretariat prior to the public meeting on September 6. Members of the public may access or request copies of these documents at *http://www.codexalimentarius.net/current.asp.*

*Public Meeting*

At the September 6th public meeting, draft U.S. positions on the agenda items will be described; discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 28th Session of the CCFFP, Mr. Philip Spiller, at *melissa.ellwanger@fda.hhs.gov.* Written comments should state that they relate to activities of the 28th Session of the CCFFP.

*Additional Public Notification*

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web Page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index.* FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on: August 10, 2006.

**F. Edward Scarbrough,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. E6–13361 Filed 8–14–06; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** USDA Rural Development administers rural utilities programs through the Rural Utilities Service (Agency). In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Agency invites comments on the following information collections for which Agency intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by October 16, 2006.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development Utilities Programs, 1400 Independence Ave., SW., STOP 1522, Room 5818, South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. Fax: (202) 720–8435.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy o9f the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development Utilities Programs, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–0784.

*Title:* CFR Part 1794, Environmental policies and Procedures.

*OMB Control Number:* 0572–0117.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* The information collection contained in this rule are requirements prescribed by the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346), the Council on environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and Executive Orders. USDA Rural Development administers rural utilities programs through the Rural Utilities Service (Agency). Agency applicants provide environmental documentation, as prescribed by the rule, to assure that policy contained in NEPA is followed. The burden varies depending on the type, size, and location of each project, which then prescribes the type of information collection involved. The collection of information is only that information that is essential for the Agency to provide environmental safeguards and to comply with NEPA as implemented by the CEQ regulations.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 240 hours per response.

*Respondents:* Business or other for-profit and non-for-profit institutions.

*Estimated Number of Respondents:* 600.

*Estimated Number of Responses per Respondent:* 3.

*Estimated Total Annual Burden on Respondents:* 450,200 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, USDA Rural Development Utilities Programs, at (202) 720–7853. FAX: (202) 720–7853.

All responses to this notice will be summarized and included in the request from OMB approval. All comments will also become a matter of public record.

Dated: August 9, 2006.

**Curtis M. Anderson,**

*Deputy Administrator, Rural Utilities Service.*

[FR Doc. 06–6938 Filed 8–14–06; 8:45 am]

BILLING CODE 3410–15–M

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** USDA Rural Development administers rural utilities programs through the Rural Utilities Service (Agency). In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Agency invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by October 16, 2006.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development Utilities Programs, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–8818. FAX: (202) 720–8435.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development Utilities

Programs, U.S. Department of Agriculture, STOP 1522, Room 5170 South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

*Title:* Broadband Grant Program.

*OMB Control Number:* 0572–0127.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. To further this objective, RUS provides financial assistance in the form of grant to eligible entities that propose, on a "community-oriented connectivity" basis, to provide broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services to extremely rural, lower income communities. The Agency gives priority to rural areas that it believes have the greatest need for broadband transmission services. Grant authority is utilized to deploy broadband infrastructure to extremely rural, lower income communities on a "community-oriented connectivity" basis. The "community-oriented connectivity" concept integrates the deployment of broadband infrastructure with the practical, everyday uses and applications of the facilities. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. The Agency provides financial assistance to eligible entities that are proposing to deploy broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 154.87 hours per response.

*Respondents:* Public bodies, commercial companies, cooperatives, nonprofits, Indian tribes, and limited dividend or mutual associations and must be incorporated or a limited liability company.

*Estimated Number of Respondents:* 300.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 48,010.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, USDA Rural Development Utilities Programs at (202) 720–7853, FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 9, 2006.

**Curtis M. Anderson,**

*Deputy Administrator, Rural Utilities Service.*

[FR Doc. E6–13362 Filed 8–14–06; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 080906D]**

### Western Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting and public hearing.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold its 134th meeting to consider and take action on pending recommendations regarding fishing in the Northwestern Hawaiian Islands (NWHI) commensurate with the provisions of Proclamation 8031 which established the Northwestern Hawaiian Islands Marine National Monument. The Council will also hold a public hearing during this 134th Council meeting.

**DATES:** The 134th Council meeting and public hearing will be held at 2 p.m. (Hawaii Standard Time) on Wednesday, August 30, 2006. For specific dates, times and locations of the public hearing, and the agenda for the 134th Council meeting, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The 134th Council meeting and public hearing will be held at the Council's office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. For participants residing in American Samoa, the Northern Mariana Islands, Hawaii and the continental United States, the 134th Council meeting telephone conference call-in-number is: 1–888–482–3560; Access Code: 522–8220. For Guam and international participants, the call-in-number is: 1–647–723–3959; Access Code: 522–8220.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808) 522–8220; fax: (808) 522–8226.

**SUPPLEMENTARY INFORMATION:**

#### Background Information

On June 15, 2006, President George W. Bush signed Presidential Proclamation No. 8031 establishing the Northwestern Hawaiian Islands Marine National Monument (NWHI monument). The proclamation set apart and reserved the Northwestern Hawaiian Islands for the purpose of protecting the historic objects, landmarks, prehistoric structures and other objects of historic or scientific interest that are situated upon lands owned and controlled by the Federal Government of the United States. Proclamation No. 8031 directs the Secretary of Commerce and the Secretary of the Interior (the Secretaries) to prohibit access into the NWHI monument unless authorized, and limit or regulate virtually all activities through a permit and zoning system among other measures.

In establishing the NWHI monument, Proclamation No. 8031 assigns primary management responsibility of marine areas of the NWHI monument to the Secretary of Commerce, NOAA, in consultation with the Secretary of the Interior. The proclamation assigns the Secretary of the Interior, through the U.S. Fish and Wildlife Service (USFWS) with sole responsibility for management of the areas of the monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce. Proclamation No. 8031 also requires the Secretary of Commerce to manage the NWHI monument in consultation with the Secretary of the Interior and the State of Hawaii and directs the Secretaries to promulgate any additional regulations needed for the proper care and management of the monument objects identified above, to the extent authorized by law.

At this 134th meeting, the Council will consider and take action on pending recommendations regarding fishing in the Northwestern Hawaiian Islands commensurate with the provisions of Proclamation 8031 which established the NWHI monument.

#### 134th Council Meeting Agenda

1. Introductions
2. Approval of Agenda
3. Implementation of Fishing Regulations for the NWHI Monument
4. Public Hearing
5. Council Discussion and Action
6. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during its 134th meeting. Council action will be restricted to those issues listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: August 9, 2006.

**Tracey L. Thompson,**

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

[FR Doc. E6–13307 Filed 8–14–06; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice of Availability of Final Contracting Policy

**AGENCY:** National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of Availability of Final Revised Contracting Policy.

**SUMMARY:** The NOAA National Ocean Service (NOS) is publishing its updated contracting policy for hydrographic services per NOAA's 2005 plans to review and update the subject policy.

**DATES:** No comments are solicited through this notice.

**ADDRESSES:** Ashley Chappell, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Station 6113, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Ashley Chappell, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Station 6113, Silver Spring, Maryland 20910; Telephone: 301–713–2770 ext. 148; fax (301) 713–4019, Attention: Ashley Chappell; E-mail *ashley.chappell@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The contracting policy for hydrographic services within the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) is final.

### Background

In House Report 108–576, which accompanied the FY 2005 Consolidated Appropriations Act, Congress recommended that NOAA's National Ocean Service "work with the private mapping community to develop a strategy for expanding contracting with private entities to minimize duplication and take maximum advantage of private sector capability in fulfillment of NOAA's mapping and charting responsibilities."

NOAA first consulted with congressional staff to clarify the scope of the request. Subsequently, on June 13, 2005, NOAA submitted a report to Congress outlining its intent to utilize its advisory group, the Hydrographic Services Review Panel (the Panel), as the primary vehicle for reevalting its existing mapping and charting contracting policy established in 1996. The report stated that the scope of NOAA's efforts would be limited to hydrographic services programs funded under the "Mapping and Charting" section of the NOAA budget. NOAA then issued a **Federal Register** notice publishing and soliciting comments on its 1996 policy. The majority of comments were from private sector mapping firms and in general were supportive of NOAA's existing policy. Upon review of the public comments and in consultation with the Panel, NOAA concluded that a moderate revision of its existing policy was the appropriate approach. On April 7, 2006, NOAA issued a second **Federal Register** notice publishing and soliciting comments on its draft revised policy. Two comments were received. One was generally supportive and the second detailed several concerns.

Two concerns were that NOAA's efforts (1) did not respond to the congressional request and (2) that the revised policy mistakenly focused solely on NOAA's hydrographic services. As noted, personnel met with congressional staff and then provided Congress a report outlining the scope of NOAA's intended efforts. That strategy included utilizing the Panel as the primary mechanism for engaging the public, including the private mapping community, in reexamining the contracting policy. In terms of the scope, the congressional language requesting NOAA to undertake this effort appeared in the "Mapping and Charting" section of the annual appropriations report that addresses only NOAA's hydrographic services.

The second comment disagreed with the draft policy's conclusion that acquisition of geospatial data is a core agency mission and that the agency should maintain a core capability. Upon review, NOAA concludes its legal authorities provide language indicating acquisition of data is a core agency mission and that the agency should maintain an adequate operational capability. For example, the Hydrographic Services Improvement Act says that the NOAA administrator "shall acquire and disseminate hydrographic data." (33 U.S.C. 892a(a)(1)). The Act authorizes NOAA to procure vessels, equipment and technologies in order to "maintain operational expertise in hydrographic data acquisition and hydrographic services." (33 U.S.C. 892a(b)(1)).

### NOAA Hydrographic Services Contracting Policy

NOAA recognizes that qualified commercial sources can provide competent, professional, cost-effective hydrographic services to NOAA in support of its mapping and charting mission for enhancing navigation safety. NOAA also recognizes that the provision of hydrographic services, including the acquisition and dissemination of hydrographic and shoreline data, is a core mission requirement of NOAA under the 1947 Coast and Geodetic Survey Act and the Hydrographic Services Improvement Act of 1998 (as amended). In the interest of public and environmental safety, the Federal government's responsibility for executing its hydrographic services missions is manifest and non-delegable. Therefore, it is incumbent upon NOAA, as recommended by the Hydrographic Services Review Panel (the Panel), to maintain its operational hydrographic services core capability, and contract for the remainder of its hydrographic services to the extent of available funding.

In general, it is the intent of NOAA to contract for hydrographic services when qualified commercial sources exist, and when such contracts are the most cost effective method of conducting these functions. This policy documents the framework and conditions under which contracting will be employed to ensure an open and consistent approach. To support this policy, NOAA will maintain a dialogue with private sector organizations and constituent groups. For the purposes of this policy, the term "hydrographic services" is defined to include: Geodesy, hydrography,

photogrammetry, topography, remote sensing, geophysical (gravity, seismological, geomagnetic) measurements, tide and current observations, and data processing. Although this policy is limited to NOAA's hydrographic services, it is NOAA's intent to advance contracting and adhere to the principles of this policy to meet all of its geospatial, surveying and mapping requirements.

NOAA will procure hydrographic data and services from qualified sources in accordance with its legal authorities, the Federal Acquisition Regulations (FAR) and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 *et seq.*), including Title IX where appropriate. Commonly known as the "Brooks Act" for Architect/Engineering (A/E) contracts, Title IX is a contract mechanism for use in situations where the professional nature of the services to be procured requires that potential contractors have specialized technical expertise.

NOAA may determine that a particular surveying or mapping activity is inherently governmental. NOAA surveying and mapping activities considered inherently governmental in nature may include services necessary to: (1) Monitor the quality of NOAA products; (2) promulgate and promote national and international technical standards and specifications; (3) conduct basic research and development and ensure the rapid transfer to the private sector of the derived technology; (4) maintain the Federal geodetic and navigational databases necessary to support safe and efficient marine operations; (5) support coastal stewardship ecosystem applications; and (6) support Maritime Domain Awareness and Homeland Security preparation and response activities. To carry out the above activities, and to adequately monitor contracted services, NOAA will maintain a core capability of field and office expertise.

NOAA may task qualified commercial sources with surveying and mapping services in any part of the U.S. Exclusive Economic Zone for any NOAA mission-related purpose, irrespective of pre-defined priority categories such as those documented in the NOAA Hydrographic Surveying Priorities. The government's interests and responsibilities for surveying and mapping vary broadly, and experience has shown that maintaining flexibility is key to responding to the nation's changing needs for updated surveying and mapping data.

**Ancillary Statements and Actions**

As recommended by the Panel, NOAA will continue to utilize a mix of in-house and private-sector resources to accomplish its hydrographic services missions. Costs and productivity will be closely monitored within each category (*i.e.*, public and private) to ensure best use of hydrographic services resources. NOAA will also seek to determine the optimal resource allocation between in-house and private-sector resources based on the strength of the governmental interest, the total requirement for mapping and charting services, and the particular operational capabilities of either government or private-sector resources that may make one more suitable.

NOAA will continue to examine ways to improve its contracting process, such as methods for minimizing the turnover frequency of contracting personnel and for reducing the length of time required to award contracts and task orders. NOAA will maintain its offer of debriefings to successful and unsuccessful hydrographic services contractors after final selection has taken place. The purpose of these debriefings is to assist contractors with identifying significant weaknesses or deficiencies in their submissions. NOAA is also exploring the establishment of an Ocean and Coastal Mapping Training Center. The Training Center was initially conceived as a curriculum to support NOAA's in-house hydrographic surveying training requirements. But NOAA now recognizes value in broadening the Center's scope to include training for NOAA and private sector contractors in techniques, standards, and technologies that support NOAA's many shoreline, coastal and ocean mapping activities. This concept builds on NOAA's annual Hydrographic Training and Field Procedures Workshops currently held for NOAA personnel and its hydrographic services contractors to train and trade valuable lessons learned from surveying experience. Such training would be beneficial to current or prospective NOAA contractors seeking to strengthen their proposal submissions.

To view the 1996 National Ocean Service Contracting Policy; the Brooks Act, Public Law 92–582 or the 1998 and 2002 Hydrographic Services Improvement Acts (which authorize NOAA Navigation Services programs), visit *http://nauticalcharts.noaa.gov/ocs/hsrp/archive/library.htm.*

Dated: August 9, 2006.

**Captain Steven Barnum,**

*NOAA, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 06–6929 Filed 8–14–06; 8:45am]

BILLING CODE 3510–JE–M

## DEPARTMENT OF COMMERCE

### Technology Administration

### Technology Administration Performance Review Board Membership

The Technology Administration Performance Review Board (TA PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the TA PRB and supersedes the list published in **Federal Register** Vol. 70, No. 158, pages 48374–48375, on August 17, 2005.

Bruce Borzino (C), Deputy Director, National Technical Information Service, Springfield, VA 22161, Appointment Expires: 12/31/2008, General.

Alan Cookson (C) (Alternate), Deputy Director, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/07, Limited.

Paul Doremus (C), Director of Strategic Planning, Program Planning and Integration, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, Appointment Expires: 12/31/07, Limited.

Cita Furlani (C), Director, Information Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/07, Limited.

Patrick Gallagher (C) (Alternate), Director, NIST Center for Neutron Research, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/07, Limited.

Howard Harary (C), Deputy Director, Manufacturing Engineering Laboratory, National Institute of

Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/07, Limited.

Patricia Sefcik (C), Senior Director to the Deputy Assistant Secretary for Manufacturing, Manufacturing and Services, International Trade Administration, Washington, DC 20230, Appointment Expires: 12/31/07, General.

James E. Hill (C), Director, Building and Fire Research Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/2008, General.

Dated: August 7, 2006.

**Robert Cresanti,**

*Under Secretary for Technology, Technology Administration, Department of Commerce.*

[FR Doc. E6–13356 Filed 8–14–06; 8:45 am]

BILLING CODE 3510–18–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Uniform Formulary Beneficiary Advisory Panel

**AGENCY:** Department of Defense, Assistant Secretary of Defense (Health Affairs).

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice announces a meeting of the Uniform Formulary Beneficiary Advisory Panel. The panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary. The meeting will be open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** Thursday, September 21, 2006, from 8 a.m. to 4 p.m.

**ADDRESSES:** Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rich Martel, TRICARE Management Activity, Pharmaceutical Operations Directorate, Beneficiary Advisory Panel, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041, telephone 703–681–2890, ext. 6718, fax 703–681–1940, or e-mail at *baprequests@tma.osd.mil.*

**SUPPLEMENTARY INFORMATION:** The Uniform Formulary Beneficiary Advisory Panel will only review and comment on the development of the Uniform Formulary as reflected in the recommendations DOD Pharmacy and Therapeutics (P&T) Committee coming out of that body's meeting in August 2006. The P&T Committee information and subject matter concerning drug classes reviewed for that meeting are available at *http://www.pec.ha.osd.mil.* Any private citizen is permitted to file a written statement with the advisory panel. Statements must be submitted electronically to *baprequests@tma.osd.mil* no later than September 14, 2006. Any private citizen is permitted to speak at the Beneficiary Advisory Panel meeting, time permitting. One hour will be reserved for public comments, and speaking times will be assigned only to the first twelve citizens to sign up at the meeting, on a first-come, first-served basis. The amount of time allocated to a speaker will not exceed five minutes.

Dated: August 8, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06–6906 Filed 8–14–06; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[DOD–2006–OS–0179]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary of Defense is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on September 14, 2006 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 696–4940.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted August 3, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 8, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DODDS 21**

**SYSTEM NAME:**

Department of Defense Dependents Schools (DODDS) Grievance Records (May 14, 1997, 62 FR 26483).

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with "DoDEA 21."

**SYSTEM NAME:**

Delete entry and replace with "Department of Defense Education Activity (DODEA) Grievance Records."

**SYSTEM LOCATION:**

Delete name and replace with "Department of Defense Education Activity."

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "The system contains records relating to grievances and arbitrations filed by DoDEA employees with the Agency, with the Office of Special Counsel, the Office of Personnel Management, or the Federal Labor Relations Authority. Includes records relating to the identity of third parties, pleadings, statements of witnesses, investigative reports, interviews, hearings, hearing examiner's findings and recommendations, copies of decisions relating to the grievance, and other relevant correspondence and exhibits."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "5 U.S.C. 1221, 2302, and 7532; 10 U.S.C. 2164; 20 U.S.C. 901–907; 20 U.S.C. 931; E.O. 9397 (SSN); 5 CFR 771; DoD Directive 1342.2, Department of Defense Education Activity; and DoDEA 5771.9, Administrative Grievance Procedures."

**PURPOSE(S):**

Delete first paragraph and replace with "To maintain records for use by

management in resolving employ grievances."

In second paragraph, delete "DoDDS" and replace with "DoDEA."

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add a new paragraph between the first and second paragraphs to read "To the Merit systems Protection Board (MSPB), the MSPB Office of Special Counsel, the Federal Labor Relations Authority, the Department of Justice, the Offices of the United States Attorneys, alternative dispute resolutions specialists, and the Federal courts for purposes related to, or incident to, the adjudication of the grievance."

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Add at the end of the sentence "and electronic records."

**RETRIEVABILITY:**

Delete entry and replace with "Names of the individuals initiating grievance procedures, case number, and by subject matter."

**SAFEGUARDS:**

Delete entry and replace with "Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers."

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Chief, Management Employee Relations Branch, Human Resources Regional Service Center, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634."

**NOTIFICATION PROCEDURE:**

Delete "Dependents Schools" and replace with "Education Activity."

**RECORD ACCESS PROCEDURES:**

Delete "Dependents Schools" and replace with "Education Activity."

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "Individuals who have initiated a grievance; witness statements or testimony; agency officials; labor organization representatives; arbitrators, hearing officials and administrative law judges; officials in the MSPB Office of Special Counsel; and by officials of the Federal Labor Relations Authority or Merit Systems Protection Board."

* * * * *

**DoDEA 21**

**SYSTEM NAME:**

Department of Defense Education Activity (DODEA) Grievance Records.

**SYSTEM LOCATION:**

Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current or former employees who have submitted grievances in accordance with 5 U.S.C. 2302, and 5 U.S.C. 7121.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains records relating to grievances and arbitrations filed by DoDEA employees with the Agency, with the Office of Special Counsel, the Office of Personnel Management, or the Federal Labor Relations Authority. Includes records relating to the identity of third parties, pleadings, statements of witnesses, investigative reports, interviews, hearings, hearing examiner's findings and recommendations, copies of decisions relating to the grievance, and other relevant correspondence and exhibits.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 1221, 2302, 7121 and 7532; 10 U.S.C. 2164; 20 U.S.C. 901–907; 20 U.S.C. 931; E.O. 9397 (SSN); 5 C.F.R. 771; DoD Part 1 Directive 1342.2, Department of Defense Education Activity; and DoDEA 5771.9, Administrative Grievance Procecures.

**PURPOSE(S):**

To maintain records for use by management in resolving employee grievances.

To generate statistical reports, work force studies, and perform other analytical activities supporting personnel management functions of DoDEA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Merit Systems Protection Board (MSPB), the MSPB Office of Special Counsel, the Federal Labor Relations Authority, the Department of Justice, the Offices of the United States Attorneys, alternate dispute resolutions specialists, and the Federal courts for purposes related to, or incident to, the adjudication or litigation of the grievance.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic records.

**RETRIEVABILITY:**

Names of the individuals initiating grievance procedures, case number, and by subject matter.

**SAFEGUARDS:**

Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers.

**RETENTION AND DISPOSAL:**

Records are destroyed 4 years after the case is closed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Management Employee Relations Branch, Human Resources Regional Service Center, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Written requests for information should contain the full name and address of the individual, and must be signed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain the full name and address of the individual, and must be signed.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individuals who have initiated a grievance; witness statements or testimony; agency officials; labor organization representatives; arbitrators, hearing officials and administrative law judges; officials in the MSPB Office of Special Counsel; and by officials of the Federal Labor Relations Authority or Merit Systems Protection Board.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06–6909 Filed 8–14–06; 8:45am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[USN–2006–0049]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to Alter a System of Records.

**SUMMARY:** The Department of the Navy proposed to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on September 14, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy PA/FOIA Policy Branch, Chief of Navy Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685–325–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on August 3, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Government Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 8, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**NM05000–2**

**SYSTEM NAME:**

Administrative Personnel Management System (June 14, 2006, 71 FR 34322).

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete entry and replace with "Organization Management and Locator System."

**SYSTEM LOCATION:**

Delete first paragraph and replace with "Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Military, civilian, and contractor personnel attached to the activity; former members; applicants for civilian employment, visitors, volunteers, guests, and invitees; and dependent family members."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Records, correspondence, and databases needed to manage personnel, projects, and access to programs. Information consists of name; Social Security Number; date of birth; photo identification; grade and series or rank/rate; biographical data; security clearance; education; experience characteristics and training histories; qualifications; Common Access Card (CAC) issuance and expiration; food service meal entitlement code; trade; hire/termination dates: type of appointment; leave; location; assigned organization code and/or work center code; Military Occupational Series (MOS); labor code; payments for training, travel advances and claims; hours assigned and worked; routine and emergency assignments; functional responsibilities; access to secure spaces and issuance of keys; travel; retention group; vehicle parking; disaster control; community relations (blood donor, etc); employee recreation programs; retirement category; awards; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; computer use responsibility agreements; and other data needed for personnel, financial, line, safety and security management, as appropriate."

* * * * *

**PURPOSE(S):**

Delete paragraph 1 and replace with "To manage, supervise, and administer programs for all Department of the Navy civilian, military, and contractor personnel. Information is used to prepare organizational locator, recall rosters, and social rosters; notify personnel of arrival of visitors; locate individuals on routine and/or emergency matters; locate individuals during medical emergencies, facility evacuations and similar threat situations; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; track attendance at training; identify routine and special work assignments; determine clearance for access control; identify record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; control the budget; travel claims; track manpower, grades, and personnel actions; maintain statistics for minorities; track employment; track labor costing; prepare watch bills; project retirement losses; verify employment to requesting banking activities; rental and credit organizations; name change location; checklist prior to leaving activity; safety reporting/monitoring; and, similar administrative uses requiring personnel data."

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with "Electronic databases and paper records."

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*."

**NOTIFICATION PROCEDURE:**

Delete first paragraph and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in questions. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*."

**RECORD ACCESS PROCEDURES:**

Delete first paragraph and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*."

* * * * *

**NM05000–2**

**SYSTEM NAME:**

Organization Management and Locator System.

**SYSTEM LOCATION:**

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.dla.mil/sndl.aspx*.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military, civilian, and contractor personnel attached to the activity; former members; applicants for civilian employment, visitors, volunteers, guests, and invitees; and dependent family members.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records, correspondence, and databases needed to manage personnel, projects, and access to programs. Information consists of name; social Security Number; date of birth; photo identification; grade and series or rank/rate; biographical data; security clearance; education; experience characteristics and training histories; qualifications; Common Access Card (CAC) issuance and expiration; food service meal entitlement code; trade; hire/termination dates; type of appointment; leave; location; assigned organization code and/or work center code; Military Occupational Series (MOS); labor code; payments for training, travel advances and claims; hours assigned and worked; routine and emergency assignments; functional responsibilities; access to secure spaces and issuance of keys; travel; retention group; vehicle parking; disaster control; community relations (blood donor, etc); employee recreation programs; retirement category; awards; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; computer use responsibility agreements; and other data needed for personnel, financial, line, safety and security management, as appropriate.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

**PURPOSE(S):**

To manage, supervise, and administer programs for all Department of the Navy civilian, military, and contractor personnel. Information is used to prepare organizational locator, recall rosters, and social rosters; notify personnel of arrival of visitors; locate individuals on routine and/or emergency matters; locate individuals during medical emergencies, facility evacuations and similar threat situations; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; track attendance at training; identify routine and special work assignments; determine clearance for access control; identify record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; control the budget; travel claims; track manpower, grades, and personnel actions; maintain statistics for minorities; track employment; track labor costing; prepare watch bills; project retirement losses; verify employment to requesting banking activities; rental and credit organizations; name change locations; checklist prior to leaving activity; safety reporting/monitoring; and, similar administrative uses requiring personnel data.

To arbitrators and hearing examiners for use in civilian personnel matters relating to civilian grievances and appeals.

To authenticate authorization for access to services and spaces such as Morale, Welfare, and Recreation (MWR) facilities and food services.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic databases and paper records.

**RETRIEVABILITY:**

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, and supervisor's shop and code.

**SAFEGUARDS:**

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

**RETENTION AND DISPOSAL:**

Destroy when no longer needed or after two years, whichever is later.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl/aspx.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual; Defense Manpower Data Center; employment papers; records of the organization; official personnel jackets; supervisors; official travel orders; educational institutions; applications; duty officer; investigations; OPM officials; and/or members of the American Red Cross.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06–6907 Filed 8–14–06; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[USN–2006–0048]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to Add Systems of Records.

**SUMMARY:** The Department of the Navy proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The proposed action will be effective on September 14, 2006 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685–325–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available: from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on August 3, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: August 8, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**NM05070–1**

**SYSTEM NAME:**

Library Patron File.

**SYSTEM LOCATION:**

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.dps.dla.mil/andl.aspx.*

Commander, U.S. Joint Forces Command, 1562 Mitacher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Authorized users of Navy, Marine Corps, U.S. Joint Forces Command, and U.S. Pacific Command library facilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The library patron file may contain the following information pertinent to each individual: Name, rank, Social Security Number; organization and organization address and phone number; home address and home phone number; names and ages of dependents; title of materials borrowed; date borrowed; date returned; and notation of monetary settlement if borrowed material was lost or damaged.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; Pub. L. 106–554, Children's Internet Protection Act; and E.O. 9397 (SSN).

*Purpose(s):*

To identify individuals authorized to borrow library materials; to ensure that all library property is returned and individual's account is cleared, and to provide librarian useful information for selecting, ordering, and meeting user requirements.

To comply with the Children's Internet Protection Act and to provide authentication for borrowed electronic resources (e.g., e-books, e-journals, e-mail, chat rooms, other forms of direct electronic communications, videotapes, DVDs, and Music CDs).

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Navy's compilation of systems of records notices apply to this system.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

*Storage:*

Paper and electronic files.

*Retrievability:*

Name, Social Security Number, or library account number.

*Safeguards:*

Library is locked when not in use. Password controlled system. File and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and/or visitor registers.

*Retention and disposal:*

Records are destroyed when no longer needed to obtain and/or control library materials.

*System manager(s) and address:*

Commanding officer at the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

*Notification procedures:*

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the library in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Written requests for information should contain the full name of the individual, Social Security Number and/or library account number, organization to which assigned when library utilized, and current address.

For personal visits the individual should be able to provide acceptable personal identification during normal hours of library operation.

*Record access procedures:*

Individual's seeking access to information about themselves contained in this system should address written inquiries to the library in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Written requests for information should contain the full name of the individual, Social Security Number and/or library account number, organization to which assigned when library utilized, and current address.

For personal visits the individual should be able to provide acceptable personal identification during normal hours of library operation.

*Contesting record procedures:*

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5E; 32 CFR part 701; or may be obtained from the system manager.

*Record source categories:*

Individual's library staff; and Defense Enrollment Eligibility Reporting System (DEERS) database.

*Exemptions claimed for the system:*

None.

[FR Doc. 06–6908 Filed 8–14–06; 8:45 am]
BILLING CODE 5001–06–M

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–8087–8]**

## Access to Confidential Business Information by Computer Sciences Corporation's Identified Subcontractors

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized subcontractors of its prime contractor, Computer Sciences Corporation of Chantilly, VA access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur no sooner than August 22, 2006.

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

*For technical information contact*: Scott M. Sherlock, TSCA Security Staff, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202)564–8257; e-mail address: *sherlock.scott@epa.gov*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Notice 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 subject to TSCA reporting requirements. 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 Copies of this Document and Other Related Documents?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. 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 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/.*

### II. What Action is the Agency Taking?

Under GSA Contract Number GS00T99ALD0204, Task Order Number T0002AJMZ39, Computer Sciences Corporation (CSC) of 15000 Conference Center Drive, Chantilly, VA and its subcontractors Digital Intelligence Systems Corporation (Disys) of 4151 LaFayette Center Drive, Suite 600, Chantilly, VA; Tek Systems of 7437 Race Road S, Hanover, MD; and Yoh I.T. of 1818 Market Street, Philadelphia, PA, will assist the Office of Pollution Prevention and Toxics (OPPTS) in computer operations and maintenance of TSCA CBI Computer Systems and Communications Network, linking CBI sites, located in Washington, DC. CSC and its subcontractors will also assist in maintaining and operating the EPA CBI computer facilities located in Research Triangle Park, NC.

In accordance with 40 CFR 2.306(j), EPA has determined that under GSA Contract Number GS00T99ALD0204, Task Order Number T0002AJMZ39, CSC and its subcontractors will require

access to CBI submitted to EPA Under all sections of TSCA, to perform successfully the duties specified under the contract.

CSC and its subcontractor personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that the Agency may provide CSC and its subcontractors access to these CBI materials on a need-to- know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Research Triangle Park, NC facilities. CSC and its subcontract personnel will be required to adhere to all provisions of EPA's TSCA Confidential Business Information Security Manual.

Clearance for access to TSCA CBI under GSA Contract Number GS00T99ALD0204, Task Order Number T0002AJMZ39 may continue until September 30, 2007.

CSC's subcontractors and subcontract personnel will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to the CBI.

**List of Subjects**

Environmental protection, Confidential business information.

Dated: August 7, 2006.

**Brion Cook,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E6–13348 Filed 8–14–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8209–8]**

## FY 2006 and 2007 Targeted Watersheds Grant Program: Availability of Funds and Request for Proposals for Implementation Projects (CFDA 66.439—Funding Opportunity Number EPA–OW–OWOW–06–3)

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

**ACTION:** Notice of Availability of Funds and Request for Proposals for Targeted Watersheds Implementation Projects.

**SUMMARY:** This notice announces the availability of funds for grants and cooperative agreements under EPA's Targeted Watersheds Grant Program. The Targeted Watersheds Grant Program is a competitive grant program designed to support the protection and restoration of the country's water resources through a holistic watershed approach to water quality management. In fiscal year (FY) 2006 Congress appropriated over $16 million for the program. The Agency is soliciting proposals under this announcement for implementation projects, and under a separate announcement for capacity building projects. The Agency anticipates additional funding for the Targeted Watersheds Grant Program in FY 2007.

Under this announcement, EPA will award approximately 9 to 20 grants or cooperative agreements for restoration and/or protection efforts. Anticipated awards will range from approximately $600,000 to $900,000 each and have a project period of three to five years. The total amount anticipated to be awarded under this announcement will range from $7.1 million to about $16 million (these totals represent combining a portion of both 2006 and anticipated 2007 Targeted Watersheds Grant funds)—the total amount to be awarded under this announcement will depend upon the FY 2007 funds and the quality of proposals received. Under this announcement, EPA is providing applicants the option of submitting their proposals either directly to EPA in hard copy or electronically via Grants.gov. (*See* Section IV for additional submission information and requirements.)

**DATES:** Proposals must be received by EPA or electronically through Grants.gov by 5 p.m. Eastern Standard Time November 13, 2006. Proposals received after this deadline will not be considered.

**ADDRESSES:** Erin Collard; USEPA; Office of Wetlands, Oceans, and Watersheds; Room 7136G; Mail Code 4501T; 1301 Constitution Avenue, NW. Washington, DC 20004; telephone: 202–566–2655.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding this action, please contact the appropriate regional contact person listed in Section VII of this notice. A copy of this full announcement and additional information on the program can be found on the Targeted Watersheds Grant Web site at *http://www.epa.gov/twg.* The announcement is also synopsized on *http://www.grants.gov.*

**SUPPLEMENTARY INFORMATION:**

**Overview Information**

The Targeted Watersheds Grant Program encourages watershed practitioners to examine local water related problems in the context of the larger watershed in which they exist, to develop solutions to those problems by creatively applying the full array of available tools, including Federal, State, and local programs, and to restore and preserve water resources through strategic planning and coordinated project management that draw in public and private sector partners. Both the watershed approach and the Targeted Watersheds Grant Program focus on multi-faceted plans for protecting and restoring water resources that are developed using partnership efforts of diverse stakeholders. Hence, the goal of the Targeted Watersheds Grant Program is to advance successful partnerships and coalitions that have completed the necessary watershed assessments and have a technically sound watershed plan ready to implement.

*Federal Agency Name:* Environmental Protection Agency.

*Funding Opportunity Title:* FY 2006/ 2007 Targeted Watersheds Grant Program: Request for Proposals for Implementation Projects.

*Announcement Type:* Request for Proposals.

*Funding Opportunity Number:* EPA-OW-OWOW–06–3.

*Catalogue of Federal Domestic Assistance (CFDA) Number:* 66.439.

*Dates:* Proposals must be received by EPA or electronically through Grants.gov by 5 p.m. Eastern Standard Time, November 13, 2006. Proposals received after this deadline will not be considered.

**I. Funding Opportunity Description**

*A. Targeted Watersheds Grant Program Objectives*

To achieve environmental goals, EPA encourages the adoption of a watershed approach as a broad coordinating process for focusing on priority water resource problems. Using a watershed approach, multiple stakeholders integrate regional and locally led activities with local, State, tribal, and Federal environmental management programs. These environmental goals should ultimately protect and restore the health of the nation's aquatic resources, which not only includes but goes beyond meeting water quality standards.

The Targeted Watersheds Grant Program encourages watershed organizations and practitioners to examine local water related problems in the context of the larger watershed in which they exist, to develop solutions to those problems by creatively applying the full array of available tools, including Federal, State, and local programs, and to restore and preserve water resources through strategic planning and coordinated project management that draw in public and

private sector partners. Both the watershed approach and the Targeted Watersheds Grant Program focus on multi-faceted plans for protecting and restoring water resources that are developed using partnership efforts of diverse stakeholders. Hence, the goal of the Targeted Watersheds Grant Program is to advance successful partnerships and coalitions that have completed the necessary watershed assessments and have a technically sound watershed plan ready to implement.

In accordance with the President's focus on building a cooperative ethic in all environmental conservation and protection activities, the Targeted Watersheds Grant Program empowers watershed organizations and practitioners to collaborate and implement environmental change. Overcoming many water quality problems requires the involvement of local citizens who have a vested interest in the creeks, rivers, lakes, estuaries, wetlands, and groundwater flowing through their neighborhoods and towns. Moreover, it is organized and sustainable partnerships comprised of an array of governmental and non-governmental entities that are the most successful in improving water resources and achieving on-the-ground results. The program is intended to encourage the kind of proactive and incentive based protection and restoration measures that will yield cleaner water and protect ecosystems. By furnishing funds to watershed organizations or practitioners, the Agency can foster the President(s cooperative conservation ideal by ensuring that affected stakeholders have the means necessary to actively participate in the watershed restoration process at local, State, and Federal levels.

*B. National Priorities*

Under this announcement, EPA is soliciting proposals for projects that will result in the protection, preservation, and restoration of a watershed that incorporates a watershed-based approach. Finding solutions to water quality problems requires sustainable approaches that can be aligned with core water programs. EPA is looking for innovative ways to address water quality problems that will result in tangible, measurable environmental results in a relatively short time frame. For example, market-based approaches can create social and economic incentives for implementing creative pollution reduction strategies and water protection measures. Market-based trading projects are considered an important component of innovation. One of the Assistant Administrator's key market-based priorities for protecting and restoring watersheds is the development of water quality trading pilots with states and other partners.

Proposals for watershed restoration and/or protection projects must include a monitoring component. Activities proposed for funding are not required to address the entire watershed, but are expected to have been based on a comprehensive assessment and plan for the watershed. As such, all activities should directly support the described watershed plan and Targeted Watersheds Grant funds should be used in accordance with the plan. Examples of successful proposals from past competitions can be found on the Web site at *http://www.epa.gov/twg.*

Watershed proposals must be nominated by Governors or Tribal Leaders. A Governor or Tribal Leader nomination letter must be provided as part of each proposal package submitted to EPA. Governors or Tribal Leaders may nominate any number of proposals, either those that are entirely within their State or tribal boundaries or interjurisdictional watersheds (*i.e.*, those that encompass several States or Tribes). For interjurisdictional watersheds, any of the engaged Governors/Tribal Leaders may nominate the proposal. To be considered an interjurisdictional watershed (and be scored as such) the proposal must include a letter of support from all partnering States, Tribes or local government entities in the proposal package (this can include a second nomination letter from an engaged Governor/Tribal Leader, letters from local government elected officials, or letters from the appropriate water agency in the adjacent State, Tribe, or local government entity).

*C. EPA's Strategic Plan and Anticipated Environmental Results*

The Targeted Watersheds Grant program is linked to EPA's Strategic Plan (2003–2008 EPA's Strategic Plan). It is predicated on the concept that watersheds are improved most effectively and efficiently by managing water resource use and water quality on a watershed basis. The Targeted Watersheds Grant Program supports EPA's strategic goals (*http://www.epa.gov/ocfo/plan/plan.html*) to improve and restore impaired water quality on a watershed basis and facilitate ecosystem-scale protection and restoration under EPA Strategic Plan Goal 2—Clean and Safe Water, Objective 2.2 (Protect Water Quality), Sub-objective 2.2.1 (Protect and Improve Water Quality on a Watershed Basis) and Goal 4—Healthy Communities and Ecosystems, Objective 4.3 (Ecosystems), Sub-objective 4.3.1 (Protect and Restore Ecosystems).

By supporting the implementation of comprehensive watershed projects, these grants will also support the Administrator's Sustainable Infrastructure priority to develop innovative, market-based, and sustainable solutions for water infrastructure financing and management.

In accordance with the goals and objectives in the Strategic Plan, the Targeted Watersheds Grant Program aims to advance projects beyond the planning stage to the point of producing tangible environmental results. Therefore, a high priority is to support projects that are likely to achieve quantifiable outcomes within the project period. Applicants for the FY 2006/2007 funds must include specific statements describing the environmental results of the proposed project in terms of well-defined "outputs" and to the maximum extent practicable, well-defined "outcomes".

All proposed projects must be linked to environmental results and demonstrate how they will contribute to the ultimate goals of clean and safe water and healthy communities and ecosystems. Environmental results are used as a way to gauge a project's performance and are described in terms of output measures and outcome measures. The term "output" means an activity, effort, and/or associated work product related to an environmental goal or objective that will be produced or provided over the period of time or by a specific date. The term "outcome" means an environmental result, effect or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes may be short-term (*i.e.*, changes in learning, knowledge, attitude, skill), intermediate (*i.e.*, changes in behavior, practice, or decisions), or long-term (*i.e.*, changes in condition of natural resources).

In addition to environmental outcomes, other relevant outcomes can be behavioral, health-related, or programmatic in nature and need to be identified. An example is increasing the watershed approach information available to local and State decisionmakers who write and implement laws, ordinances, and permits. In this context, certain efforts designed to increase the watershed approach knowledge of decisionmakers can be viewed as environmental outcomes (results) if the grantee can show or measure the improvement in

the knowledge of decisionmakers who are in the position to create institutional changes that are necessary to restore or protect the environment. In such instances, "outcomes" are not measured typically by environmental or water quality indicators, but rather by institutional indicators related to the adoption and application of laws and regulations, and the active management of programs necessary to provide environmental protection.

Additional information regarding EPA(s definition of environmental results in terms of "outputs" and "outcomes" can be found at: *http://www.epa.gov/ogd/grants/awards/5700.7.pdf* or *http://www.epa.gov/water/waterplan/documents/FY06NPGappendix-b.pdf.*

Outcomes expected as a result of the awards under this announcement could include:

- Actual on-the-ground water restoration or protection projects put in place.
- Baseline and resulting water quality monitoring data that indicate measurable environmental improvement.
- Local ordinances passed aimed at protection and restoration of water quality.
- Enhanced public participation and awareness of water quality issues at the community level.
- Transfer of knowledge among watershed groups across the nation.
- Improved water quality, Clean Water Act (CWA) Section 303(d) delisting of streams, or increased recreational use of water bodies.

For example, for a project aimed at reducing in-stream sediment loads, an expected output under this announcement could be the number of trees planted, the miles of riparian buffer restored, the number of culverts repaired, or other best management practices (BMPs) installed. The expected outcome of the particular activity would indicate the expected sediment reduction to be achieved (*e.g.*, cubic yards) in a specified time period relative to the overall goal (*e.g.*, achieving a water quality standard, delisting a stream segment listed as impaired under CWA Section 303(d), or attaining a milestone under a TMDL).

In another example, a proposal for an urban watershed may be focused on reducing stormwater runoff and bacterial contamination. The anticipated output of this activity could be the number of septic systems retrofitted, the number of farmers who install livestock fencing, or the number of homeowners who participate in a rain barrel program. Anticipated outcomes of this project could be a reduction in fecal coliform concentration, a rise in macroinvertebrate populations, or the number of days a waterbody displays a "blue flag" (*i.e.*, is safe for swimming, fishing, or boating).

*D. Key Program Changes From FY 2005*

This year, EPA is making several important changes to the Targeted Watersheds Grant Program to make it more effective in addressing the Agency(s goals and to streamline review procedures. Key changes are described below and are explained in greater detail in later Sections of this notice.

First, in an effort to improve efficiencies, EPA is combining its FY 2006 and anticipated FY 2007 funds into one solicitation. The total amount to be awarded under this solicitation will depend upon the FY 2007 funding level and the quality of the proposals received.

Second, EPA is eliminating the limit on the number of proposals a Governor or Tribal Leader can nominate. In previous years, Governors and Tribal Leaders were only allowed to submit two nominations for proposals that resided entirely within their state/jurisdiction. This year however, Governors or Tribal Leaders may forward more than two proposals for consideration.

Third, the Agency is restoring the geographic scope of the solicitation. While last year Chesapeake Bay watershed projects were excluded from the national competition, this year projects that are in the Chesapeake Bay watershed are eligible to compete.

Fourth, EPA has amended the evaluation criteria. Environmental Significance has been added as a criterion. Applicants will be required to explain, and will be scored on, the importance, relevance, connection to, and applicability of the proposal to the Agency's strategic goals. In addition, two additional criteria related to the applicant's past performance have been added. Programmatic Capability and Qualifications of the Applicant will evaluate the extent to which the applicant possesses the technical experience and administrative ability to carry out the grant or cooperative agreement, and Environmental Results Past Performance will evaluate how the applicant documented and/or reported on its progress towards achieving the expected results (*i.e.*, outputs and outcomes) under prior agreements. This year, aspects of the Innovation criterion (*e.g.*, new technologies or market-based trading projects) will be addressed in the Quality of Proposal criterion.

Fifth, the applicant will be allotted more space in which to describe its proposal. Instead of the 10-page, double-spaced limitation in the past, applicants will be allowed a total of 12 pages with no spacing limitations in which to present their proposals. All materials including the proposal narrative, budget narrative, grants management experience, tables, timelines, graphs, maps, and pictures must be included in the 12 pages. The 12-page limitation does not include the SF 424, the SF 424A, the Governor or Tribal Leader nomination letter(s) and the accompanying letters of support. See Section IV for more information.

Sixth, EPA has extended the length of the grant period from three to a maximum of five years. The Agency, in general, expects project implementation to be completed within two to three years and the monitoring component conducted continuously throughout the project period.

Finally, the Federal Government now provides the option to apply for many grants and submit materials through a standardized electronic grants application system called Grants.gov. In addition, this will be the last Targeted Watersheds Grant Program request for proposals that will be announced in the **Federal Register**.

*E. Statutory Authority*

The grants or cooperative agreements funded as a result of this announcement will be awarded under the independent authority contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–54) and the anticipated Department of the Interior, Environment, and Related Agencies Appropriations Act for 2007.

*F. Geospatial Information*

Grants awarded under this announcement may involve Geospatial Information. Geospatial data generally means information that identifies, depicts, or describes the geographic locations, boundaries, or characteristics of inhabitants and natural or constructed features on the Earth. This includes such information derived from, among other sources, socio-demographic analysis, economic analysis, land information records and land use information processing, statistical analysis, survey and observational methodologies, environmental analysis, critical infrastructure protection, satellites, remote sensing, airborne imagery collection, mapping, engineering, construction, global positioning systems, and surveying technologies

and activities. It also includes individual point or site-specific data that are referenced to a location on the earth and digital aerial imagery of the earth.

This information may be derived from, among other things, Geographic Information Systems (GIS), Global Positioning Systems (GPS), remote sensing, mapping, charting, and surveying technologies, or statistical data. For purposes of EPA grants, this refers to geographically based information or data or the tools, applications or hardware that allow one to collect, manage, analyze, store or distribute data in a geographic manner.

**II. Award Information**

Approximately $7.1 million to about $16 million is expected to be available for awards under this announcement (these totals represent combining a portion of both 2006 and anticipated 2007 Targeted Watersheds Grant funds) depending upon the amount of FY 2007 funds and the quality of proposals received. EPA plans to award approximately 9 to 20 grants or cooperative agreements under this announcement. Anticipated awards will range from approximately $600,000 to $900,000 each, depending on the amount requested, the overall size and scope of the project, and the total amount of funds available.

Awards under this program can have up to a five-year project period, if warranted. Recipients should complete their project implementation within two to three years and continue to monitor water quality and other pertinent metrics for an additional one to two years, for a maximum of up to five years. The total project period, including any no-cost, one-year extensions provided to award recipients cannot exceed five years.

EPA reserves the right to partially fund proposals/applications under this announcement by funding discrete activities, portions, or phases of proposed projects. If EPA decides to partially fund a proposal/application, it will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal/application, or portion thereof, was evaluated and selected for award, and that maintains the integrity of the competition and selection process. EPA also reserves the right to make no awards, or fewer awards than expected under this announcement.

EPA reserves the right to make additional awards under this announcement consistent with Agency policy, if additional funding becomes available. Any additional selections for awards will be made no later than six months after the original selection decisions.

Selected recipients will enter into a funding agreement with the applicable EPA Regional Office (see Section VII). The Targeted Watersheds Grant Program funds both grants and cooperative agreements. Although EPA will negotiate precise terms and conditions relating to substantial involvement as part of the award process, cooperative agreements permit substantial involvement between the EPA Project Officer and the selected applicant in the performance of work supported by program funds. Federal involvement for projects selected may include close monitoring of the recipient(s performance; collaboration during the performance of the scope of work; in accordance with 40 CFR 31.36(g), review of proposed procurements; reviewing qualifications of key personnel (EPA does not have the authority to select employees or contractors employed by the recipient); and/or review and comment on the content of publications (printed or electronic) prepared (the final decision on the content of reports rests with the recipient).

**III. Eligibility Information**

*A. Eligible Applicants*

States, local governments, public and private nonprofit institutions/organizations, federally recognized Indian tribal governments, U.S. territories or possessions, and interstate agencies are eligible to apply. For-profit commercial entities and all Federal agencies are ineligible. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible to apply.

*B. Cost Sharing/Match Requirement*

EPA is requiring applicants to demonstrate in their proposal submission how they will provide the minimum non-federal match of 25 percent of the total cost of the proposal. This means EPA will fund a maximum of 75 percent of the total project cost. In addition to cash, matching funds can come from in-kind contributions, such as the use of volunteers and/or donated time, equipment, expertise, *etc.*, consistent with the regulations governing matching fund requirements (40 CFR 31.24 or 40 CFR 30.23). Federal funds may not be used to meet the match requirement for this grant program unless authorized by the statute governing their use.

Federally recognized Indian tribal governments may be exempt from this match requirement if fulfilling the match requirement would impose undue hardship. Tribal governments wishing to be exempt from the minimum 25 percent match requirement must submit a one-page written request with justification within 30 calendar days from the date of this announcement. Match exemption requests should be sent directly to the EPA contact listed in Section IV.D. EPA will notify the potential applicant of its decision within 10 business days. If approved, the proposal will be scored as if it meets the minimum 25 percent match.

To determine if the minimum match is met, the following formulas may be helpful:

(1) Amount ($) requested from EPA/Cost ($) of entire project ≥ 0.75, or

(2) Total cost ($) of proposal/4 = Amount ($) needed for match.

For example, if the total cost of the project is $1 million, the applicant must be able to provide $250,000 in matching funds or services. In this example, the federally funded portion of the project would be $750,000.

*C. Threshold Eligibility Criteria*

These are requirements which, if not met at the time of proposal submission, will result in elimination of the proposal from consideration for funding. Only proposals that meet all of these criteria will be evaluated against the ranking factors in Section V of this announcement. Applicants deemed ineligible for funding consideration as a result of the threshold eligibility review will be notified within 15 calendar days of the ineligibility determination.

1. An applicant must meet the eligibility requirements as described in Section III.A.

2. Applicants must demonstrate how they will provide a match of 25 percent of the total project cost as described in Section III.B above.

3. The proposal must be nominated by a State Governor or Tribal Leader.

4. The proposal must contain the six components as described in Section IV.C.

5. Submissions that are faxed or sent by standard U.S. Postal Service (USPS) parcel post will not be accepted, as described in Section IV.D.

6. Proposals must be received by EPA or through Grants.gov on or before the solicitation closing date and time specified in Section IV. Proposals received after the closing date and time will be returned to the sender without

further consideration. In addition, pages submitted in excess of the 12-page limitation described in Section IV.C will not be reviewed.

*D. Funding Restrictions*

EPA has chosen to declare certain projects or activities ineligible for funding. These include activities required or regulated under the CWA. For example, activities for the development of Total Maximum Daily Loads (TMDLs) and Phase II Stormwater projects will not be funded. Activities implementing the non-regulatory component of TMDLs (*e.g.*, the elements of a watershed plan that address non-point source pollution), however, are eligible. The construction of buildings or other major structures, or the purchase of major equipment or machinery will not be funded under this program. Proposals containing a sub-award project (also called mini-grants) are eligible, but the portion that is to be regranted to third parties within the watershed via a smaller-scaled competition should account for no more than 20 percent of the requested funding amount. If proposals are submitted that have ineligible projects or activities, those projects or activities in the proposals will not be considered for funding.

All costs incurred under this program must be allowable under the applicable Office of Management and Budget (OMB) Cost Circulars: A–87 (States and local governments), A–122 (nonprofit organizations), or A–21 (universities). Copies of these circulars can be found at *http://www.whitehouse.gov/omb/circulars/*. In accordance with EPA policy and the OMB circulars, as appropriate, any recipient of funding must agree not to use assistance funds for lobbying, fund-raising, or political activities (*i.e.*, lobbying members of Congress or lobbying for other Federal grants, cooperative agreements, or contracts).

## IV. Application and Submission Information

*A. Address To Request Application Package*

Grant application forms, including Standard Forms SF 424 and SF 424A, are available at *http://www.epa.gov/ogd/grants/how_to_apply.htm* and by mail upon request by calling the Grants Administration Division at (202) 564–5320.

*B. Form of Application Submission*

Applicants must submit their proposal using one of the two methods outlined below. All proposals must be prepared and include the information as described in Section IV.C regardless of mode of submission.

1. Hard Copy and Compact Disc (CD)

Two hard copies of the complete proposal package as described below in Section IV.C, and a CD of the complete proposal package, are required to be sent by express mail or courier service, or hand delivered. Please mark all submissions: *ATTN: TWG—Implementation* (see Section IV.D for address). The CD may be in Adobe Portable Document Format (.pdf), Microsoft Word (.doc), or WordPerfect (.wpd). Nomination letter(s), letters of support, and maps will need to be scanned so that they can be submitted as part of the CD. Pictures and/or computer generated maps may be included as separate files using .jpg or .tif format.

2. Grants.gov Submission

Applicants who wish to submit their materials electronically through the Federal Government's Grants.gov Web site may do so. Grants.gov allows an applicant to download a proposal or application package template and complete the package offline based on agency instructions. After an applicant completes the required proposal or application package, it can submit the package electronically to Grants.gov, which transmits the package to the funding agency. Nomination letter(s), letters of support, pictures, and maps will need to be scanned so that they can be submitted electronically as part of the proposal package. Pictures and/or computer generated maps must also be in an electronic format and submitted along with the proposal package.

If you wish to apply electronically via Grants.gov, the electronic submission of your proposal package must be made by an official representative of your institution who is registered with Grants.gov and authorized to sign applications for Federal assistance. For more information, go to *http://www.grants.gov* and click on "Get Registered" on the left side of the page. Note that the registration process may take a week or longer to complete. If your organization is not currently registered with Grants.gov, please encourage your office to designate an AOR and ask that individual to begin the registration process as soon as possible.

To begin the application process for this grant program, go to *http://www.grants.gov* and click on the "Apply for Grants" tab on the left of the page. Then click on "Apply Step 1: Download a Grant Application Package and Instructions" to download the PureEdge viewer and obtain the application package and instructions for applying under this announcement using grants.gov (*https://apply.grants.gov/forms_apps_idx.html*). You may retrieve the application package and instructions by entering the Funding Opportunity Number, EPA–OW–OWOW–06–3, or the CFDA number, in the space provided. Then complete and submit the application package as indicated. You may also be able to access the application package by clicking on the button "How To Apply" at the top right of the synopsis page for this announcement on *http://www.grants.gov* (to find the synopsis page, go to *http://www.grants.gov* and click on the "Find Grant Opportunities" button on the left side of the page and then go to Search Opportunities and use the Browse by Agency feature to find EPA opportunities).

Application/proposal materials submitted through Grants.gov will be time/date stamped electronically. Complete instructions on applying through Grants.gov are provided in Attachment A to this announcement.

*C. Content of Application Submission*

Apart from the SF 424, the SF 424A, the Governor or Tribal Leader nomination letter(s), and the accompanying letters of support, the remaining parts of the proposal package (comprised of items 2–3 below) must not exceed 12 pages in length and should use a 12-point font. Pages in excess of 12 will not be reviewed. All materials including the project narrative, budget, tables, timeline, charts, graphs, maps, and pictures must be included within the 12 pages. Moreover, any appendices aside from the nomination letter and support letters will not be reviewed. Applicants are responsible for the contents of their proposals.

Each proposal package must contain all of the components listed in this section. Failure to submit any of the six components will result in disqualification and removal from the selection process.

1. Nomination letter

A letter signed by the Governor or Tribal Leader formally nominating the watershed for consideration for funding must accompany each proposal package.

2. Proposal Narrative

a. *Cover page.* The cover page should include:

(1) The name of the watershed along with the designated 8-digit Hydrological Unit Code(s) (HUCs);

(2) The impaired waters, such as any degraded stream segments within the project area that are on the State's 303(d) list;

(3) Nominee contact information (*i.e.*, name, affiliation, address, telephone, and E-mail of the person with whom the Agency should correspond);

(4) Tax status or other description of organization; and

(5) Internet Web site (*i.e.*, URL) of the organization, if available.

HUCs (also known as USGS Cataloging Units) and State 303(d) listings can be found on EPA(s Surf Your Watershed Web site at *http://www.epa.gov/surf/*.

b. *Abstract.* Provide a brief (approximately 150-word) executive summary of the proposal. This should include a brief description of the perceived need for the work, the proposed work, and the anticipated outputs and outcomes.

c. *Project Narrative.* The narrative description of the proposed tasks and activities must include the following sections:

(1) *Characterization of the watershed.* Describe the watershed, including any critical or significant natural resources, such as wetlands. Include a description of the physical, chemical, biological, ecological, socioeconomic, and cultural characteristics, including rural, urban, and environmental justice areas. Briefly describe the environmental problems and threats facing the watershed and the existing watershed plans and planning efforts addressing the problems and threats, including demographics of the impacts.

(2) *Project need.* Describe the environmental significance of the project, that is, the problem or conservation issue(s) to be addressed, why it is a priority, and the context relevant to the overall watershed plan. The objectives of the proposal and the immediate and long-term desired outcomes should be described relative to the overall environmental conditions. An assessment of the natural resource and environmental conditions and evidence of problem sources, along with the prioritization of the threats and impairments facing the watershed should be included. The prioritization should focus on those threats and impairments that will be addressed by the proposal.

(3) *Project plan.* Describe the work that will be done using Targeted Watersheds Grant funding. Identify the specific deliverables and the anticipated outcomes (*i.e.*, quantifiable results) associated with the major project components.

(i) *Project components:* Describe in detail the tasks and activities for each project for each year of the project period. Include milestones and/or timelines for accomplishing tasks for the project period. Explain how the projects fit together to benefit the watershed as a whole and are ready for implementation (*i.e.*, feasibility). Include in this section why the proposal will work and what makes it innovative. If the proposal is a market-based trading project, describe the drivers, the buyers and sellers, and the scheme already in place so that a trade can begin.

(ii) *Partnering:* Describe how you will engage partners and other stakeholders in your project. Interjurisdictional watershed partnerships (*i.e.*, those that encompass abutting areas and thus neighboring political authorities) are encouraged. Watershed proposals that encompass more than one governmental authority will be considered interjurisdictional provided that the Governor, Tribal Leader or local government elected official, or the appropriate water agency in the adjacent State, Tribe, or local government entity is a partner or otherwise supports the project(s).

(iii) *Financial Integrity/Budget:* Explanations of the costs associated with each project should be included. Description of costs should correspond to figures presented in the SF 424A (see item 6).

(4) *Anticipated Outputs and Outcomes.* Applicants must include specific statements describing the anticipated environmental results of the proposed project in terms of well-defined "outputs" and to the maximum extent practicable, well-defined "outcomes" (See Section I for details on outputs and outcomes).

(i) *Monitoring and measuring:* Describe the water quality monitoring and assessment that will be conducted consistent with the project components. Identify appropriate environmental indicators that will be monitored, and describe the method for evaluating environmental improvements. Describe the methodology (*i.e.*, sampling, survey models, etc.) and time table that will be used to measure progress, including your approach to measuring progress towards achieving the expected project outcomes and outputs including those identified in Section I.

(ii) *Environmental Results Past Performance:* Identify federally funded assistance agreements that your organization performed within the last three years (no more than five and preferably EPA agreements) and briefly describe how you documented and/or reported on whether you were making progress towards achieving the expected results (*i.e.*, outputs and outcomes) under those agreements. If you were not making progress, please indicate whether, and how, you documented why not. If you do not have any relevant or available environmental results past performance information, please indicate this in the proposal and you will receive a neutral score for this factor under Section V.

(5) *Peer Outreach and Information Transfer.* Describe the outreach component of the project. Describe the strategy for disseminating the results, including lessons learned, of the project among watershed organizations and governmental agencies with similar environmental challenges within the project watershed and to a wider (*i.e.*, regional or national) audience. Describe how the project will promote and actively conduct technology transfer or provide technical assistance that improves the knowledge of state and local decision-makers.

(6) *Programmatic Capability/ Technical Experience.* Identify federally funded assistance agreements similar in size, scope, and relevance to the proposed project that your organization performed within the last three years (no more than five and preferably EPA agreements) and briefly describe (i) whether, and how, you were able to successfully complete and manage those agreements and (ii) your history of meeting the reporting requirements under those agreements including submitting acceptable final technical reports. If you do not have any relevant or available past performance or reporting information, please indicate this in the proposal and you will receive a neutral score for these factors under Section V.

In addition, provide information on your organizational experience and plan for timely and successfully achieving the objectives of the proposed project, and your staff expertise/qualifications, staff knowledge, and resources or the ability to obtain them, to successfully achieve the goals of the proposed project.

**Note:** The proposal narrative should also include any additional information, to the extent not otherwise addressed above, that addresses the selection criteria found in Section V.A.

3. Map(s)

A map of the watershed and the proposed work areas must accompany the narrative text.

4. SF 424A

In addition to the narrative text, applicants must provide a detailed

breakdown of cost by category for each project on the SF 424A. All project costs including grant administration costs, matching funds, other leveraged funds, and travel, including travel to the annual conference (see Section VIII.B), should be included.

5. Letter(s) of Support

To substantiate the information contained in the narrative portion of the submission, letters verifying partnerships and matching funds are required. Applicants are encouraged to demonstrate active involvement of both public and private partners via letters of support. All letters must be on the official letterhead of the agency or organization.

(a) Signed letter(s) from active partners indicating their commitment to implementing the workplan or specific proposed projects.

(b) A minimum of one letter signed by an authorizing official from an entity committing to provide matching funds, either in cash or in-kind contributions, including the total value of its commitment toward the projects.

(c) For interjurisdictional consideration, a signed letter(s) from the Governor, Tribal Leader or local government elected official, or the appropriate water agency in the adjacent State, Tribe, or local government entity expressing its support and participation in the proposed project(s).

6. Signed SF 424

*D. Submission Dates and Times*

Applicants who choose to submit their materials in hard copy form must send two copies of their complete proposal packages and the CD to Erin Collard, Office of Wetlands, Oceans and Watersheds; U.S. EPA; Room 7136G; 1301 Constitution Avenue, NW.; Washington, DC 20004; telephone: 202–566–2655. Proposals submitted to the above address will be considered if received through courier, hand-delivery, or by express delivery service by 5 p.m., Eastern Standard Time, November 13, 2006. Due to security measures, EPA cannot accept submission packages sent by standard U.S. Postal Service parcel post; however, USPS overnight or two-day express delivery is acceptable.

Submissions through Grants.gov must be received by Grants.gov by 5 p.m., Eastern Standard Time, November 13, 2006.

*E. Intergovernmental Review*

If selected for award, applicants must comply with the Intergovernmental Review Process and/or consultation provisions of Section 204, Demonstration Cities and Metropolitan Development Act, if applicable, which are contained in 40 CFR part 29. Applicants should consult the office or official designated as the single point of contact in his or her state for more information on the process the state requires to be followed in applying for assistance if the state has selected the program for review. Further information regarding this requirement will be provided if your application is selected for funding.

*F. Confidential Business Information*

In accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate such claims in accordance with 40 CFR part 2. Applicants must clearly mark applications/proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant which is otherwise required by 40 CFR 2.204(2) prior to disclosure.

**V. Application Review Information**

*A. Evaluation Criteria*

All eligible proposals, based on the Section III threshold eligibility review, will be evaluated based on the following criteria and weights below. Points will be awarded based on how well each evaluation criterion and/or subcriterion is addressed.

Weight based on a 65 point scale.

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| 20 points | 1. Quality of Proposal. Under this criterion, proposals will be evaluated based on the extent and quality to which they describe project(s) that are part of larger watershed assessments and plans and reflect a watershed-based approach to conservation and restoration. Reviewers will evaluate whether the approach is technically/scientifically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and measurable objectives. Under this criterion, reviewers will focus on the following components:<br>(a) Feasibility. The extent and quality to which the applicant demonstrates an understanding of priority water resource problems within the watershed, has substantially completed the assessment and planning phase, and is prepared to begin work. Reviewers will look at level of project development (*i.e.*, the readiness of the project, technical merit, and expected environmental improvements) (15 points).<br>(b) Innovation. The extent and quality to which the proposal describes unique, creative or novel approaches to environmental restoration or protection. Emphasis will be placed on how well the proposal demonstrates a thoughtful and strategic approach to problem-solving including, but not limited to, water quality trading (5 points). |
| 15 points | 2. Anticipated Outputs and Outcomes. Under this criterion, proposals will be evaluated based on the extent and quality to which a proposal clearly articulates a set of performance and progress measures and identified and measurable indicators as identified in Section I of this announcement.<br>(a) Measuring and Monitoring. The extent and quality to which the proposal demonstrates a sound plan for measuring progress toward achieving the expected outputs and outcomes including those identified in Section I of the announcement (10 points).<br>(b) Past Performance. The extent and quality to which the applicant adequately documented and/or reported on their progress towards achieving the expected results (outcomes and outputs) under Federal agency assistance agreements performed within the last three years, and if such progress was not being made whether the applicant adequately documented and/or reported why not (5 points).<br>NOTE: In evaluating applicants under this factor, EPA will consider the information provided by the applicant and may also consider relevant information from other sources including agency files and prior/current grantors (to verify and/or supplement the information supplied by the applicant). Applicants with no relevant or available past performance reporting history will receive a neutral score for this factor of 2.5 points. |
| 5 points | 3. Environmental Significance. Under this criterion, proposals will be evaluated based on: (a) The extent and quality to which the proposal demonstrates relevance to solving an important environmental problem in that watershed and reflects state and Federal environmental priorities and goals (2.5 points) and (b) the extent and quality to which the proposed project(s) are interrelated to improve the water quality and water resources, including wetlands, within the watershed (2.5 points). |

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| 10 points | 4. Broad Support. Under this criterion, proposals will be evaluated based on how well they show the applicant's ability to demonstrate and substantiate strong collaborative partnerships and document effective working relationships among state, tribal, local entities, and broad-based community involvement. Scores will be based on the extent and quality to which the applicant can show a wide variety of public, private, and non-profit participation, and the level to which the applicant can demonstrate strong and diverse stakeholder stewardship and support (5 points). Reviewers will also consider interjurisdictionality, that is the extent and quality to which the proposal actively involves more than one governmental entity (*i.e.*, Federal, state, tribal, or local government entity) (5 points). |
| 5 points | 5. Peer Outreach and Information Transfer. Under this criterion, proposals will be evaluated based on the design and breadth of the outreach component. The score will be based on the extent and quality to which the applicant demonstrates a clear strategy for transferring the knowledge and experience garnered to other watershed organizations and agencies with similar environmental challenges both within and beyond the affected watershed. |
| 5 points | 6. Financial Integrity. Under this criterion, proposals will be evaluated based on the adequacy of the budget information provided, whether it is reasonable and clearly presented, and the extent to which the applicant can demonstrate a broad range of leveraging capacity. |
| 5 points | 7. Programmatic Capability (Technical Experience) and Qualifications of the Applicant. Under this criterion, applicants will be evaluated based on their ability to successfully complete and manage the proposed project taking into account the following factors:<br>(i) Past performance in successfully completing and managing federally funded assistance agreements similar in size, scope, and relevance to the proposed project within the last three years (1 point);<br>(ii) History of meeting reporting requirements under federally funded assistance agreements similar in size, scope, and relevance to the proposed project within the last three years and submitting acceptable final technical reports under those agreements (1 point);<br>(iii) Organizational experience and plan for timely and successfully achieving the objectives of the proposed project (1 point); and<br>(iv) Staff expertise/qualifications, staff knowledge, and resources or the ability to obtain them, to successfully achieve the goals of the project (2 points).<br>NOTE: In evaluating applicants under this factor, the Agency will consider the information supplied by the applicant and may also consider relevant information from other sources including agency files and prior/current grantors (*i.e.*, to verify and/or supplement the information supplied by the applicant). Applicants with no relevant or available past performance information or reporting history (*i.e.*, items (i) and (ii) under this criterion) will receive a neutral score of one-half point for each of those elements. |

*B. Review and Selection Process*

All proposals received by EPA or submitted electronically through Grants.gov by the solicitation deadline will be sent to the appropriate EPA regional office(s) based on project location. All proposals will be evaluated against the threshold criteria listed in Section III of this announcement. Proposals that do not pass the threshold review will not be considered for funding and the applicant will be so notified.

All eligible proposals within each region will be reviewed and scored by a panel of EPA regional watershed experts using the evaluation criteria outlined in Section V.A. Based on the review, each regional panel will develop a list of the most highly rated proposals to submit to their Regional Administrator. Based on the panel's scores, each Regional Administrator can recommend up to four proposals to the national panel.

The national panel, which will consist of representatives from agency programs and regional offices, will evaluate the (up to) 40 semi-finalists based on: (1) Geographic diversity, (2) amount of funds leveraged, and (3) project diversity. Based on the review of the semi-finalists against these factors, the panel will develop a list of proposals to recommend for funding to submit to the Selection Official (typically the Assistant Administrator for Water) for approval. In making the final award decisions, the Selection Official will consider the national panel's recommendation and may also take into account national program priorities.

## VI. Award Administration Information

*A. Award Notices*

All applicants, including those who are not selected for funding, will be notified by mail. Successful applicant(s) will be invited to submit a complete application package prior to award (see 40 CFR 30.12 and 31.10) that will be due approximately 60 days after being notified. Required forms and instructions for preparing and submitting the completed application will be provided at that time.

EPA expects to announce its selections early in calendar year 2007. The exact amount of funds to be awarded, specific activities, duration of the projects, and role of the EPA Project Officer will be determined in the pre-award negotiations between the selected applicant and EPA.

EPA reserves the right to negotiate and/or adjust the final grant amount and workplan content prior to award, as appropriate and consistent with Agency policy including the Assistance Agreement Competition Policy, EPA Order 5700.5A1.

An approvable workplan is required to include:

1. Workplan components to be funded under the grant or cooperative agreement;

2. Estimated work years and the estimated funding amounts for each workplan component;

3. Workplan commitments for each workplan component and a timeframe for their accomplishment;

4. Performance evaluation process and reporting schedule; and

5. Roles and responsibilities of the recipient and EPA in carrying out the workplan commitments.

In addition, successful applicants will be required to certify that they have not been Debarred or Suspended from participation in Federal assistance awards in accordance with 40 CFR part 32.

A listing of successful proposals will be posted on *http://www.epa.gov/twg* Web site address at the conclusion of the competition. This Web site may also contain information about this announcement including information concerning deadline extensions or other modifications.

Applicants will receive a notice of award through postal mail. The notice of award signed by the Award Official (or equivalent) in the Grants Administration Division is the authorizing document, and will be mailed to the individual signing the original application.

*B. Administrative and National Policy Requirements*

The general award and administration process for all Targeted Watersheds Grants is governed by regulations at 40 CFR part 30 ("Uniform Administrative Requirements for Grants and Agreements to Institutions of Higher Education, Hospitals, and Other Non-profit Organizations") and 40 CFR part

31 ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments").

DUNS Number

All applicants are required to provide a number from the Dun and Bradstreet Data Universal Numbering System (DUNS) when applying for Federal assistance agreements. Organizations can receive a DUNS number in one day at no cost by calling the dedicated toll-free request line at 1–866–705–5711 or by visiting the Web site at *http://www.dnb.com.*

*C. Reporting*

Project monitoring and reporting requirements can be found in 40 CFR 30.50–30.52, 40 CFR 31.40–31.41. In general, recipients are responsible for managing the day-to-day operations and activities supported by the grant or cooperative agreement to assure compliance with applicable Federal requirements, and for ensuring that established milestones and performance goals are being achieved. Performance reports and financial reports must be submitted quarterly and are due 30 days after the reporting period. The format for these reports will be identified during the grant application time frame, and will include reporting on established performance measures indicated in the project description (*i.e.*, goals, outputs and outcomes). The final report is due 90 days after the assistance agreement has expired.

*D. Dispute Process*

Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in 70 FR 3629, 3630 (January 26, 2005), which can be found at: *http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05–1371.htm.*

*E. Administrative Capability Requirement*

Nonprofit applicants that are recommended for funding under this announcement may be subject to pre-award administrative capability reviews consistent with Section 8b, 8c, and 9d of *EPA Order 5700.8—Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards (http://www.epa.gov/ogd/grants/award/5700_8.pdf).* In addition, nonprofit applicants that qualify for funding may, depending on the size of the award, be required to fill out and submit to the Grants Management Office the Administrative Capabilities Form with supporting documents contained in Appendix A of EPA Order 5700.8.

**VII. Agency Contacts**

Note to Applicants: EPA will respond to questions from individual applicants regarding threshold eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification about the announcement. Questions must be submitted in writing and received by EPA before October 30, 2006 to the appropriate EPA Regional Contact and written responses will be posted on EPA's Web site at: *http://www.epa.gov/twg.* In accordance with EPA's Competition Policy (EPA Order 5700.5A1), EPA staff will not meet with individual applicants or discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to ranking criteria.

*EPA Regional Contacts*

*Region I—Connecticut, Maine, Massachusetts, Rhode Island, Vermont, New Hampshire:* Rob Adler or Jerry Potamis; telephones 617–918–1396 and 617–918–1651; E-mails *adler.robert@epa.gov* and *potamis.gerald@epa.gov,* respectively.

*Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands:* Cyndy Kopitsky; telephone 212–637–3832; E-mail *kopitsky.cyndy@epa.gov.*

*Region III—Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, DC:* Ralph Spagnolo; telephone 215–814–2718; E-mail *spagnolo.ralph@epa.gov.*

*Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Kentucky, Tennessee:* William L. Cox; telephone 404–562–9351; E-mail *cox.williaml@epa.gov.*

*Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin:* Paul Thomas; telephone 312–886–7742; E-mail *thomas.paul@epa.gov.*

*Region VI—Louisiana, Texas, Oklahoma, Arkansas, New Mexico:* Brad Lamb; telephone 214–665–6683; E-mail *lamb.brad@epa.gov.*

*Region VII—Iowa, Kansas, Missouri, Nebraska:* Jaci Ferguson; telephone 417–575–8028; E-mail *ferguson.jaci@epa.gov.*

*Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming:* Gary Kleeman; telephone 303–312–6246; E-mail *kleeman.gary@epa.gov.*

*Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Mariana Islands, Guam:* Sam Ziegler; telephone 415–972–3399; E-mail *ziegler.sam@epa.gov*

*Region X—Alaska, Idaho, Oregon, Washington:* Bevin Reid; telephone 206–553–1566; E-mail *reid.bevin@epa.gov.*

**VIII. Other Information**

*A. Quality Assurance and Quality Control (QA/QC)*

Certain quality assurance and/or quality control (QA/QC) and peer review requirements are applicable to the collection of environmental data. Environmental data are any measurements or information that describe environmental processes, location, or condition; ecological or health effects and consequences; or the performance of environmental technology. Environmental data also include information collected directly from measurements, produced from models, and obtained from other sources such as data bases or published literature. Regulations pertaining to QA/QC requirements can be found in 40 CFR 30.54 and 31.45. Additional guidance can be found at *http://www.epa.gov/quality/qa_docs.html#noeparqt.*

Applicants should allow sufficient time and resources for this process in their proposed projects. If your organization does not have a Quality Management System in place, one must be developed. A project specific Quality Assurance Project Plan (QAPP) must be submitted and approved by EPA. Allow 4–6 months in your timeline for approval of these plans. All projects will require a QAPP.

*B. Assistance Agreement Terms and Conditions*

1. Annual Grantee Conference

The grantee must attend the annual National Targeted Watersheds Grantee Conference at the initiation of the project and a subsequent annual conference to be determined in consultation with the EPA Project Officer. Attendance at two conferences is mandatory. The purpose of these conferences is to provide watershed organizations with training and support to better restore, protect, and manage their watersheds, provide help and assistance regarding Agency grants management requirements and, most importantly, provide grant recipients with opportunities to share successful approaches with each other.

Attendance at a minimum of two conferences will be mandatory and will be included in the *Terms and Conditions* of the grant or cooperative agreement. The recipient will be allowed to use award funds to pay for travel and lodging. The cost of hosting

the conference will be paid for by EPA. If the recipient wishes to use the award money for travel expenses, these costs must be included in the submitted proposed budget.

2. Information Technology

Also as a *Term and Condition* of the grant, recipients will be required to institute standardized reporting requirements into their workplans and include such costs in their budgets. All environmental data will be required to be entered into the Agency's Storage and Retrieval data system (STORET) and recipients may need to purchase appropriate ORACLE software. STORET is a repository for water quality, biological, and other physical data used by state environmental agencies, EPA and other Federal agencies, universities, private citizens, and many other organizations. Information regarding training sessions sponsored by EPA will be provided. Watershed organizations may also want to contact their state agency responsible for entering data into the system. More information about STORET can be found at *http://www.epa.gov/STORET.*

Dated: July 7, 2006.

**Benjamin H. Grumbles,**

*Assistant Administrator for Water.*

**Attachment A—How To Submit Your Proposal Through Grants.gov**

At *http://www.grants.gov,* you will find step-by-step instructions which will help you to apply under this announcement. Proposals submitted through Grants.gov will be time/date stamped electronically.

If you wish to apply electronically via Grants.gov, the electronic submission of your proposal must be made by an official representative of your institution who is registered with Grants.gov and authorized to sign applications for Federal assistance. For more information, go to *http://www.grants.gov* and click on "Get Registered" on the left side of the page. Note that the registration process may take a week or longer to complete. If your organization is not currently registered with Grants.gov, please encourage your office to designate an Authorized Organization Representative (AOR) and ask that individual to begin the registration process as soon as possible.

To begin the application process for this announcement, go to *http://www.grants.gov* and click on the "Apply for Grants" tab on the left side of the page. Then click on "Apply Step 1: Download a Grant Application Package and Instructions" to download the PureEdge viewer and obtain the application package (*https://apply.grants.gov/forms_apps_idx.html*). You may retrieve the application package and instructions by entering the Funding Opportunity Number, *EPA–OW–OWOW–06–3,* or CFDA number, in the space provided. You may also be able to access the application package by clicking on the button "How To Apply" at the top right of the synopsis page for this announcement on *http://www.grants.gov* (to find the synopsis page go to *http://www.grants.gov* and click on the "Find Grant Opportunities" button on the left side of the page and then go to "Search Opportunities" and use the "Browse by Agency" feature to find EPA opportunities).

Applicants are required to submit electronic versions of the documents described in Section IV.C of the announcement to apply through Grants.gov: the proposal narrative, letters of nomination and support, map, SF 424 and SF 424A.

For the Proposal Narrative portion, you will need to attach electronic files. Prepare your narrative as described in Section IV.C of the announcement and save the document to your computer as an MS Word, PDF or WordPerfect file. When you are ready to attach your proposal narrative to the application package, click on "Project Narrative Attachment Form," and open the form. Click "Add Mandatory Project Narrative File," and then attach your narrative (previously saved to your computer) using the browse window that appears. You may then click "View Mandatory Project Narrative File" to view it. Enter a brief descriptive title of your project in the space beside "Mandatory Project Narrative File Filename," the filename should be no more than 40 characters long. If there other attachments that you would like to submit to accompany your narrative, you may click "add Optional Project Narrative File" and proceed as before. When you have finished attaching the necessary documents, click "Close Form." When you return to the "Grant Application Package" page, select the "Project Narrative Attachment Form" and click "Move Form to Submission List." The form should now appear in the box that says, "Mandatory Completed Documents for Submission."

For the SF 424 and SF 424A, click on the appropriate form and then click "Open Form" below the box. The fields that must be completed will be highlighted in yellow. Optional fields and completed fields will be displayed in white. If you enter an invalid response or incomplete information in a field, you will receive an error message. When you have finished filling out each form, click "Save." When you return to the electronic Grant Application Package page, click on the form you just completed, and then click on the box that says, "Move Form to Submission List." This action moves the document over to the box that says, "Mandatory Completed Documents for Submission." All additional documents may be submitted as "Attachments".

Once you have finished filling out all of the forms/attachments and they appear in one of the "Completed Documents for Submission" boxes, click the "Save" button that appears at the top of the Web page. It is suggested that you save the document a second time, using a different name, since this will make it easier to submit an amended package later if necessary.

Please use the following format when saving your file: "Applicant Name—TWG—FY06—Watershed Name—State." If it becomes necessary to submit an amended package at a later date, then the name of the 2nd submission should be changed to "Applicant Name—TWG—FY06—Watershed Name—State—2nd Submission." Once your application package has been completed and saved, send it to your AOR for submission to U.S. EPA through Grants.gov. Please advise your AOR to close all other software programs before attempting to submit the application package through Grants.gov.

In the "Application Filing Name" box, your AOR should enter your organization's name (abbreviated where possible), the appropriate region, the fiscal year (*e.g.*, FY06), and the grant category (*e.g.*, Environmental Quality). The filing name should not exceed 40 characters. From the "Grant Application Package" page, your AOR may submit the application package by clicking the "Submit" button that appears at the top of the page. The AOR will then be asked to verify the agency and funding opportunity number for which the application package is being submitted. If problems are encountered during the submission process, the AOR should reboot his/her computer before trying to submit the application package again. [It may be necessary to turn off the computer (not just restart it) before attempting to submit the package again.] If the AOR continues to experience submission problems, he/she may contact Grants.gov for assistance by phone at 1–800–518–4726 or E-mail at *http://www/grants.gov/help/help.jsp* and at the same time, should notify Carol Peterson at 202–566–1304 or *peterson.carol@epa.gov* of the problem. If you have any technical difficulties at any time during this process, please

refer to *http://www.grants.gov/help/help.jsp*.

[FR Doc. 06–6898 Filed 8–14–06; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0192; FRL–8064–1]**

## Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Atrazine in or on Leafy Vegetable Crop Group 4 (except Brassica) Commodities

**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 atrazine in or on leafy vegetable Crop Group 4 (except Brassica) commodities.

**DATES:** Comments must be received on or before September 14, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0192 and pesticide petition number (PP) 6F7022, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0192. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Hope Johnson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5410; e-mail address: *johnson.hope@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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 this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

**II. What Action is the Agency Taking?**

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA 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 pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

**New Tolerance**

*PP 6F7022*. Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27409, proposes to establish a tolerance for residues of the herbicide atrazine in or on food commodities vegetable, leafy, except Brassica, Group 4 at 0.60 parts per million (ppm). Syngenta has submitted practical analytical methods (AG-484, MRID 40431365) for detecting and measuring the level of atrazine and its chloro-s-triazine metabolites in or on various crop commodities.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 7, 2006.

**Donald R. Stubbs,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6–13315 Filed 8–14–06; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 2006.

**A. Federal Reserve Bank of Cleveland** (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. Jerome C. Kohlhepp*, Edgewood, Kentucky; to acquire voting shares of F.N.B. Bancorporation, Inc., Fort Mitchell, Kentucky, and thereby indirectly acquire voting shares of First Bank of Northern Kentucky, Fort Mitchell, Kentucky.

Board of Governors of the Federal Reserve System, August 10, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–13324 Filed 8–14–06; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:30 a.m., Monday, August 21, 2006.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, August 11, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 06–6960 Filed 8–11–06; 2:43 pm]

BILLING CODE 6210–01–S

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

**TIME AND DATE:** 9 a.m. (EDT), August 21, 2006.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of the July 17, 2006 Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 11, 2006.

**Thomas K. Emswiler,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 06–6940 Filed 8–11–06; 11:48 am]

BILLING CODE 6760–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims

collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12⅝% for the quarter ended June 30, 2006. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: August 9, 2006.

**Jean Augustine,**

*Director, Office of Financial Policy and Reporting.*

[FR Doc. 06–6917 Filed 8–14–06; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality and Security Workgroup Meeting

**ACTION:** New Meeting Date.

**SUMMARY:** This notice announces the rescheduled date of the first meeting of the American Health Information Community Confidentiality and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.). The Confidentiality and Security Workgroup was created by the American Health Information Community as a cross-cutting Workgroup comprised of privacy, security, clinical, and technical experts, as well as representation from the consumer perspective.

*New Date Time:* August 21, 2006, 1 p.m. to 4 p.m. This meeting was previously scheduled to be held on August 4, 2006.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW, Washington, DC 20201), Conference Room 4090.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/workgroups.html.*

**SUPPLEMENTARY INFORMATION:** The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: August 3, 2006.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 06–6916 Filed 8–14–06; 8:45 am]

BILLING CODE 4150–24–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator; American Health Information Community Biosurveillance Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the eighth meeting of the American Health Information Community Biosurveillance Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

**DATES:** August 24, 2006 from 1 p.m. to 5 p.m.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. [Please bring photo ID for entry to a Federal building.]

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/bio_main.html.*

**SUPPLEMENTARY INFORMATION:** The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: August 3, 2006.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.*

[FR Doc. 06–6918 Filed 8–14–06; 8:45 am]

BILLING CODE 4150–24–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator, American Health Information Community Biosurveillance Data Steering Group Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the fourth meeting of the American Health Information Community Biosurveillance Data Steering Group in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

**DATES:** August 18, 2006, 10 a.m. to 4 p.m.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. [Please bring photo ID for entry to a Federal building.]

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/workgroups.html.*

**SUPPLEMENTARY INFORMATION:** The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: August 3, 2006.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 06–6919 Filed 8–14–06; 8:45 am]

BILLING CODE 4150–24–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Meeting of the President's Council on Bioethics on September 7–8, 2006

**AGENCY:** The President's Council on Bioethics, HHS.

**ACTION:** Notice.

**SUMMARY:** The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its twenty-sixth meeting, at which, among other things, it will hear presentations on and discuss issues in two broad areas: (1) Organ procurement, allocation, and transplantation and (2) the personal, social, and policy-related significance of genetic information and knowledge. The discussions in both areas are continuations of previous Council discussions. Subjects discussed at past Council meetings (although not on the agenda for the September 2006 meeting) include: human dignity, therapeutic and reproductive cloning, assisted reproduction, reproductive genetics, neuroscience, aging retardation, and lifespan-extension. Publications issued by the Council to date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004), *Reproduction and Responsibility:*

*The Regulation of New Biotechnologies* (March 2004), *Alternative Sources of Human Pluripotent Stem Cells: A White Paper* (May 2005), and *Taking Care: Ethical Caregiving in Our Aging Society* (September 2005).

**DATES:** The meeting will take place Thursday, September 7, 2006, from 9 a.m. to 5:15 p.m., ET; and Friday, September 8, 2006, from 8:30 a.m. to 12 noon, ET.

**ADDRESSES:** The Westin Embassy Row, 2100 Massachusetts Avenue, NW, Washington, DC 20008. Phone 202–293–2100.

*Agenda:* The meeting agenda will be posted at *http://www.bioethics.gov.*

*Public Comments:* The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:45 a.m., on Friday, September 8. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, NW, Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

Dated: August 7, 2006.

**F. Daniel Davis,**

*Executive Director, The President's Council on Bioethics.*

[FR Doc. E6–13350 Filed 8–14–06; 8:45 am]

**BILLING CODE 4154–06–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Meeting of the Citizens' Health Care Working Group

**AGENCY:** Agency for Healthcare Research and Quality (DHRQ), HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Citizens' Health Care Working Group (Working Group) mandated by section 1014 of the Medicare Modernization Act.

**DATES:** A business meeting of the Working Group will be held on Monday August 28, 2006 and Tuesday August 29, 2006. On August 28, the session will begin at 8:30 a.m. and end at 4 p.m. On August 29, the session will begin at 8:30 a.m. and end at 2 p.m.

**ADDRESSES:** The meeting will take place at the conference room of the United Food and Commercial Workers International Union. The office is located at 1775 K Street NW., Washington, DC 20006. The main receptionist area is located on the 7th floor; the conference room is located on the 11th floor. The meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Caroline Taplin, Citizens' Health Care Working Group, at (301) 443–1514 or *caroline.taplin@ahrq.hhs.gov.* If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144.

The agenda for this Working Group meeting will be available on the Citizens' Working Group Web site, *www.citizenshealthcare.gov.* Also available at that side is a roster of Working Group members. When a summary of this meeting is completed, it will also be available on the Web site.

**SUPPLEMENTARY INFORMATION:** Section 1014 of Public Law 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (HHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Working Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to: (1) Identify options for changing our health care system so that every American has the ability to obtain quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care system; and (3) submit its recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: The Secretary of HHS is designated as a member by statute. The Comptroller General of the U.S. Government Accountability Office (GAO) was directed to name the remaining 14 members whose appointments were announced on February 28, 2005.

**Working Group Meeting Agenda**

The Working Group meeting on August 28 and August 29 will be devoted to ongoing Working Group business. The principal topic to be addressed will be the refinement of materials associated with the Working Group's final recommendations. Interim recommendations were posted on the Working Group's Web site *http://www.citizenshealthcare.gov* on June 2, 2006. the comment period for the interim recommendations ends August 31, 2006 and the target date for release of final recommendations in September 26, 2006.

**Submission of Written Information**

To fulfill its charge described above, the Working Group has been conducting a public dialogue on health care in America through public meetings held across the country and through comments received on its Web site. The Working Group invites members of the public to the Web site to be part of that dialogue and encourages comments on the interim recommendations.

Further, the Working Group will accept written submissions for consideration at the Working Group business meeting listed above. In general, individuals or organizations wishing to provide written information for consideration by the Citizens' Health Care Working Group at this meeting should submit information electronically to *citizenshealth@ahrq.gov.*

Dated: August 9, 2006.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 06–6930 Filed 8–10–06; 1:47 pm]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Fees for Sanitation Inspections of Cruise Ships

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces fees for vessel sanitation inspections for fiscal year 2007 (October 1, 2006, through September 30, 2007).

**EFFECTIVE DATE:** October 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** David L. Forney, Chief, Vessel Sanitation Program, National Center for

Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–23, Atlanta, Georgia 30341–3724, telephone (770) 488–7333, E-mail: *Dforney@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

**Purpose and Background**

The fee schedule for sanitation inspections of passenger cruise ships inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1, 2006.

$$\text{Average cost per inspection} = \frac{\text{Total cost of VSP}}{\text{Weighted number of annual inspections.}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060), and was revised twice and published in the **Federal Register** on November 28, 1989 (54 FR 48942), and November 21, 2005 (70 FR 70078). The revised size/cost factor is presented in Appendix A.

**Fee**

The fee schedule (Appendix A) will be effective October 1, 2006, through September 30, 2007. If travel expenses continue to increase, the fees may need adjustment before September 30, 2007, because travel constitutes a sizable portion of VSP's costs. If an adjustment is necessary, a notice will be published in the **Federal Register** 30 days before the effective date

**Applicability**

The fees will apply to all passenger cruise vessels for which inspections are conducted as part of CDC's VSP.

Dated: August 8, 2006.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention (CDC).*

**Appendix A**

SIZE/COST FACTOR

| Vessel size | GRT [1] | Approximate cost ($U.S.) per GRT |
|---|---|---|
| Extra Small | < 3,001 | 0.25 |
| Small | 3,001–15,000 | 0.50 |
| Medium | 15,001–30,000 | 1.00 |
| Large | 30,001–60,000 | 1.50 |
| Extra Large | 60,000–120,000 | 2.00 |
| Mega* | >120,001 | 3.00 |

*New Vesel Size Category.
Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

FEE SCHEDULE

| Vessel size | GRT [1] | Fee ($U.S.) |
|---|---|---|
| Extra Small | < 3,000 | 1,300 |
| Small | 3,001–15,000 | 2,600 |
| Medium | 15,001–30,000 | 5,200 |
| Large | 30,001–60,000 | 7,800 |
| Extra Large | 60,001–120,000 | 10,400 |
| Mega* | >120,001 | 15,600 |

*New Vessel Size Category.
[1] Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Inspections and reinspections involve the same procedure, require the same amount of time, and are therefore charged at the same rate.

[FR Doc. E6–13336 Filed 8–14–06; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request, Proposed Projects

*Title:* Evaluation of the Community Healthy Marriage Initiative.

*OMB No.:* New Collection.

*Description:* The Administration for Children and Families, United States Department of Health and Human Services, is conducting a demonstration and evaluation called the Community Healthy Marriage Initiative (CHMI). Demonstration programs will be funded to support healthy marriage directly as well as encourage community changes in norms that increase support for healthy marriages and improve child and family well-being. The objective of the impact evaluation is to evaluate the community effects of these

interventions on marital stability and satisfaction and child and family well-being outcomes among low-income families. Primary data for the impact evaluation will come from three waves of in-person data collection. This collection is a baseline survey of community members where CHMI demonstrations are operating, the first of three CHMI surveys. The impact evaluation will assess the effects of community healthy marriage initiatives by comparing family and child well-being outcomes in the CHMI communities with similar outcomes in comparison communities that are well matched to the demonstration project sites.

*Respondents:* Community members aged 18–49 in three study sites and three comparison communities.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| CHMI Baseline Survey | 4,200 | 1 | 1 | 4,200 |

*Estimated Total Annual Burden Hours:* 4200/

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 9, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06–6923 Filed 8–14–06; 8:45am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request Proposed Projects

*Title:* Third Grade Follow-up to the Head Start Impact Study.

*OMB No.:* 0970–0229.

*Description:* The Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS) is requesting comments on plans to implement a third grade follow-up to the Head Start Impact Study. This study will collect information for determining, on a national basis, how Head Start affects outcomes in the third grade for children who participated in the program as compared to children not enrolled in Head Start and to determine under which conditions Head Start works best and for which children.

The Head Start Impact Study was a longitudinal study that involved approximately 5,000 first-time-enrolled three- and four-year-old pre school children across 84 nationally representative grantee/delegate agencies (in communities where there were more eligible children and families than can be served by the program). The participating children were randomly assigned to either a Head Start group (that could enroll in Head Start services) or a control group (that could not enroll in Head Start services but could enroll in other available services selected by their parents). Data collection for the study began in the fall of 2002 and extended through spring 2006.

It is the intention of the Administration for Children and Families to examine outcomes for this sample of children and families during the spring of the children's third grade year. Data will be collected in the spring of 2007 (for the four-year-old cohort) and the spring of 2008 (for the three-year-old cohort). The domains for development to be assessed include demographic characteristics of the children and families, as well as children's cognitive development, school achievement and adjustment, socio-emotional functioning, health and access to health care, and relationships with peers. Information will also be collected on parents' involvement in educational activities, mental health and well-being, and monitoring and other parenting practices, and information related to the characteristics and quality of the schools and classrooms that children attend.

*Respondents:* Individuals or households and school districts.

ANNUAL BURDEN ESTIMATES

| Respondents and activities | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Child Interview and Assessment | 4,600 | 1 | 1 | 4,600 |
| Parent Interview | 4,600 | 1 | 1 | 4,600 |
| Teacher Survey | 4,600 | 1 | .33 | 1,533 |
| School Administrator Survey | 2,300 | 1 | .25 | 575 |
| Total Annual Burden Estimates | | | | 11,308 |

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of this proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail: *infocollection@acf.hhs.gov.*

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publications.

Dated: August 9, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06–6924 Filed 8–14–06; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have delegated to the Director, Office of Family Assistance, the following authority vested in me by the Secretary of Health and Human Services in a memorandum dated September 16, 1997.

(a) Authority Delegated.

Authority to administer the provisions of the Child Care and Development Block Grant Amendments of 1996, 42 U.S.C. 9801 note, under Sections 601–615 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 1305 note, 42 U.S.C. 601 et seq., and as amended now and hereafter.

(b) Limitations and Conditions.

1. This delegation shall be exercised under the Department's existing policies on delegations and regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.

3. Any redelegation shall be in writing and prompt notification must be provided to all affected managers, supervisors, and other personnel.

(c) Effect on Existing Delegations.

This delegation supersedes any previous delegation of authority pertaining to the Child Care and Development Block Grant Program to the Administration on Children, Youth and Families (ACYF) and officials within ACYF.

(d) Effective Date.

This delegation was effective on July 24, 2006.

I hereby affirm and ratify any actions taken by the Director, Office of Family Assistance, which involved the exercise of the authority delegated herein prior to the effective date of this delegation.

Dated: August 7, 2006.

**Wade F. Horn,**

*Assistant Secretary for Children and Families.*

[FR Doc. E6–13332 Filed 8–14–06; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have delegated to the Director, Office of Head Start, the following authority vested in me by the Secretary of Health and Human Services in a memorandum dated August 20, 1991.

(a) Authority Delegated.

Authority to administer the Head Start and Early Head Start programs, authorized by the Head Start Act, 42 U.S.C. 9801 *et seq.*, including authority to conduct reviews of Head Start and Early Head Start grantees pursuant to sections 641A(c) and 645A(b)(9) of the Head Start Act, 42 U.S.C. 9836A and 9840A, and to determine the existence of deficiencies, as defined in 45 CFR 1304.3(a)(6), and other instances of noncompliance, to make determinations of whether deficiencies and other instances of noncompliance have been corrected by grantees pursuant to sections 641A(d) and 645A(b)(9) of the Head Start Act, and 45 CFR part 1304 and to terminate or suspend funding or deny refunding to Head Start and Early Head Start grantees pursuant to Section 646 of the Head Start Act, 42 U.S.C. 9841, and 45 CFR parts 1303 and 1304.

(b) Limitations and Conditions.

1. This delegation shall be exercised under the Department's existing policies on delegations and regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities. The approval or disapproval of grant applications, the making of grant awards, the waiver of the non-Federal share under 42 U.S.C. 9835(b), the waiver of fifteen percent administrative cost limitation under 42 U.S.C. 9839(b), and the approval of interim grantees under 42 U.S.C. 9836(e) require concurrence of the grants officer. The approval or disapproval of contract applications and awards are subject to contracting officer processes in accordance with Federal Acquisition Regulations.

3. Any redelegation shall be in writing and prompt notification must be provided to all affected managers, supervisors, and other personnel.

(c) Effect on Existing Delegations.

This delegation supersedes all previous delegations of authority involving the Head Start Act to officials within the Administration on Children, Youth and Families.

(d) Effective Date.

This delegation was effective on July 24, 2006.

I hereby affirm and ratify any actions taken by the Director, Office of Head Start, which involved the exercise of the authority delegated herein prior to the effective date of this delegation.

Dated: August 7, 2006.

**Wade F. Horn,**

*Assistant Secretary for Children and Families.*

[FR Doc. E6–13333 Filed 8–14–06; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### United States Visitor and Immigrant Status Indicator Technology Program ("US–VISIT"); Notice to Aliens Subject to US–VISIT Screening

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies the port of entry of Fresno, California, the sea

port of entry of New Orleans, Louisiana, and the pre-flight inspection location of Halifax, Nova Scotia, Canada, as locations at which the Department of Homeland Security will begin biometric screening of arriving aliens using the United States Visitor and Immigrant Status Indicator Technology Program.

**EFFECTIVE DATES:** This notice is effective August 15, 2006 for Fresno, California, on or before October 1, 2006, for Halifax, Nova Scotia, Canada and October 15, 2006, for New Orleans, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Mark Rouse or Craig Howie, Senior Policy Advisors, US–VISIT, Department of Homeland Security, 1616 Fort Myer Drive, 18th Floor, Arlington, Virginia 22209, (202) 298–5200.

**SUPPLEMENTARY INFORMATION:** On January 5, 2004, the Department of Homeland Security (DHS) established the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program in accordance with several statutory mandates that collectively require DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens; verifies the identities of aliens; and authenticates travel documents presented by such aliens through the comparison of biometric identifiers. Aliens subject to US–VISIT may be required to provide fingerscans, photographs, or other biometric identifiers upon arrival in, or departure from, the United States. See 69 FR 468 (Jan. 5, 2004) and 69 FR 53318 (Aug. 31, 2004) for information on the background, legal mandates, and legal requirements of the US–VISIT Program. Additional information on US–VISIT and the most up-to-date list of ports of entry where US–VISIT is operational can be found on the Internet at *http://www.dhs.gov/dhspublic/display?theme=91*.

DHS regulations at 8 CFR 235.1(d)(1)(ii) note that DHS will designate by notice in the **Federal Register** ports of entry where aliens will be required to provide fingerscans, photograph(s), or other specified biometric identifiers during the inspection process when applying for entry or admission into the United States. This notice fulfills the requirements of 8 CFR 235.1(d)(1)(ii).

This Notice makes no changes to existing US–VISIT requirements, processes, or classifications of aliens subject to or exempt from US–VISIT biometric screening. This Notice merely identifies additional ports of entry and a pre-flight inspection location that will be using US–VISIT biometric screening.

US–VISIT biometric screening will begin at Fresno, Halifax, and New Orleans as follows:

Fresno, California (Fresno-Yosemite International Airport), which will begin biometric screening on August 15, 2006.

Halifax, Nova Scotia, Canada (Halifax International Airport, Pre-Flight Inspection), which will begin biometric screening on or before October 1, 2006. Halifax is the eighth pre-flight screening location in Canada to use US–VISIT biometric screening.

New Orleans, Louisiana (Erato Street Cruise Terminal), which will begin biometric screening on October 15, 2006.

DHS notes the date of October 1, 2006, for Halifax is an estimate. It is possible that the pre-flight inspection facilities in Halifax will be ready prior to October 1, 2006. Should Halifax pre-flight inspection be ready before October 1, 2006, or if the opening of this pre-flight inspection facility is delayed beyond October 1, 2006, a revised estimated start date will be posted on the US–VISIT Internet site at the address noted above. Further, DHS will communicate the exact date Halifax will begin US–VISIT biometric screening directly to local area news media, civic organizations, and the transportation and travel industry once that date has been established.

Dated: August 7, 2006.

**Michael Chertoff,**

*Secretary.*

[FR Doc. E6–13299 Filed 8–14–06; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2006–25559]**

### National Offshore Safety Advisory Committee; Vacancies

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for applications.

**SUMMARY:** The Coast Guard seeks applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

**DATES:** Application forms should reach the Coast Guard on or before September 30, 2006.

**ADDRESSES:** You may request an application form by writing to Commandant (G–PSO–2), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1414; or by faxing 202–372–1926. A copy of the application form is also available from the Coast Guard's Advisory Committee Web page at: *http://www.uscg.mil/hq/g-m/advisory/index.htm*. Send your application in written form to the above street address. A copy of the application, along with this notice, is also available on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Commander John M. Cushing, Executive Director of NOSAC, or James M. Magill, Assistant to the Executive Director, telephone 202 372–1414, fax 202–372–1926.

**SUPPLEMENTARY INFORMATION:** NOSAC is a Federal advisory committee established under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended). It consists of 15 regular members who have particular knowledge and experience regarding offshore technology, equipment, safety and training, as well as environmental expertise in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Prevention regarding safety, security and rulemaking matters relating to the offshore mineral and energy industries. This advice assists the Coast Guard in developing policy and regulations and formulating the positions of the United States in advance of meetings of the International Maritime Organization.

NOSAC meets approximately twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for three positions. These positions will begin in January 2007. Applications should reach us by September 30, 2006, but we will consider applications received later if they arrive within a reasonable time before we make our recommendations to the Secretary of Homeland Security.

To be eligible, applicants should have experience in one of the following categories: (1) Offshore operations, (2) diving services associated with offshore activities, or (3) pipelaying services. Please state on the application form which of the three categories you are applying for. Each member normally serves a term of 3 years or until a replacement is appointed. A few

members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: August 8, 2006.

**J. G. Lantz,**

*Director of National and International Standards, Assistant Commandant for Prevention.*

[FR Doc. E6–13310 Filed 8–14–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Request for Applicants for Appointment to the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Committee Management; request for applicants for appointment to the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC); technical correction.

**SUMMARY:** This document contains a technical correction to a Notice which was published in the **Federal Register** on Monday, July 17, 2006 in which Customs and Border Protection (CBP) requests individuals who are interested in serving on the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (formerly known as the "Commercial Operations Advisory Committee" and popularly still known as "COAC") to apply for appointment.

**DATES:** Correction is effective retroactively from July 17, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda J. Tate, Program Management Specialist, Office of Trade Relations, Customs and Border Protection, (202) 344–1440, FAX (202) 344–1969.

**SUPPLEMENTARY INFORMATION:**

#### Background

On Monday, July 17, 2006, CBP published a Notice in the **Federal Register** (71 FR 40528) stating that Customs and Border Protection (CBP) is requesting individuals who are interested in serving on the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (formerly known as the "Commercial Operations Advisory Committee" and popularly still known as "COAC") to apply for appointment.

This correction concerns the section entitled "Committee Membership," specifically, the fourth paragraph of the third column on page 40529, which announced that the applicant would serve as a Special Government Employee (SGE) and that the applicant would also be required to complete a Confidential Financial Disclosure Report (OEG Form 450). Because members of the Committee are not considered Federal Government employees for any purpose, having them serve in the capacity of an SGE is incorrect. Further, there is no requirement to complete a Confidential Disclosure Report. Accordingly, this document corrects that notice by eliminating this paragraph from the document.

#### Correction of Publication

Accordingly, the publication on Monday, July 17, 2006 of the Notice, which was the subject of FR Doc. E6–11285, is corrected as follows: On page 40529, in the third column, the fourth paragraph under the heading "Committee Membership" is deleted in its entirety.

Dated: August 9, 2006.

**Lawrence J. Rosenzweig,**

*Acting Director, Office of Trade Relations, Bureau of Customs and Border Protection.*

[FR Doc. E6–13320 Filed 8–14–06; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Incidental Take of a Threatened Species on Struthers Ranch Property, El Paso County, CO

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; issuance of permit.

**SUMMARY:** This document provides notice that we, the U.S. Fish and Wildlife Service, issued a permit for the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a threatened species, on the Struthers Ranch Property in El Paso County, Colorado.

**ADDRESSES:** Documents and other information submitted with the permit application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, from the U.S. Fish and Wildlife Service, Colorado Field Office, P.O. Box 25486, Denver, Colorado 80225; telephone (303) 236–4773.

**FOR FURTHER INFORMATION CONTACT:** Adam Misztal, Fish and Wildlife Biologist, Colorado Field Office (see **ADDRESSES**), telephone (303) 236–4753.

**SUPPLEMENTARY INFORMATION:** On November 10, 2005, we published a notice in the **Federal Register** (70 FR 68472) announcing that we had received an application from WL Homes, LLC, doing business as John Laing Homes (Applicant), for a permit to incidentally take, under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), the Preble's meadow jumping mouse on the Struthers Ranch Property in El Paso County, Colorado. The permit application was made under the terms of the Struthers Ranch Habitat Conservation Plan.

On July 14, 2006, we issued a permit (TE–073390–1) to the Applicant subject to certain conditions, which we listed on the permit. We issued the permit only after we determined that: (1) The Applicant applied in good faith, (2) issuing the permit would not adversely affect the Preble's meadow jumping mouse, and (3) issuing the permit would be consistent with the purposes and policy set forth in the Act.

**Authority:** The action is authorized by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 25, 2006.

**James J. Slack,**

*Deputy Regional Director, Region 6.*

[FR Doc. E6–13340 Filed 8–14–06; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Klamath Fishery Management Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** We, the Fish and Wildlife Service, announce a meeting of the Klamath Fishery Management Council (Council), to take place by conference call. The meeting is open to the public. The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River

Basin. The purpose of this meeting is to formulate a recommendation to the Pacific Fishery Management Council regarding a proposed amendment to their Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon and California. The proposed amendment concerns the harvest of Klamath River fall Chinook salmon in years of low projected abundance.

**DATES:** The meeting will be from 10 a.m. to 12 p.m. on Wednesday, September 6, 2006.

**ADDRESSES:** The meeting will be held by conference call. Members of the public may participate in the call by appearing in person at the appointed meeting time at the Yreka Fish and Wildlife Office (Yreka FWO), 1829 South Oregon Street, Yreka, California, or by requesting an access telephone number in advance from the Yreka FWO. The Yreka FWO's telephone number is (530) 842–5763.

**FOR FURTHER INFORMATION CONTACT:** Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California, 96097, telephone (530) 842–5763.

**SUPPLEMENTARY INFORMATION:** Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), we announce a meeting of the Klamath Fishery Management Council. This Council was established under the Klamath River Basin Fishery Restoration Act (16 U.S.C. 460ss *et seq.*).

For background information on the Council, please refer to the **Federal Register** notice of the initial meeting (July 8, 1987, 52 FR 25639).

Dated: August 9, 2006.

**John Engbring,**

*Acting California/Nevada Operations Office Manager, California/Nevada Office, Fish and Wildlife Service, Sacramento, CA.*

[FR Doc. E6–13339 Filed 8–14–06; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[(ES–960–1910–BJ) Group 29, Maine]**

### Filing of Plat of Survey, Maine; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management published a notice in the **Federal Register** concerning the filing of a plat of survey. The notice contained an incorrect filing time period.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. 703–440–1688.

**Correction**

In the **Federal Register** of August 3, 2006, in FR Doc. E6–12097 on page 44042, under **DATES**, correct 30 calendar days from the date of publication in the **Federal Register** to read: on the date of publication in the **Federal Register.**

Dated: August 9, 2006.

**Michael W. Young,**

*Chief Cadastral Surveyor.*

[FR Doc. E6–13337 Filed 8–14–06; 8:45 am]

**BILLING CODE 4310–GJ–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting (By Phone)

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a Federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

The AMWG will conduct the following conference call:

*Date:* Wednesday, September 6, 2006. The call will begin at 2 p.m. (EDT), 12 p.m. (MDT) and 11 a.m. (PDT, and Arizona) and conclude two (2) hours later in the respective time zones. The telephone numbers are: 801–524–3860 for Federal participants and 1–888–264–8816 for non-Federal participants and members of the public.

*Agenda:* The purpose of the meeting will be to review and discuss the TWG recommended Fiscal Year 2007, hydrograph, budget, and workplan, to facilitate making a recommendation to the Secretary of the Interior.

Time will be allowed for any individual or organization wishing to make formal oral comments on the call. To allow full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* at least five (5) days prior to the call. Any written comments received will be provided to the AMWG members.

**FOR FURTHER INFORMATION CONTACT:** Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: July 31, 2006.

**Dennis Kubly,**

*Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.*

[FR Doc. E6–13338 Filed 8–14–06; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Second Public Meeting for Reclamation's Managing for Excellence Project

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of announcement of a public meeting.

**SUMMARY:** The Bureau of Reclamation is holding a meeting to inform the public about the Managing for Excellence project. This meeting is the second of three meetings that will be held in 2006 to inform the public about the action items, progress, and results of the Managing for Excellence project and to seek broad feedback. A subsequent meeting will likely be held November 2006 in Sacramento, California.

**DATES:** September 19, 2006, 8 a.m. to 5 p.m., and September 20, 2006, 8 a.m. to 12 p.m.

**ADDRESSES:** Salt Lake City Marriott University Park, 480 Wakara Way, Salt Lake City, UT 84104, Ballroom 2 and 3, 1st Floor.

**FOR FURTHER INFORMATION CONTACT:** Staci Link (303) 445–2808.

**SUPPLEMENTARY INFORMATION:** The Managing for Excellence Project will identify and address the specific 21st Century challenges Reclamation must

meet to fulfill its mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. This project will examine Reclamation's core capabilities and the agency's ability to respond to both expected and unforeseeable future needs in an innovative and timely manner. This project will result in essential changes in a number of key areas, which are outlined in, Managing for Excellence—An Action Plan for the 21st Century Bureau of Reclamation. For more information regarding the Project, Action Plan, and specific actions being taken, please visit the Managing for Excellence Web page at *http://www.usbr.gov/excellence.*

**Registration**

Although you may register the first day of the conference starting at 7:30 a.m., we highly encourage you to register online at *http://www.usbr.gov/excellence,* or by phone at 303–445–2808.

Dated: August 3, 2006.

**William E. Rinne,**

*Acting Commissioner, Washington Office.*

[FR Doc. 06–6931 Filed 8–14–06; 8:45 am]

BILLING CODE 4310–MN–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 27, 2006, Dade Behring Inc., 100 GBE Drive, MS514, Post Office Box 6101, Attention: RA/QS, Newark, Delaware 19714–6101, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Ecgonine (9180) | II |
| Morphine (9300) | II |

The company plans to produce the listed controlled substances in bulk to be used in the manufacture of reagents and drug calibrator/controls for DEA exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 16, 2006.

Dated: August 7, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–13325 Filed 8–14–06; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 27, 2006, Dade Behring, Inc., Regulatory Affairs, Quality Systems, 20400 Mariani Avenue, Cupertino, California 95014, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I and II:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Benzoylecgonine (9180) | II |
| Morphine (9300) | II |

The company plans to produce the listed controlled substances in bulk products to be used in the manufacture of reagents and drug calibrator/controls for DEA exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 16, 2006.

Dated: August 7, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–13327 Filed 8–14–06; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Registration

By Notice dated April 18, 2006 and published in the **Federal Register** on April 25, 2006 (71 FR 23949), Hospira, Inc., 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The company plans to import the basic class of controlled substance for use in dosage unit manufacturing.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Hospira, Inc. to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Hospira, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: August 7, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–13328 Filed 8–14–06; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on March 22, 2006, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule II:

| Drug | Schedule |
|---|---|
| Coca Leaves (9040) | II |
| Raw Opium (9600) | II |
| Poppy Straw (9650) | II |
| Concentrate of Poppy Straw (9670). | II |

The company plans to import the listed controlled substances to manufacture bulk controlled substance intermediates for sale to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 14, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46). all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: August 7, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–13329 Filed 8–14–06; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 21, 2006, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island, 02816, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I and II:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Methylphenidate (1724) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Hydrocodone (9193) | II |
| Thebaine (9333) | II |
| Noroxymorphone (9668) | II |
| Fentanyl (9801) | II |

The company plans to manufacture the listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 16, 2006.

Dated: August 7, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–13326 Filed 8–14–06; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0271]**

### Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review—Extension of currently approved collection.

Bureau of Justice Assistance Application Form: *Project Safe Neighborhood Semi-Annual Researcher Reporting Form.*

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for "sixty days" until October 16, 2006. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact M. Pressley at 202–353–8643 or 1–866–859–2687, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 function 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:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection: Project Safe Neighborhood Semi-Annual Researcher Reporting Form.*

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* State and local law enforcement agencies.

*Other:* None.

*Abstract:* One of the central elements of PSN is the requirement that PSN task forces collect data on outcome measures related to the level of firearms violence in each judicial district and information on the strategies used to combat that gun violence. This information is essential if we are strategically to target our financial resources for maximum impact, and is a necessary element in assessing success or failure and providing the information required to make mid-course corrections in our local programs.

To accomplish the data collection at the local level, the Bureau of Justice Assistance has funded a research partner to work with each of the 94 districts.[1] The grant program provided $150,000 to a researcher in each district to be spent over three years. The data collected by these researchers has allowed for program assessment at the local level, but also has provided the opportunity to gauge the results of the initiative across the country. Understanding the gun violence problem throughout the country will allow the Department to identify trends and adapt the program at a national level to meet the needs of the districts. Additionally, by collecting both outcome and intervention measures, the Department can identify programs that demonstrate success in reducing targeted gun crime. This information is essential to evaluating the program and providing feedback at the national level that can inform management decisions.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that no more than 93 respondents will apply twice a year. Each application takes approximately 60 minutes to complete.

(6) An estimate of the total public burden (in hours) associated with the collection: The total hour burden to complete the applications is 186. (93 respondents × 1 hour per respondent × 2 responses per year = 186 burden hours) If additional information is required, contact: Ms. Lynn Bryant, Clearance Officer, U.S. Department of Justice, Policy and Planning Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC, 20530, or via facsimile at (202) 514–1534.

Dated: August 9, 2006.

**Lynn Bryant,**

*Clearance Officer, Justice Management Division, United States Department of Justice.*

[FR Doc. E6–13354 Filed 8–14–06; 8:45 am]

BILLING CODE 4410–18–P

[1] While there are 94 judicial districts, there are only 93 United States Attorneys and accordingly 93 research partners. The Northern Mariana Islands and Guam share one research partner.

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

August 9, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.

*Type of Review:* Revision of a currently approved collection.

*Title:* Consumer Price Index (CPI) Housing Survey (CADC).

*OMB Number:* 1220–0163.

*Type of Response:* Reporting.

*Affected Public:* Individuals and households.

*Frequency:* On occasion and semi-annually.

*Number of Respondents:* 88,234.

*Total Annual Responses:* 114,351.

*Estimated Total Annual Burden Hours:* 11,916.

*Estimate Average Response Time:* 5 to 7 minutes.

*Total Annualized capital/startup costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The Consumer Price Index (CPI) is the timeliest instrument compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is used most widely as a measure of inflation, and is used in the formulation of economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. E6–13351 Filed 8–14–06; 8:45 am]

BILLING CODE 4510–24–P

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Claim for Medical Reimbursement Form (OWCP–915). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before October 16, 2006.

**ADDRESSES:** Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, FAX (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, FAX, or e-mail).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three statutes require OWCP to pay for covered medical treatment that is provided to beneficiaries, and also to reimburse beneficiaries for any out-of-pocket covered medical expenses they have paid. Form OWCP–915, Claim for Medical Reimbursement Form, is used for this purpose and collects the necessary beneficiary and medical provider data in a standard format. This information collection is currently approved for use through March 31, 2007.

#### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

#### III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide payment for certain covered medical services to injured employees who are covered under the Acts.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Claim for Medical Reimbursement Form.

*OMB Number:* 1215–0193.

*Agency Number:* OWCP–915.

*Affected Public:* Individual or households; business or other for-profit; not-for-profit institutions.

*Total Respondents:* 21,396.

*Total Responses:* 85,584.

*Time per Response:* 10 minutes.

*Frequency:* Quarterly.

*Estimated Total Burden Hours:* 14,208.

*Total Burden Cost (capital/startup):* $107,836.

*Total Burden Cost (operating/maintenance):* $812,703.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 10, 2006.

**Hazel Bell,**

*Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. E6–13395 Filed 8–14–06; 8:45 am]

BILLING CODE 4510–CR–P

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Request for Employment Information (CA–1027). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before October 16, 2006.

**ADDRESSES:** Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Payment of compensation for partial disability to injured Federal workers is required by 5 U.S.C. 8106. That section also requires the Office of Workers' Compensation Programs (OWCP) to obtain information regarding a claimant's earnings during a period of

eligibility to compensation. The CA–1027, Request for Employment Information, is the form used to obtain information for an individual who is employed by a private employer. This information is used to determine the claimant's entitlement to compensation benefits. This information collection is currently approved for use through March 31, 2007.

**II. Review Focus**

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

The Department of Labor seeks extension of approval to collect this information in order to determine a claimant's eligibility for compensation benefits.

*Type of Review:* Extension.
*Agency:* Employment Standards Administration.
*Title:* Request for Employment Information.
*OMB Number:* 1215–0105.
*Agency Number:* CA–1027.
*Affected Public:* Business or other for-profit.
*Frequency:* On occasion.
*Total Respondents:* 500.
*Total Responses:* 500.
*Time Per Response:* 15 minutes.
*Estimated Total Burden Hours:* 125.
*Total Burden Cost (capital/startup):* $200.
*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 10, 2006.

**Hazel Bell,**

*Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. E6–13396 Filed 8–14–06; 8:45 am]
BILLING CODE 4510–CH–P

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the "International Training Application." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before October 16, 2006.

**ADDRESSES:** Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

**FOR FURTHER INFORMATION CONTACT:** Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The BLS is one of the largest labor statistics organizations in the world and has provided international training since 1945. Each year, the BLS International Labor Statistics Center conducts seminars of 1 to 4 weeks duration at its training facilities in Washington, DC. In addition to the annual international seminars, the Center organizes visits to the BLS for many international visitors each year.

The seminars bring together statisticians, economists, analysts, and other data users from countries all over the world. Each seminar is designed to strengthen the participants' ability to collect and analyze economic and labor statistics. Each seminar includes a field trip, as well as lectures, discussions, and workshops.

**II. Current Action**

Office of Management and Budget clearance is being sought for the International Training Application. By implementing the new International Training Application form, BLS will be able to expedite the processing of international students requesting training.

**III. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

*Type of Review:* New Collection.
*Agency:* Bureau of Labor Statistics.
*Title:* International Training Application.
*OMB Number:* 1220–NEW.
*Affected Public:* Individuals or households.
*Total Respondents:* 50.
*Frequency:* On occasion.
*Total Responses:* 50.
*Average Time Per Response:* 30 minutes.
*Estimated Total Burden Hours:* 25 hours.
*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 8th day of August, 2006.

**Cathy Kazanowski,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. E6–13349 Filed 8–14–06; 8:45 am]

BILLING CODE 4510–24–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (06–051)]**

### Notice of Intent To Grant Exclusive License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant exclusive license.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, license in the United States to practice the invention described and claimed in U.S. patent 5,880,834, titled "Convex Diffraction Grating Imaging Spectrometer," NASA case number NPO–19293 to ASE Optics, Inc., having its principal place of business in Rochester, New York. The fields of use may be limited to monitoring and control of manufacturing processes. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

**DATES:** The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Management Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, M/S 180–200, Pasadena, CA 91109.

**FOR FURTHER INFORMATION CONTACT:** Mark Homer, Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA 91109, telephone 818–354–7770, fax 818–393–3160. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: August 7, 2006.

**Keith T. Sefton,**

*Deputy General Counsel, Administration and Management.*

[FR Doc. E6–13308 Filed 8–14–06; 8:45 am]

BILLING CODE 7510–13–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before September 14, 2006 to be assured of consideration.

**ADDRESSES:** Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on May 23, 2006 (71 FR 29670). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Request to use NARA facilities for events.

*OMB number:* 3095–0043.

*Agency form number:* N/A.

*Type of review:* Regular.

*Affected public:* Not-for-profit institutions, individuals or households, business or other for-profit, Federal government.

*Estimated number of respondents:* 22.

*Estimated time per response:* 30 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 11.

*Abstract:* The information collection is prescribed by 36 CFR 1280.74. The collection is prepared by organizations that wish to use NARA public areas for an event. NARA uses the information to determine whether or not we can accommodate the request and to ensure that the proposed event complies with NARA regulations.

Dated: August 9, 2006.

**Martha Morphy,**

*Assistant Archivist for Information Services.*

[FR Doc. E6–13341 Filed 8–14–06; 8:45 am]

BILLING CODE 7515–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 52–008]**

### Dominion Nuclear North Anna, LLC; Notice of Extension of Public Comment Period on the Supplement to the Draft Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has extended the public comment period on Supplement 1 to NUREG–1811, "Draft Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site" (SDEIS). The site is located near the Town of Mineral in Louisa County, Virginia, on the southern shore of Lake Anna.

On July 12, 2006, the NRC issued a Notice of Availability (71 FR 39372) of the SDEIS and on July 14, 2006, the U.S. Environmental Protection Agency issue a Notice of Filing (71 FR 40096) of the SDEIS. The public comment period on the SDEIS was to have ended on August 28, 2006. Multiple requests for an extension to the comment period were received by the NRC. Pursuant to Title 10 of the Code of Federal Regulations Section 51.73, the comment period has been extended by 15 days to September 12, 2006.

The purpose of this notice is to inform the public that the comment period was extended to September 12, 2006. The SDEIS is available for public inspection and comment in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS Accession No. ML061800217), and on the NRC Web site at *http://www.nrc.gov*. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room or PERR). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Louisa County Library, located at 881 Davis Highway, Mineral, Virginia, has agreed to make the SDEIS available for public inspection.

As indicated in **Federal Register** notice 71 FR 39372, the NRC staff will hold a public meeting to present an overview of the SDEIS and to accept public comments on the SDEIS. The public meeting will be held in the Forum at the Louisa County Middle School, 1009 Davis Highway, Mineral, Virginia on Tuesday, August 15, 2006. The meeting will convene at 7 p.m. and will continue until 10 p.m., as necessary. The meeting will be transcribed and will include: (1) A presentation of the contents of the SDEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions 1 hour before the start of the meeting at the Louisa County Middle School. No formal comments on the SDEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing.

Any interested party may submit comments by September 12, 2006, on this report for consideration by the NRC staff. Comments may be accompanied by additional relevant information or supporting data. Members of the public may send written comments on the SDEIS for the North Anna ESP to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** Notice. Comments may also be delivered to Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. Electronic comments may be sent by the Internet to the NRC at *North_Anna_comments@nrc.gov*. To assist the NRC staff in identifying and considering issues and concerns, comments on the supplement to the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html*.

*For Further Information Contact:* Mr. Jack Cushing, Senior Environmental Project Manager, at telephone number 301–415–1424, or by mail at U.S. Nuclear Regulatory Commission, ATTN: Jack Cushing, Mail Stop 0–11F1, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Dated at Rockville, Maryland, this 9th day of August 2006.

For the Nuclear Regulatory Commission.

**William Beckner,**

*Deputy Director, Division of New Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–13331 Filed 8–14–06; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–285]**

### Omaha Public Power District; Fort Calhoun Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) 50.46 and 10 CFR Part 50, Appendix K, for Facility Operating License No. DPR–40, issued to Omaha Public Power District (OPPD, the licensee), for operation of the Fort Calhoun Station, Unit 1 (Fort Calhoun Station), located in Washington County, Nebraska. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would allow the Fort Calhoun Station to use M5 an advanced alloy fuel cladding material for pressurized-water reactors (PWRs).

The proposed action is in accordance with the licensee's application dated August 11, 2005, as revised by letter dated November 8, 2005, and as supplemented by letter dated April 12, 2006.

*The Need for the Proposed Action*

The proposed action is needed so that OPPD can use M5 an advanced alloy for fuel rod cladding and other assembly structural components at the Fort Calhoun Station. Section 50.46 and Part 50 of 10 CFR, Appendix K, make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO. Since the chemical composition of the M5 alloy differs from the specifications for zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the M5 alloy as a cladding material or in other assembly structural components at the Fort Calhoun Station.

*Environmental Impacts of the Proposed Action*

The underlying purposes of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, are to ensure that facilities have

adequate acceptance criteria for the emergency core cooling system (ECCS), and to ensure that cladding oxidation and hydrogen generation are appropriately limited during a loss-of-coolant accident (LOCA) and conservatively accounted for in the ECCS evaluation model, respectively. Neither 10 CFR 50.46 nor 10 CFR Part 50, Appendix K, explicitly allows the use of M5 as a fuel rod cladding material or for other assembly structural components. Topical Report (TR) BAW–10227P, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," which was approved by the NRC on February 4, 2000, demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy to M5. In addition, TR BAW–10227P demonstrated that the Baker-Just equation (used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation) is conservative in all post-LOCA scenarios with respect to M5 advanced alloy as a fuel rod cladding material or in other assembly structural components. The licensee will use NRC-approved methods for the reload design process for Fort Calhoun Station reloads with M5. The NRC has completed its safety evaluation of the proposed action and concludes that licensee's request to use the M5 advanced alloy for fuel rod cladding and in other assembly structural components in lieu of zircaloy or ZIRLO is acceptable.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Fort Calhoun Station dated August 1972.

*Agencies and Persons Consulted*

In accordance with its stated policy, on June 14, 2006, the staff consulted with the Nebraska State official, Julia Schmitt of the Department of Health and Human Services Regulation and Licensor, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 11, 2005, as revised by letter dated November 8, 2005, and as supplemented on April 12, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of August 2006.

For the Nuclear Regulatory Commission.

**Alan B. Wang,**

*Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–13330 Filed 8–14–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**DATE:** Weeks of August 14, 21, 28, September 4, 11, 18, 2006.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED**

**Week of August 17, 2006**

*Thursday, August 17, 2006*

10 a.m. Affirmation Session (Public Meeting) (Tentative).

a. Louisiana Energy Services, LP (National Enrichment Facility) Docket No. 70–3103–ML, Petitions for Review of LBP–06–15. (Tentative).

b. Pacific Gas & Elec. Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI "Motion by San Luis Obispo Mothers for Peace, Sierra Club, and Peg Pinard for Declaratory and Injunctive Relief with respect to Diablo Canyon ISFSI" (Tentative).

c. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station) Docket No. 50–0219, Legal challenges to LBP–06–07 and LBP–06–11 (Tentative).

**Week of August 21, 2006—Tentative**

There are no meetings scheduled for the Week of August 21, 2006.

**Week of August 28, 2006—Tentative**

There are no meetings scheduled for the Week of August 28, 2006.

**Week of September 4, 2006—Tentative**

There are no meetings scheduled for the Week of September 4, 2006.

**Week of September 11, 2006—Tentative**

*Monday, September 11, 2006 9:30 p.m.*

Discussion of Security Issues (Closed—Ex. 1).

1:30 p.m.emsp;Discussion of Security Issues (Closed—Ex. 1 & 3).

*Tuesday, September 12, 2006*

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Conrol

Program Directors (CRCPD) (Public Meeting) (Contact: Shawn Smith, 301–415–2620).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1 p.m. Discussion of Security Issues (Closed—Ex. 1).

**Week of September 18, 2006—Tentative**

There are no meetings scheduled for the Week of September 18, 2006.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabiloities where appropriate. If you need a reasonable acommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by E-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 10, 2008.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 06–6939 Filed 8–11–06; 9:59 am]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

**I. Background**

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 21, 2006, to August 3, 2006. The last biweekly notice was published on August 1, 2006 (71 FR 43528).

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 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. The basis for this proposed determination for each amendment request is shown below.

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. Within 60 days after the date of publication of this notice, 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.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place 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 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, 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 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 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/doc-collections/cfr/.* If a request for a hearing or petition for

leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order

As required by 10 CFR 2.309, a petition for leave to intervene shall set 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 general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include 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/requestor to relief. A petitioner/requestor who fails to satisfy 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.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, 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 by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and 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 the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit 1, DeWitt County, Illinois*

Date of amendment request: June 30, 2006.

*Description of amendment request:* The proposed change would revise the Note preceding Technical Specification (TS) Surveillance Requirement (SR) 3.4.6.1 to be consistent with the wording in NUREG–1434, "Standard Technical Specifications General Electric Plants, BWR/6," Revision 3.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment revises the note associated with TS SR 3.4.6.1, which requires verification that the leakage past the Reactor Coolant System (RCS) Pressure Isolation Valves (PIVs) is less than a specified limit. The proposed revision provides clarification that performance of this SR is allowed during plant shutdown (*i.e.*, a Mode other than Modes 1 and 2).

The proposed change does not require modification to the facility. The proposed change does not affect the operation of any facility equipment, the interface between facility systems, or the reliability of any equipment. In addition, the proposed change does not alter the requirement to perform the leakage testing of the RCS PIVs and does not revise the leakage limits associated with this SR. The function of the RCS PIVs is to separate the high pressure RCS from an attached low pressure system. Periodic testing of PIVs can substantially reduce intersystem Loss of Coolant Accident (LOCA) probability. Since the proposed change does not alter the method or limits associated with the leak rate testing of the RCS PIVs there is no significant increase in the probability of a LOCA. Therefore, the proposed amendment does not involve a significant increase in the

probability of an accident previously evaluated.

The consequences of a previously analyzed event are dependent on the initial conditions assumed in the analysis, the availability and successful functioning of equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The method for performing the leakage testing of the RCS PIVs and the specified leakage limit for this testing will not change as a result of the proposed revision and, therefore, there is no change in the consequences associated with the LOCA analysis. The radiological consequences remain within applicable regulatory limits. The proposed change does not alter any system's performance measures or the ability to perform its accident mitigation functions. The radiological consequences associated with any previously evaluated accident do not change as a result of the proposed revision. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the wording of the Note to TS SR 3.4.6.1 clarifies the plant conditions for when the surveillance is required to be performed. The proposed change does not affect the design, functional performance or operation of the facility. No new equipment is being introduced and installed equipment is not being operated in a new or different manner. Similarly, the proposed change does not affect the design or operation of any structures, systems or components involved in the mitigation of any accidents, nor does it affect the design or operation of any component in the facility such that new equipment failure modes are created. There are no setpoints at which protective or mitigative actions are initiated that are affected by this proposed action. No change is being made to procedures relied upon to respond to an off-normal event.

As such the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. The proposed change revises a note associated with a surveillance requirement to clarify the plant conditions for when the surveillance needs to be performed. This change involves an administrative clarification to reflect the original intent of the TS. The equipment will continue to be tested in a manner and at a frequency necessary to provide confidence that the equipment can perform its intended safety function. There is no change in the design of the affected systems, no alteration of the setpoints at which alarms or actions are initiated, and no change in plant configuration from original design. There is no impact on the plant safety analyses.

Therefore, operation of CPS in accordance with the proposed change will 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 request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

*NRC Branch Chief:* Daniel S. Collins.

*Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* June 14, 2006.

*Description of amendment request:* The proposed change will delete Waterford 3 Technical Specification (TS) Surveillance Requirement (SR) 4.8.1.1.2.f. This SR requires that the emergency diesel generator be subjected to an inspection in accordance with procedures prepared in conjunction with its manufacturer's recommendations.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The ability of the emergency diesel generator to perform its safety function is not proven by the performance of the manufacturer's recommended inspections. The inspections are not considered an initiator or mitigating factor in any previously evaluated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change results in the deletion of the SR associated with the performance of manufacturer's inspections. No modifications to plant structures, systems, or components, or changes in the design of the plant structures, systems, or components are required to support the proposed TS change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The ability of the emergency diesel generator to perform its safety function is not proven by the performance of the manufacturer's recommended inspections. Inspection activities will continue to be performed.

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 request involves no significant hazards consideration.

*Attorney for licensee:* N.S. Reynolds, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

*NRC Branch Chief:* David Terao.

*Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois*

*Date of amendment request:* June 2, 2006.

*Description of amendment request:* The proposed amendments would revise Technical Specification (TS) Surveillance Requirement (SR) 3.4.3.1 to increase the allowable as-found main steam safety valve (MSSV) lift set point tolerance from +/−1 percent to +/−3 percent. The proposed change would also revise the SR 3.1.7.10 to increase the enrichment of sodium pentaborate used in the Standby Liquid Control (SLC) system from greater than or equal to 30 atom percent boron-10 to greater than or equal to 45 atom percent boron-10.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change increases the allowable as-found MSSV lift setpoint tolerance, determined by test after the valves have been removed from service, from +/−1 percent to +/−3 percent. The proposed change does not alter the TS requirements for

the number of MSSVs required to be operable, the nominal lift setpoints, the allowable as-left lift setpoint tolerance, the MSSV testing frequency, or the manner in which the valves are operated.

Consistent with current TS requirements, the proposed change continues to require that the MSSVs be adjusted to within +/−1 percent of their nominal lift setpoints following testing. Since the proposed change does not alter the manner in which the valves are operated, there is no significant impact on reactor operation.

The proposed change does not involve a physical change to the valves, nor does it change the safety function of the valves. The proposed TS revision involves no significant changes to the operation of any systems or components in normal or accident operating conditions and no changes to existing structures, systems, or components, with the exception of the SLC system enrichment change. The proposed change to increase the enrichment of sodium pentaborate used in the SLC system by a design modification using a single SLC pump will ensure that the requirements of 10 CFR 50.62, "Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants," continue to be met. The SLC system is not an initiator to an accident; rather, the SLC system is used to mitigate a postulated anticipated transient without scram (ATWS) event. Therefore, these changes will not increase the probability of an accident previously evaluated.

Generic considerations related to the change in setpoint tolerance were addressed in NEDC–31753P, "BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report," and were reviewed and approved by the NRC in a safety evaluation dated March 8, 1993. The plant specific evaluations, required by the NRC's safety evaluation and performed to support this proposed change, show that there is no change to the design core thermal limits and adequate margin to the reactor vessel pressure limits using a +/−3 percent lift setpoint tolerance. These analyses also show that operation of Emergency Core Cooling Systems is not affected, and the containment response following a loss-of-coolant accident is acceptable. The plant systems associated with these proposed changes are capable of meeting applicable design basis requirements and retain the capability to mitigate the consequences of accidents described in the Updated Final Safety Analysis Report. Therefore, these changes do not involve an increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change increases the allowable as-found lift setpoint tolerance for the DNPS MSSVs, and increases the required enrichment of sodium pentaborate used in the SLC system. The proposed change to increase the enrichment of sodium pentaborate used in the SLC system will ensure that the requirements of 10 CFR 50.62 continue to be met.

The proposed change to increase the MSSV tolerance was developed in accordance with the provisions contained in the NRC safety evaluation for NEDC–31753P. MSSVs installed in the plant following testing or refurbishment will continue to meet the current tolerance as-left acceptance criteria of +/−1 percent of the nominal setpoint. The proposed change does not affect the manner in which the overpressure protection system is operated; therefore, there are no new failure mechanisms for the overpressure protection system.

The proposed change to allow an increase in the MSSV setpoint tolerance does not alter the nominal MSSV lift setpoints or the number of MSSVs currently required to be operable by DNPS TS. The proposed change does not involve physical changes to the valves, nor does it change the safety function of the valves. There is no alteration to the parameters within which the plant is normally operated. As a result, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not modify the safety limits or setpoints at which protective actions are initiated, and does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety.

Establishment of the ±3 percent MSSV setpoint tolerance limit does not adversely impact the operation of any safety-related component or equipment. Evaluations performed in accordance with the NRC safety evaluation for NEDC–31753P have concluded that all design limits will continue to be met.

The proposed change to increase the enrichment of sodium pentaborate used in the SLC system will ensure that the requirements of 10 CFR 50.62 continue to be met.

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 requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

*NRC Branch Chief:* Daniel S. Collins.

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LSCS), Units 1 and 2, LaSalle County, Illinois*

*Date of amendment request:* March 16, 2006.

*Description of amendment request:* The proposed amendment would modify Technical Specification (TS) 3.3.6.1, "Primary Containment Isolation Instrumentation," Table 3.3.6.1–1 to revise the allowable values (AVs) for the reactor core isolation cooling (RCIC) temperature-based leak detection. The proposed change is a result of revising the setpoint calculation for the subject temperature instruments based on the current reactor coolant leak detection analytical limit. The temperature limits correspond to a 25-gallon per minute (gpm) leak as determined by LSCS calculations. The proposed changes would revise TS Table 3.3.6.1–1 AVs for the following four RCIC system isolation functions:

Item 3.e. RCIC Equipment Room Temperature—High
Item 3.f. RCIC Equipment Room Differential Temperature—High
Item 3.g. RCIC Steam Line Tunnel Temperature—High
Item 3.h. RCIC Steam Line Tunnel Differential Temperature—High

*Basis for proposed no significant hazards consideration determination:* 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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is a result of revising the setpoint calculation for the subject temperature instruments based on the current reactor coolant leak detection calculation analytical limit. The proposed changes will revise TS Table 3.3.6.1–1 Allowable Values for the following four RCIC system isolation functions as noted below.

- Increase the Allowable Value for Function 3.e., "RCIC Equipment Room Temperature—High," from ≤ 291.0 °F to ≤ 297.0 °F
- Decrease the Allowable Value for Function 3.f., "RCIC Equipment Room Differential Temperature—High," from ≤ 189.0 °F to ≤ 188.0 °F
- Decrease the Allowable Value for Function 3.g., "RCIC Steam Line Tunnel Temperature—High," from ≤ 277.0 °F to ≤ 267.0 °F
- Increase the Allowable Value for Function 3.h., "RCIC Steam Line Tunnel Differential Temperature—High," from ≤ 155.0 °F to ≤ 163.0 °F

The function of the instrumentation listed on TS Table 3.3.6.1–1, in combination with other accident mitigation features, is to limit fission product release during and following postulated Design Basis Accidents to within allowable limits. The Allowable Values specified in TS Table 3.3.6.1–1 provide assurance that the instrumentation will perform as designed.

The Allowable Values for RCIC system isolation are not a precursor to any accident previously evaluated. Accidents are assumed to be initiated by equipment failure. The proposed change does not alter the initiation conditions or operational parameters for the system. There is no increase in the failure probability of the system. As such, the probability of occurrence for a previously evaluated accident is not increased.

The Allowable Values specified in Table 3.3.6.1–1 provide assurance that the RCIC system will perform as designed. The proposed revision to the Allowable Values does not change any of the RCIC system leak detection isolation actuation setpoints. Thus, the radiological consequences of any accident previously evaluated are not increased.

Based on the above information, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not change or introduce any new equipment, modes of system operation or failure mechanisms.

The proposed change is based on revised reactor coolant leak detection calculation analytical limits determined by the most current revision to the heat rise calculation. Setpoint calculations have been performed to determine the nominal trip setpoints and Allowable Values for the instrumentation associated with the leak detection function based on the revised analytical limits determined by the heat rise calculations. The proposed revision to the Allowable Values does not change any of the RCIC system leak detection isolation actuation setpoints.

Based on the above information, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change will revise TS Table 3.3.6.1–1 Allowable Values for the instrument functions associated with RCIC Isolation.

The current Allowable Values for these functions are:

≤ 291.0 °F for RCIC Equipment Room Temperature—High
≤ 189.0 °F for RCIC Equipment Room Differential Temperature—High
≤ 277.0 °F for the RCIC Steam Line Tunnel Temperature—High
≤ 155.0 °F for the RCIC Steam Line Tunnel Differential Temperature—High

The proposed change revises the Allowable Values to the following:

≤ 297.0 °F for RCIC Equipment Room Temperature—High
≤ 188.0 °F for RCIC Equipment Room Differential Temperature—High
≤ 267.0 °F for the RCIC Steam Line Tunnel Temperature—High
≤ 163.0 °F for the RCIC Steam Line Tunnel Differential Temperature—High

The proposed change is a result of revising the setpoint calculation for the subject temperature instruments based on the current analytical limit. The proposed changes will revise TS Table 3.3.6.1–1 Allowable Values for the subject four RCIC system isolation functions and will provide assurance that the RCIC system will perform as designed. The proposed revision to the Allowable Values does not change any of the RCIC system leak detection isolation actuation setpoints.

Margin of safety is established by the design and qualification of plant equipment, the operation of the plant within analyzed limits, and the point at which protective or mitigative actions are being initiated. The proposed change does not alter these considerations. The proposed allowable values will still ensure that the results of the accident analysis remain valid.

Based on this information, the proposed changes do 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 requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

*NRC Branch Chief:* Daniel S. Collins.

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Date of amendment request:* April 4, 2006.

*Description of amendment request:* The proposed amendment request will add one NRC approved topical report reference to the list of analytical methods in Technical Specification (TS) 5.6.5, "Core Operating Limits Report (COLR)," that can be used to determine core operating limits, and will delete seven obsolete references from the same TS Section.

The proposed changes are:

1. Add an NRC previously approved Topical Report ANF–1358(P)(A), Revision 3, "The Loss of Feedwater Heating Transient in Boiling Water Reactors," (LOFWH), which will list FRA–ANP method for evaluating the LOFWH transient.

2. Delete seven references describing previously approved Global Nuclear Fuel (GNF) and FRA–ANP methodologies for the analyses of ATRIUM–9B and GE9 fuel. Both of these fuel types have been or will be completely discharged from both Lasalle County Station (LSCS) reactors after the loading of ATRIUM–10 fuel during the LSCS Unit 2 refuel outage currently scheduled to begin in February 2007 (*i.e.*, L2R11).

The proposed changes support the continued irradiation of ATRIUM–10 fuel in the LSCS reactors and the use of the NRC-approved analytical methodology for evaluation of LOFWH transients.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Technical Specification (TS) 5.6.5 lists NRC-approved analytical methods used at LaSalle County Station (LSCS) to determine core operating limits. The proposed changes will add an NRC-approved topical report reference to the list of administratively controlled analytical methods in TS 5.6.5, "Core Operating Limits Report (COLR)," that can be used to determine core operating limits, and delete seven obsolete references.

The addition of a Framatome ANP (FRA–ANP) methodology to determine overall core operating limits for future LSCS core configurations was approved by the NRC in Reference 2. LSCS Unit 2 will continue to load Framatome ANP ATRIUM–10 fuel during the Unit 2 Refueling Outage 11 currently scheduled for February 2007. The proposed change to TS 5.6.5 will add a FRA–ANP methodology as a reference to determine core operating limits for loss of feedwater heater (LOFWH) conditions. Thus, the proposed change will allow LSCS to use the most recent FRA–ANP methodology for analysis of LOFWH conditions.

The addition and deletion of approved analytical methods in TS Section 5.6.5 has no effect on any accident initiator or precursor previously evaluated and does not change the manner in which the core is operated. The NRC-approved methods ensure that the output accurately models predicted core behavior, have no effect on the type or amount of radiation released, and have no effect on predicted offsite doses in the event of an accident. Additionally, the NRC-approved methods do not change any key core parameters that influence any accident consequences. Thus, the proposed changes do not have any effect on the probability of an accident previously evaluated.

The methodology conservatively establishes acceptable core operating limits such that the consequences of previously analyzed events are not significantly increased.

The proposed changes in the list of analytical methods do not affect the ability of LSCS to successfully respond to previously evaluated accidents and does not affect radiological assumptions used in the evaluations. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes to TS Section 5.6.5 do not affect the performance of any LSCS structure, system, or component credited with mitigating any accident previously evaluated. The NRC-approved analytical methodology for evaluating LOFWH transients will not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed changes do not introduce any new modes of system operation or failure mechanism.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

*Response:* No.

The proposed changes will add a reference to the list of analytical methods in TS 5.6.5 that can be used to determine core operating limits and delete seven obsolete references. The proposed changes do not modify the safety limits or setpoints at which protective actions are initiated and do not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety. Therefore, the proposed changes provide an equivalent level of protection as that currently provided.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above information, EGC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

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 requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* Daniel S. Collins.

*Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania*

*Date of application for amendments:* June 8, 2006.

*Description of amendment request:* The proposed changes modify Technical Specifications (TSs) 3.1.3, "Control Rod OPERABILITY"; 3.1.6, "Rod Pattern Control"; 3.3.2.1, "Control Rod Block Instrumentation"; 3.10.7, "Control Rod Testing—Operating"; and 3.10.8, "SHUTDOWN MARGIN (SDM) Test—Refueling" to replace the current references to banked position withdrawal sequence (BPWS) with references to "the analyzed rod position sequence."

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change modifies Technical Specifications (TS) 3.1.3, "Control Rod OPERABILITY"; TS 3.1.6, "Rod Pattern Control"; TS 3.3.2.1, "Control Rod Block Instrumentation"; TS 3.10.7, "Control Rod Testing—Operating", and; TS 3.10.8, SHUTDOWN MARGIN (SDM) Test—Refueling". The proposed change would replace the current references to "Banked Position Withdrawal Sequence (BPWS)" with references to "the analyzed rod position sequence". The use of the "the analyzed rod position sequence" will continue to minimize the consequences of an accident previously evaluated including the Control Rod Drop Accident (CRDA). Additionally, the use of the words "the analyzed rod position sequence" will provide an equivalent level of protection during plant startups and shutdowns and therefore will not increase the consequences of an accident previously evaluated.

Control rod patterns during startup and shutdown conditions will continue to be controlled by the operator and the Rod Worth Minimizer (RWM) (LCO [limiting condition of operation] 3.3.2.1, "Control Rod Block Instrumentation"), so that only specified control rod sequences and relative positions are allowed over the operating range of all control rods inserted to 10% of Rated Thermal Power. As a result of this change, these sequences will continue to limit the potential amount of reactivity addition that could occur in the event of a Control Rod Drop Accident (CRDA).

Accidents are initiated by the malfunction of plant equipment, or the failure of plant structures, systems, or components. The proposed change will ensure that analyzed rod position sequences are developed to minimize incremental control rod reactivity worth in accordance with the "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–15 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–15–US, September, 2005, NRC approved methodology, and reviewed and approved in accordance with the 10 CFR 50.59 process. These analyzed rod position sequences will limit the potential reactivity increase for a postulated CRDA during reactor startups and shutdowns below the Low Power Setpoint of 10% of Rated Thermal Power.

The proposed change will continue to ensure that systems, structures and components are capable of performing their intended safety functions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not affect the assumed accident performance of the control rods, nor any plant structure, system, or component previously evaluated.

The proposed change does not involve the installation of new equipment, and installed equipment is not being operated in a new or different manner. The change ensures that control rods remain capable of performing their safety functions. No set points are being changed which would alter the dynamic response of plant equipment. Accordingly, no new failure modes are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change will ensure that analyzed rod position sequences are developed to minimize incremental control rod reactivity worth in accordance with the "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–15 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–15–US, September, 2005, NRC approved methodology, and reviewed and approved in accordance with the 10 CFR 50.59 process. The proposed change will not adversely impact the plant's response to an accident or transient. All current safety margins will be maintained. There are no changes proposed which alter the set points at which protective actions are initiated, and there is no change to the operability requirements for equipment assumed to operate for accident mitigation.

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 request involves no significant hazards consideration.

*Attorney for Licensee:* Mr. Brad Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

*NRC Branch Chief (Acting):* Brooke D. Poole.

*FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania*

*Date of amendment request:* June 14, 2006.

*Description of amendment request:* The amendments would incorporate the results of a new spent fuel pool criticality analysis documented in WCAP–16518–P/WCAP–16518–NP, "Beaver Valley Unit 2 Spent Fuel Pool Criticality Analysis," Revision 1, May 2006 for the BVPS–2 spent fuel storage pool. The revised criticality analysis will permit utilization of vacant storage locations dictated by the existing Technical Specification (TS) storage configurations in the BVPS–2 spent fuel storage pool.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No. The relevant accidents previously evaluated are limited to the fuel handling and criticality accidents.

Administrative controls during fuel fabrication ensure that the fuel is fabricated to ensure proper loading of fuel in the fuel assemblies. Administrative and operational controls used to load fuel assemblies into the spent fuel pool ensure the fuel assemblies are stored in compliance with the allowed storage configurations. Fuel handling is performed under administrative controls and physical limitations. These controls will remain in effect and continue to protect against criticality and fuel handling accidents involving new storage configurations dictated by the new analysis. There is therefore no impact on the probability of fuel handling or criticality accidents.

The new criticality analysis defines new spent fuel storage configurations with new enrichment and burnup limits. Integral Fuel Burnable Absorber (IFBA) limits are used to comply with the 1-out-of-4 configuration for fresh fuel. The boron dilution evaluation that supported Amendment [No.] 128 [February 11, 2002, Agencywide Documents Access and Management System Accession No. ML020020373], permitting credit for soluble boron at BVPS Unit No. 2 continues to remain valid. The new analysis demonstrates that $k_{eff}$ remains below unity for the various storage configurations considered with zero soluble boron, and that $k_{eff}$ remains less than or equal to 0.95 for the entire pool with credit for soluble boron under non-accident and accident conditions with a 95% probability at a 95% confidence level (95/95). Potential consequences of accidents previously analyzed remain unchanged.

The editorial changes made to the table numbers and the LCO [Limiting Condition for Operation] and Surveillance Requirement wording do not impact probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No. The relevant types of accidents previously evaluated are limited to criticality and fuel handling accidents. Although the new analysis will allow utilization of additional storage capacity, implementation of fuel loading configurations and fuel handling activities will continue to be performed under administrative and operational controls. No new or different activities are introduced as a result of the proposed changes. The utilization of additional storage capacity within the allowances of the revised analysis will introduce no new or other kind of accident.

The editorial changes made to the table numbers and the LCO and Surveillance Requirement wording do not impact any previously evaluated accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No. The margin to safety with respect to analyzed accidents involves maintaining $k_{eff}$ through fuel storage configurations and boron concentration controls in the spent fuel pool. The boron dilution evaluation that supported that supported Amendment [No.] 128 permitting credit for soluble boron at BVPS Unit No. 2 remains valid. The Amendment [No.] 128 evaluation concluded that a boron dilution event is not credible for BVPS Unit No. 2. The new analysis calculates the non-accident soluble boron concentration to be less than was determined in the Amendment [No.] 128 evaluation. Thus, there is no significant reduction in a margin of safety because of the new analysis and the conclusions of the Amendment [No.] 128 dilution evaluation remain valid.

Under accident conditions, the soluble boron needed to maintain $k_{eff}$ below 0.95 with the new storage configurations is less than what is assumed in current analysis. The proposed change does not involve a significant reduction in a margin of safety for accident conditions.

The editorial changes made to the table numbers and the LCO and Surveillance Requirement wording do not impact a margin of safety.

Therefore, the proposed changes do 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 request involves no significant hazards consideration.

*Attorney for licensee:* Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Branch Chief:* Richard J. Laufer.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio*

*Date of amendment request:* June 1, 2006.

*Description of amendment request:* The proposed amendment would modify Technical Specification 3.4.10, "Residual Heat Removal (RHR) Shutdown Cooling System—Cold Shutdown" by adding a default Condition to address situations when an RHR shutdown cooling subsystem becomes inoperable in MODE 4 and, within the completion time of 1 hour, an alternate method of decay heat removal can not be verified to be available.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No. The proposed amendment does not change the design of any structures, systems or components (SSCs), and does not affect the manner in which plant systems are operated. It is a change to the Technical Specifications only, to provide guidance to plant operators on appropriate actions to take, where no Technical Specification guidance currently exists. Since the design of plant SSCs is not changed and plant systems and components are not operated in a different manner, there is no change to previously identified accident initiators, and the proposed amendment would not impact the probability of any of the previously evaluated accidents in the Updated Safety Analysis Report (USAR).

The USAR event that evaluates the consequences of a loss of RHR Shutdown Cooling is included in Section 15.2.9 entitled "Failure of RHR Shutdown Cooling". This event examines the consequences of a loss of not only an RHR shutdown cooling

subsystem, but also the loss of the suction source from the recirculation system leading to both RHR Shutdown Cooling subsystems, and a loss of offsite power. Even with these multiple failures, this event is not one of the limiting transients. As noted in Section 15.2.9.5, "Radiological Consequences," there are no fuel failures, and the consequences of the event are much less than those for the "Main Steam Isolation Valve Closure" transient, which is evaluated with acceptable results in USAR Section 15.2.4.5. Since the proposed amendment only involves the addition of a Required Action where no guidance currently exists, and the design of plant SSCs is not changed and plant systems and components are not operated in a different manner, the proposed amendment does not affect the consequences of the Section 15.2.9 analysis, nor does it affect the ability of the installed RHR subsystems to perform their shutdown cooling function. The change adds a default Condition to provide guidance to the operators in those situations when a subsystem becomes inoperable with the plant in MODE 4 and an alternate cannot be verified to be available within an hour, which does not impact the consequences of the previously evaluated accidents in the USAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No. This change to the required Technical Specification actions does not involve a change in the design function or operation of plant SSCs. It does not introduce credible new failure mechanisms, malfunctions, or accident initiators not considered in the existing plant design and licensing basis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No. This proposed amendment only involves a change to the required Technical Specification actions. It does not involve a change in the evaluation and analysis methods used to demonstrate compliance with regulatory and licensing requirements, and does not exceed or alter a design basis or safety limit. The safety margin before the change remains unchanged after the proposed amendment.

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 request involves no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Branch Chief:* Daniel S. Collins.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio*

*Date of amendment request:* June 1, 2006.

*Description of amendment request:* The proposed amendment would modify Technical Specification 3.4.9, "Residual Heat Removal (RHR) Shutdown Cooling System—Hot Shutdown," to revise the Required Actions when both RHR shutdown cooling subsystems are inoperable in MODE 3.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No. The proposed amendment does not change the design of any structures, systems or components (SSCs), and does not affect the manner in which plant systems are operated. It is a change to the Technical Specifications only, to provide guidance to plant operators on appropriate actions to take, when both RHR shutdown cooling subsystems are inoperable. Since the design of plant SSCs is not changed and plant systems and components are not operated in a different manner, there is no change to previously identified accident initiators, and the proposed amendment would not impact the probability of any of the previously evaluated accidents in the Updated Safety Analysis Report (USAR).

The USAR event that evaluates the consequences of a loss of RHR Shutdown Cooling is included in Section 15.2.9 entitled "Failure of RHR Shutdown Cooling." This event examines the consequences of a loss of not only an RHR shutdown cooling subsystem, but also the loss of the suction source from the recirculation system leading to both RHR Shutdown Cooling subsystems, and a loss of offsite power. Even with these multiple failures, this event is not one of the limiting transients. As noted in Section 15.2.9.5, "Radiological Consequences," there are no fuel failures, and the consequences of the event are much less than those for the "Main Steam Isolation Valve Closure" transient, which is evaluated with acceptable results in USAR Section 15.2.4.5. Since the proposed amendment only involves the addition of a Required Action where no guidance currently exists, and the design of plant SSCs is not changed and plant systems and components are not operated in a different manner, the proposed amendment does not affect the consequences of the Section 15.2.9 analysis, nor does it affect the ability of the installed RHR subsystems to perform their shutdown cooling function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No. This change to the required Technical Specification actions does not involve a change in the design function or operation of plant SSCs. It does not introduce credible new failure mechanisms, malfunctions, or accident initiators not considered in the existing plant design and licensing basis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No. This proposed amendment only involves a change to the required Technical Specification actions. It does not involve a change in the evaluation and analysis methods used to demonstrate compliance with regulatory and licensing requirements, and does not exceed or alter a design basis or safety limit. The safety margin before the change remains unchanged after the proposed amendment.

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 request involves no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Branch Chief:* Daniel S. Collins.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania*

*Date of amendment request:* April 28, 2006.

*Description of amendment request:* The proposed amendment would change the SSES 1 and 2 Technical Specifications (TSs) to modify the standby liquid control system for single loop pump operation and use of enriched sodium pentaborate solution.

*Basis for proposed no significant hazards consideration determination:* 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:

Does the proposed change involve a significant increase in the probability or

consequences of an accident previously evaluated?

*Response:* No.

The proposed changes revise Technical Specification 3.1.7 for the Standby Liquid Control (SLC) system to reflect new boron weight-percent and enrichment requirements. In addition, the change to single pump operation reduces the required SLC pump flow and discharge pressure required to satisfy 10 CFR 50.62, thus increasing the reliability of the system. The changes do not otherwise alter the design or operation of the SLC system, and the existing design of the system is sufficient to support operation with the enriched sodium pentaborate solution. The SLC system is not considered to be the initiator of any event currently analyzed in the FSAR [Final Safety Analysis Report]. Therefore, the proposed changes do not increase the probability of a previously evaluated accident.

The SSES ATWS [anticipated transient without scram] analysis was performed using standard accepted assumptions, inputs, and codes. That analysis, which demonstrated that the acceptance criteria for peak vessel pressure, peak cladding temperature, peak local cladding oxidation, peak suppression pool temperature, and peak containment pressure, established the requirements for the proposed boron weight-percent and concentration, and pump flow rate. The analysis assumed the use of only a single pump, versus two pumps. The results of the analysis are that no fission product barriers are adversely challenged, and the radiological consequences of previously evaluated accidents (i.e., ATWS) are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes revise Technical Specification 3.1.7 for the SLC system to reflect new boron weight-percent and enrichment requirements. In addition, the change to single pump operation reduces the required SLC pump flow and discharge pressure required to satisfy 10 CFR 50.62, thus increasing the reliability of the system. A new Surveillance Requirement (SR 3.1.7.10) is also added to verify the correct solution enrichment prior to addition of inventory to the SLC tank. The changes do not otherwise alter the design or operation of the SLC system, and the existing design of the system is sufficient to process the enriched sodium pentaborate solution. With the exception of these changes, no other physical changes to plant structures or systems are proposed. Thus, the proposed changes do not create a new initiating event for the spectrum of events currently postulated in the FSAR.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes revise Technical Specification 3.1.7 for the SLC system to reflect new boron weight-percent and enrichment requirements. In addition, the change to single pump operation reduces the required SLC pump flow and discharge pressure required to satisfy 10 CFR 50.62, thus increasing the reliability of the system. The changes do not otherwise alter the design or operation of the SLC system, and the existing design of the system is sufficient to process the enriched sodium pentaborate solution.

The analysis was performed using standard accepted assumptions, inputs, and codes. That analysis, which demonstrated that ATWS acceptance criteria are satisfied, established the requirements for the proposed boron weight-percent and concentration, and pump flow rate. Further, the analysis assumed only a single pump is in operation verses two pumps. The evaluation demonstrated that the SLC system meets this post-LOCA [loss-of-coolant accident] suppression pool pH control design function.

Therefore, the proposed changes do 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 request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

*NRC Branch Chief:* Richard J. Laufer.

*Tennessee Valley Authority, Docket No. 50–259 , Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama*

*Date of amendment request:* October 12, 2004.

*Description of amendment request:* As part of Nuclear Regulatory Commission's (NRC) approval of the Improved Technical Specifications for Browns Ferry Nuclear Plant, Unit 1, by Amendment No. 234, NRC imposed License Condition 2.C(4) to ensure that the required analyses and modifications needed to support the Technical Specification (TS) changes made by License Amendment No. 234 and any subsequent TS changes, were completed by licensee prior to entering the mode for which the TS applies. The proposed amendment would remove this license condition from the license.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment does not affect any precursors for accidents described in Chapter 14 of the Browns Ferry Updated Final Safety Analysis Report (UFSAR). The proposed amendment does not change the conditions, operating configurations, or minimum amount of operating equipment assumed in the safety analysis for accident mitigation. No changes are proposed in plant protection or which create new modes of plant operation. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment does not introduce new equipment, which could create a new or different kind of accident. No new external threats, release pathways, or equipment failure modes are created. Therefore, the implementation of the proposed amendment will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed amendment does not impact the redundancy or availability of equipment credited in the response to accidents described in Chapter 14 of the UFSAR. For these reasons, the proposed amendment 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 request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Branch Chief:* L. Raghavan.

*Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama*

*Date of amendment request:* May 1, 2006 (TS–455).

*Description of amendment request:* The proposed amendment would revise the numeric values of the safety limit minimum critical power ratio (SLMCPR) in the Technical Specification (TS) Section 2.1.1.2 for single and two reactor recirculation loop operation to incorporate the results of the Browns Ferry Nuclear Plant, Unit 1 Cycle 7 SLMCPR analysis.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed Technical Specification change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment establishes a revised SLMCPR value for single and two recirculation loop operation. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed SLMCPR values preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Since the change does not require any physical plant modifications or physically affect any plant components, no individual precursors of an accident are affected and the probability of an evaluated accident is not increased by revising the SLMCPR values.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The revised SLMCPR values have been determined using NRC-approved methods and procedures. The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. These calculations do not change the method of operating the plant and have no effect on the consequences of an evaluated accident. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed Technical Specification change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed license amendment involves a revision of the SLMCPR value for single and two recirculation loop operation based on the results of an analysis of the Unit 1 Cycle 7 core. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed Technical Specification change involve a significant reduction in a margin of safety?

*Response:* No.

The margin of safety as defined in the TS bases will remain the same. The new SLMCPR values were calculated using referenced fuel vendor methods and procedures, which are in accordance with the fuel design and licensing criteria. The SLMCPR remains high enough to ensure that greater than 99.9 percent of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change does not involve a reduction in the 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 request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC (Acting) Branch Chief:* L. Raghavan.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of amendment request:* July 6, 2006 (TS–06–04).

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) for the Sequoyah Nuclear Plant, Units 1 and 2. Action a.1 of TS 3.1.3.2, "Position Indication Systems—Operating," requires the verification of rod position by use of the moveable incore detectors. Tennessee Valley Authority (the licensee, TVA) is proposing a revision to TS 3.1.3.2 to allow the position of the control and shutdown rods to be monitored by a means other than the moveable incore detectors. The amendment will provide a less burdensome monitoring method should problems with the analog rod position indication (ARPI) system be experienced. When a recurring problem in the system requires the monitoring of a rod's position by the alternate means, TVA plans to continue unit operation and to use the alternate means until the unit enters Mode 5 and repairs to the system can safely be implemented.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change provides an alternative method for the monitoring of the position of a rod once the position of the rod is verified using the moveable incore detector system. The proposed monitoring of rod control system parameters provides a reasonably similar approach to rod position monitoring as that provided by the movable incore detector system. In particular, the ability to immediately detect a rod drop or misalignment is not directly provided by the movable incore detector system or by the monitoring of rod control system parameters. Additionally, neither the movable incore detector system, nor the monitoring of rod control system parameters, provides the capability to verify rod position following a reactor trip or shutdown. Therefore, the monitoring of rod control system parameters, in lieu of the use of the movable incore detector system, provides an equivalent and acceptable method of monitoring rod position while a position indicator is inoperable.

The proposed change does not alter plant equipment that is considered to have the potential to alter the probability of an accident. The affected components are for monitoring only and do not actively affect equipment that interacts with the control of the reactor. Likewise, the affected components are for monitoring and provide an equivalent level of indication of rod position as the current action. This maintains an acceptable level of rod position indication for normal plant operations, as well as post accident mitigation actions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

As described above, the proposed change provides only an alternative method of monitoring the position of a rod. No new accident initiators are introduced by the proposed alternative manner of performing rod position monitoring. The proposed change does not affect the reactor protection system or the reactor control system. Hence, no new failure modes are created that would cause a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The rod position indicators are required to determine control rod positions and thereby ensure compliance with the control rod alignment and insertion limits. The proposed change does not alter the requirement to determine rod position but provides an alternative method for monitoring the position of the affected rod after the position of the rod is verified using the moveable incore detector system. As a result, the initial conditions of the accident analysis are preserved. The components affected by the alternate rod monitoring will not affect plant setpoints utilized for automatic mitigation of accident conditions or other equipment necessary for accident mitigation.

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 request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Michael L. Marshall, Jr.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of amendment request:* July 12, 2006 (TS–06–03).

*Description of amendment request:* The proposed amendment would revise the limiting condition for operation for the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specification (TS) Section 3.7.5, "Ultimate Heat Sink." This revision would change the minimum ultimate heat sink (UHS) water elevation in TS 3.7.5.a from 670 feet to 674 feet. The essential raw cooling water (ERCW) temperature requirement in TS 3.7.5.b would be increased from 83 degrees Fahrenheit (°F) to 87 °F. The conditional requirements of TS 3.7.5.c would no longer be required and would be deleted by the proposed change. This change would also delete a footnote that established a temporary UHS temperature limit of 87 °F through September 30, 1995. These proposed changes are supported by a combination of design basis re-analysis, bounding analysis, and sensitivity analysis of the ERCW system, the UHS, and supported systems.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to increase the UHS maximum temperature and the minimum water level does not alter the function, design, or operating practices for plant systems or components. One exception is the elimination of non-safety-related station air compressor loads located in the turbine building. The UHS is utilized to remove heat loads from plant systems during normal and accident conditions. This function is not expected or postulated to result in the generation of any accident and continues to adequately satisfy the associated safety functions with the proposed changes. Therefore, the probability of an accident presently evaluated in the safety analyses will not be increased because the UHS function does not have the potential to be the source of an accident. The heat loads that the UHS is designed to accommodate have been evaluated for functionality with the higher temperature and elevation requirements. The result of these evaluations is that there is existing margins associated with the systems that utilize the UHS for normal and accident conditions. These margins are sufficient to accommodate the postulated normal and accident heat loads with the proposed changes to the UHS. Since the safety functions of the UHS are maintained, the systems that ensure acceptable offsite dose consequences will continue to operate as designed. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The UHS function is not an initiator of any accident and only serves as a heat sink for normal and upset plant conditions. By allowing the proposed change in the UHS temperature and elevation requirements, only the parameters for UHS operation are changed while the safety functions of the UHS and systems that transfer the heat sink capability continue to be maintained. The UHS function provides accident mitigation capabilities and does not reflect the potential for accident generation. Therefore, the possibility for creating a new or different kind of accident is not created because the UHS is only utilized for heat removal functions that are not a potential source for accident generation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change has been evaluated for systems that are needed to support accident mitigation functions as well as normal operational evolutions. Operational margins were found to exist in the systems that utilize the UHS capabilities such that these proposed changes will not result in the loss of any safety function necessary for normal or accident conditions. The ERCW system has excess flow margins that will accommodate the increased flows necessary for the proposed temperature increase. While operating margins have been reduced by the proposed changes, safety margins have been maintained as assumed in the accident analyses for postulated events.

Additionally, the proposed changes do not require the modification of component setpoints utilized for automatic mitigation of accident conditions or other equipment necessary for accident mitigation. Therefore, a significant reduction in the margin to safety is not created by this proposed change. 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 request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Branch Chief:* L. Raghavan.

*Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of amendment request:* June 16, 2006 (WBN–TS–06–04).

*Description of amendment request:* The proposed amendment change would revise Technical Specification (TS) 5.7.2.11, "Inservice Testing Program," to remove "applicable supports" from the Inservice Testing (IST) Program and revise the IST Program for pumps and valves to meet the requirements of the latest Edition and Addenda of the American Society of Mechanical Engineers (ASME) Code approved by the NRC for use on the date 12-months prior to the start of the 10-year IST Interval. For the Watts Bar Nuclear Plant (WBN), Unit 1, the second 10-year IST Interval will begin on December 27, 2006. The ASME Code that was approved in 10 CFR 50.55a(f)(4) for use on December 27, 2005, was ASME Operations and Maintenance (OM) Code, 2001 Edition, with Addenda through 2003. The proposed change provides consistency with the requirements in 10 CFR 50.55a(f)(4) by replacing the reference to ASME Boiler and Pressure Vessel Code, Section XI, with ASME OM Code. This proposed change is based on Technical Specification Task Force (TSTF) Traveler 479, Revision 0, "Changes to Reflect Revision of 10 CFR 50.55a." TSTF 279–A, Revision 0, "Remove 'applicable supports' from Inservice Testing Program," was approved by NRC and incorporated into Revision 2 of NUREG–1431, "Standard Technical Specification Westinghouse Plants." In addition, the proposed amendment would add provisions to TS 5.7.2.11, Item b, to only apply Surveillance Requirement 3.0.2 to those IST frequencies of 2 years or less.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change revises Technical Specification Section 5.7.2.11 for WBN Unit 1 to conform to the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, 2, and 3.

ASME has in the last several years, transitioned the requirements for inservice testing of pumps and valves out of ASME Section XI and into a separate, stand alone code entitled the "Code for Operation and Maintenance of Nuclear Power Plants," (ASME OM Code). The ASME OM Code has been endorsed by the NRC in 10 CFR 50.55a and is the Code that will be required for inservice testing of pumps and valves during the WBN Second Inservice Interval. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The proposed change also deletes the reference to supports from the Inservice Testing Program as supports are already inspected under the Inservice Inspection Program.

The proposed changes do not involve any hardware changes, nor do the changes affect the probability of any event initiators. There will be no change to normal plant operating parameters, accident mitigation capabilities, or accident analysis assumptions or inputs. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change revises the Technical Specifications to delete the reference to "applicable supports" from the Inservice Testing Program and to incorporate the latest Code requirements in 10 CFR 50.55a(f)(4) for Code Class 1, 2, and 3 pumps and valves for WBN's next ten year interval. The testing requirements are similar and reflect the same type testing. Valves are still stroke timed; remote position indicators are still verified to be accurate; seat leakage measurements of critical valves are still performed; relief valves still have their setpoints and seat leakages verified; pumps are still tested for hydraulic performance and mechanical condition; check valves are verified to open and close properly; and supports are still inspected under the appropriate inspection program.

The proposed changes do not involve a modification to the physical configuration of the plant or change methods governing normal plant operation. No test methods are added or deleted. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change revises the TS for consistency with the Standard Technical Specification and with the requirements in 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, 2, and 3. This change incorporates revisions to the ASME Code that result in a net improvement in the measures of testing. Incorporation of the ASME OM Code does not alter the limiting values and acceptance criteria used to judge the continued acceptability of components tested by the Inservice Testing Program. Deletion of the reference to supports in the Inservice Testing Program does not alter the support inspection program as the program is currently under the Inservice Inspection Program. Since these limits are not altered, the margin of safety is not altered. Therefore, the proposed changes do 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 request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Branch Chief:* L. Raghavan.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of amendment request:* May 30, 2006.

*Description of amendment request:* The amendment would revise Surveillance Requirements (SRs) 3.5.2.8 and 3.6.7.1 in the Technical Specifications (TSs), and delete the footnote to the frequency for SR 3.5.2.5. SR 3.5.2.8 would be revised by replacing the phrase "trash racks and screens" with the word "strainers." This reflects (1) the replacement of the existing containment recirculation sump suction inlet trash racks and screens with strainers with significantly greater effective surface area, and (2) the resulting relocation of the recirculation fluid pH control system in Refueling Outage 15 schedule for the spring of 2007. The footnote to SR 3.5.2.5 would be deleted because it is no longer applicable to the TSs.

*Basis for proposed no significant hazards consideration determination:* 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. Do[es] the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

None of the changes impact the initiation or probability of occurrence of any accident [previously evaluated].

The consequences of accidents evaluated in the FSAR [Final Safety Analysis Report for the Callaway Plant] that could be affected by this proposed change are those involving the pressurization of the containment and associated flooding of the containment and recirculation of this fluid within the Emergency Core Cooling System (ECCS) or the Containment Spray System (CSS) (e.g., LOCAs [Loss-of-Coolant Accidents]). [The containment sump trash racks and screens, and the sump strainers that are replacing the trash racks and screens are not initiators of accidents.]

Although the configurations of the existing sump screen and the replacement strainer assemblies are different, they serve the same fundamental purpose of passively removing debris from the suction of the supported system pumps. Removal of trash racks does not impact the adequacy of the pump NPSH [net positive suction head] assumed in the safety analyses. Likewise the change does not reduce the reliability of any supported systems or introduce any new system interactions. The greatly increased surface area of the new strainer is designed to reduce head loss [at the containment sump] and reduce the approach velocity at the strainer face significantly, decreasing the risk of impact from large debris entrained in the sump flow stream.

The recirculation fluid pH control system storage baskets serve a passive function to provide a buffering agent to neutralize the sump solution. The redesign and relocation of the storage baskets are considered a like kind replacement. The baskets will be located within the flood plain and will continue to ensure that the buffering agent is dissolved in the sump fluid to ensure an equilibrium pH $\geq$ 7.1. Failure of a basket would not initiate an accident. The ECCS and CSS will continue to function in a manner consistent with the plant design basis.

As such, the proposed change to the Technical Specifications Surveillance Requirements does not involve a significant increase in the probability or consequences of an accident previously evaluated. The installed quantity of trisodium phosphate Crystalline will provide a minimum equilibrium sump pH of 7.1 following dissolution and mixing. [Deleting the footnote to SR 3.5.2.5 is an administrative change to remove a one-time required verification that has already been performed and is no longer a requirement in the current TSs.] Therefore, there is not a significant increase in the probability or consequences of an accident previously evaluated.

2. Do[es] the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The containment recirculation sump strainers and recirculation fluid pH control

system are passive systems used for accident mitigation. As such, they cannot be accident initiators. Therefore, there is no possibility that this change could create any accident of any kind. [The containment recirculation sump suction inlet trash racks and screens are being replaced with a complex strainer design with significantly larger effective surface area to reduce head loss and reduce the approach velocity at the strainer face significantly, decreasing the risk of impact from large debris entrained in the sump flow stream. This will result in the recirculation fluid pH control system being relocated.]

No new accident scenarios, transient precursors, or limiting single failures are introduced as a result of these changes. There will be no adverse effect[s] or challenges imposed on any safety-related system as a result of these changes. The quantity of trisodium phosphate crystalline will provide a minimum equilibrium sump pH of ≥ 7.1 following dissolution and mixing. Therefore, the possibility of a new or different type of accident is not created.

There are no changes which would cause the malfunction of safety-related equipment, assumed to be operable in the accident analyses, as a result of the proposed Technical Specification changes. No new equipment performance burdens are imposed. The possibility of a malfunction of safety-related equipment with a different result is not created. [Deleting the footnote to SR 3.5.2.5 is an administrative change to remove a one-time required verification that has already been performed and is no longer a requirement in the current TSs.] Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do[es] the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not adversely affect any plant safety limits, setpoints, or design parameters. The changes also do not adversely affect the fuel, fuel cladding, Reactor Coolant System (RCS), or containment integrity. [The radiological dose consequence acceptance criteria in the Standard Review Plan for accidents will continue to be met. Deleting the footnote to SR 3.5.2.5 is an administrative change to remove a one-time required verification that has already been performed and is no longer a requirement in the current TSs.] Therefore, the proposed TS 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 request involves no significant hazards consideration.

*Attorney for licensee:* John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

*NRC Branch Chief:* David Terao.

*Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia*

*Date of amendment request:* May 30, 2006, as supplemented by letter dated June 30, 2006.

*Description of amendment request:* The proposed amendments would relocate the American Society for Testing and Materials (ASTM) standard being used to test the total particulate concentration of the stored fuel oil to the TS Bases. This proposed change is described in TS Task force (TSTF) Standard TS Change Traveler TSTF–374–A, Rev. 0, "Revision to TS 5.5.13 and Associated TS Bases for Diesel Fuel Oil." In addition, the licensee has proposed to use a "water and sediment test" instead of the "clear and bright" test provided in TSTF–374.

*Basis for proposed no significant hazards consideration determination:* 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. Do changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates the specific ASTM reference from the Administrative Controls Section of Technical Specifications (TS) to a licensee-controlled document. Relocating the specific ASTM Standard reference from the TS to a licensee-controlled document will not affect nor degrade the ability of the EDGs [emergency diesel generators] to perform their specified safety function. Fuel oil quality will continue to meet the current ASTM requirements for particulate concentration.

The proposed change is administrative in nature and does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed change does not alter or prevent the ability of structures, systems or components from performing their intended function to mitigate the consequences on an initiating event with the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change relocates the specific ASTM reference from the Administrative Controls Section of Technical Specifications to a licensee-controlled document.

The change does not involve a physical alteration of the plant or a change in the methods governing normal plant conditions. In addition, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do changes involve a significant reduction in the margin of safety?

The proposed change relocates the specific ASTM reference from the Administrative Controls Section of TS to a licensee-controlled document. The detail associated with the specific ASTM standard reference is not required to be in the TS to provide adequate protection of the public health and safety, since the TS still retain the requirement for compliance with the applicable ASTM standard.

The level of safety of facility operation is unaffected by the proposed change since there is no change in the intent of the TS requirements of assuring fuel oil is of the appropriate quality for EDG use. The proposed change provides the flexibility needed to maintain state-of-the-art technology in fuel oil sampling and analysis methodology.

The proposed change does not reduce a margin of safety since it has no impact on any transient or safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

*NRC Branch Chief:* Evangelos C. Marinos.

*Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia*

*Date of amendment request:* May 26, 2006.

*Description of amendment request:* Item 1: The proposed amendments would revise the Technical Specification (TS) requirements related to Reactor Coolant System (RCS) leakage definitions and requirements and steam generator tube integrity. The licensee requested this change to implement TS Task Force (TSTF) Standard TS Change Traveler, TSTF–449, "Steam Generator

Tube Integrity," (TSTF–449, Rev. 4). Item 2: In addition, in its submittal dated May 26, 2006, the licensee proposed minor deviations from the TS changes described in TSTF–449, Rev. 4, to provide consistency with Surry's custom TSs.

*Basis for proposed no significant hazards consideration determination:* Item 1: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational leakage.

A SG tube rupture (TR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary leakage rate equal to the operational leakage rate limits in the licensing basis plus the leakage rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as main steam line break (MSLB), rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (i.e., they are assumed not to rupture). These analyses typically assume that primary to secondary leakage for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT 1–131 in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the plant TS for operational leakage and for DOSE EQUIVALENT 1–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than 500 gallons per day in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT 1–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed performance based requirements are an improvement over the requirements imposed by the current [TS]. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

[SG] tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

The NRC staff has reviewed the licensee's incorporation of the above analysis by reference 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 requested amendments involve no significant hazards consideration.

*Item 2:* 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. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve adding a new definition for RCS [reactor coolant system] leakage and rewording certain [TSs] for consistency with NUREG–1431, Revision 3. These changes do not involve any physical plant modifications or changes in plant operation; consequently, no technical changes are being made to the existing TS. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve adding a new definition for RCS leakage and rewording certain [TSs] for consistency with NUREG–1431, Revision 3. These administrative changes do not involve physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes involve adding a new definition for RCS leakage and rewording certain [TS] for consistency with NUREG–1431, Revision 3. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, the changes do 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 requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

*NRC Branch Chief:* Evangelos C. Marinos.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendments:* May 26, 2005, as supplemented by letters dated May 23 and June 20, 2006.

*Brief description of amendments:* The amendments revised Technical Specification (TS) 1.1, "Definitions," TS 3.4.14, "RCS [reactor coolant system] Operational Leakage," TS 5.5.9, "Steam Generator (SG) Program," and TS 5.6.8, "Steam Generator Tube Inspection Report," and added a new specification, TS 3.4.18, "Steam Generator (SG) Tube Integrity." The changes are consistent with TS Task Force (TSTF) Change TSTF–449, Revision 4, "Steam Generator Tube Integrity."

*Date of issuance:* July 27, 2006.

*Effective date:* As of the date of issuance to be implemented within 150 days from the date of issuance.

*Amendment Nos.:* Unit 1–161, Unit 2–161, Unit 3–161.

*Facility Operating License Nos. NPF–41, NPF–51, and NPF–74:* The amendments revised the Operating Licenses and the Technical Specifications for all three units.

*Date of initial notice in* ***Federal Register:*** July 5, 2005 (70 FR 38714). The May 23 and June 20, 2006, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2006.

*No significant hazards consideration comments received:* No.

*Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina*

*Date of application for amendment:* January 21, 2005, as supplemented by letters dated May 26, 2005, September 19, 2005, and March 31, 2006.

*Brief description of amendment:* The amendment approves the implementation of the alternative source term methodology for a loss-of-coolant accident at HBRSEP2.

*Date of issuance:* July 11, 2006.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.* 207.

*Renewed Facility Operating License No. DPR–23.* Amendment does not revise the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** May 24, 2005 (70 FR 29786). The supplemental letters dated May 26, 2005, September 19, 2005, and March 31, 2006, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 2006.

*No significant hazards consideration comments received:* No.

*Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin*

*Date of application for amendment:* January 12, 2006, as supplemented by letter dated June 2, 2006.

*Brief description of amendment:* The amendment revises the existing steam generator (SG) tube surveillance program to be consistent with TS Task Force (TSTF) Change TSTF–449, Revision 4, "Steam Generator Tube Integrity," and the model safety evaluation prepared by the Nuclear Regulatory Commission (NRC) and published in the **Federal Register** on March 2, 2005 (70 FR 10298) under the consolidated line item improvement process (CLIIP).

*Date of issuance:* July 18, 2006.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 188.

*Facility Operating License No. DPR–43:* Amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** February 14, 2006 (71 FR 7806). The supplement letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the orginal **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 2006.

*No significant hazards consideration comments received:* No.

*Duke Power Company LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* October 27, 2004.

*Brief description of amendments:* The amendments revised the facility operating licenses by removal of license condition 2.F, "Reporting Requirements", with regard to maximum power level, Updated Final Safety Analysis Report, antitrust conditions, fire protection, and additional conditions.

*Date of issuance:* July 31, 2006.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 230, 226.

*Renewed Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the licenses.

*Date of initial notice in* ***Federal Register:*** July 5, 2005 (70 FR 38717).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 2006.

*No significant hazards consideration comments received:* No.

*Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington*

*Date of application for amendment:* April 17, 2006.

*Brief description of amendment:* The amendment allows a delay time for entering a supported system Technical Specification (TS) when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.8 is added to the TS to provide this allowance and define the requirements and limitations for its use.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–372, Revision 4. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 24, 2004 (69 FR 68412), on possible amendments concerning TSTF–372, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252). The licensee affirmed the applicability of the following NSHC determination in its application dated April 17, 2006.

*Date of issuance:* July 11, 2006.

*Effective date:* As of its date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 198.

*Facility Operating License No. NPF–21:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** May 9, 2006 (71 FR 26998).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 2006.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of application for amendment:* September 26, 2005, as supplemented by letter dated April 11, 2006.

*Brief description of amendment:* The amendment revises the analysis method used for the large-break loss-of-coolant accident.

*Date of issuance:* July 24, 2006.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 248.

*Facility Operating License No. DPR–26:* The amendment revised the Technical Specifications and License.

*Date of initial notice in* ***Federal Register:*** November 8, 2005 (70 FR 67747). The April 11, 2006, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 2006.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (JAFNPP), Oswego County, New York*

*Date of application for amendment:* January 26, 2006, as supplemented by letter dated April 12, 2006.

*Brief description of amendment:* The amendment approves the implementation of the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program as the basis for demonstrating the compliance of JAFNPP with the requirements of Appendix H to Title 10 of the Code of Federal Regulations part 50.

*Date of issuance:* July 26, 2006.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 285.

*Facility Operating License No. DPR–59:* The amendment revised the Updated Final Safety Analysis Report and the License.

*Date of initial notice in* ***Federal Register:*** March 14, 2006 (71 FR 13174). The April 12, 2006, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 2006.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas*

*Date of application for amendment:* September 19, 2005.

*Brief description of amendment:* The amendment modified ANO–2 Surveillance Requirement TS 3.1.1.4, "Moderator Temperature Coefficient," and allowed the use of WCAP–16011–P–A, "Startup Test Activity Reduction Program."

*Date of issuance:* August 2, 2006.

*Effective date:* As of the date of issuance to be implemented within 30 days from the date of issuance.

*Amendment No.:* 265.

*Renewed Facility Operating License No. NPF–6:* Amendment revised the Technical Specifications/license.

*Date of initial notice in* ***Federal Register:*** December 6, 2005 (70 FR 72671).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 2006.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas*

*Date of application for amendment:* September 19, 2005, as supplemented by letters dated May 11 and June 19, 2006.

*Brief description of amendment:* The amendment revised the existing steam generator tube surveillance program to be consistent with the U.S. Nuclear Regulatory Commission's approved Technical Specification Task Force Standard Technical Specification Change Traveler, TSTF–449, "Steam Generator Tube Integrity," Revision 4. TSTF–449 is part of the consolidated line item improvement process.

*Date of issuance:* August 2, 2006.

*Effective date:* As of the date of issuance to be implemented within 90 days from the date of issuance.

*Amendment No.:* 266.

*Renewed Facility Operating License No. NPF–6:* Amendment revised the Technical Specifications and Renewed Facility Operating License.

*Date of initial notice in* ***Federal Register:*** January 3, 2006 (71 FR 147). The supplements dated May 11 and June 19, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 2006.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois*

*Date of application for amendments:* January 25, 2006, as supplemented by letter dated May 17, 2006.

*Brief description of amendments:* The amendment revised the Quad Cities licensing basis, as described in the Updated Final Safety Analysis Report, to allow the use of automatic load tap changers to operate in automatic mode on the reserve auxiliary transformers to compensate for potential offsite power voltage fluctuations, in order to ensure that acceptable voltage is maintained for safety-related equipment.

*Date of issuance:* July 24, 2006.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 232 and 228.

*Renewed Facility Operating License Nos. DPR–29 and DPR–30:* The amendments revised the License.

*Date of initial notice in* ***Federal Register:*** May 23, 2006 (71 FR 29678). The May 17, 2006, supplement contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 2006.

*No significant hazards consideration comments received:* No.

*Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California*

*Date of application for amendments:* August 23, 2005, as supplemented on April 6, 2006.

*Brief description of amendments:* The amendments extended the licensed lives of the Diablo Canyon Power Plant, Unit Nos. 1 and 2 reactors by the amount of time the licensee had expended to perform low-power testing of the reactors prior to initial startup.

*Date of issuance:* July 17, 2006.

*Effective date:* As of its date of issuance and shall be implemented within 90 days of issuance.

*Amendment Nos.:* Unit 1–188; Unit 2–190.

*Facility Operating License Nos. DPR–80 and DPR–82:* The amendments revised the Facility Operating Licenses.

*Date of initial notice in* ***Federal Register:*** October 11, 2005 (70 FR 59087). The April 6, 2006, supplemental letter provided additional information that clarified the application, and did not expand the scope of the application as originally noticed.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 2006.

*No significant hazards consideration comments received:* No.

*PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* August 4, 2005, as supplemented by letters dated February 9, July 18, and August 1, 2006.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 3.7.1.3, "Ultimate Heat Sink," to permit continued plant operation if the temperature of the ultimate heat sink (UHS) exceeds 89 °F, provided the UHS temperature averaged over the previous 24-hour period is verified at least once per hour to be less than or equal to 89 °F, and the UHS temperature does not exceed a maximum value of 91.4 °F.

*Date of issuance:* August 1, 2006.

*Effective date:* As of the date of issuance, to be implemented within 60 days.

*Amendment No.:* 168.

*Facility Operating License No. NPF–57:* This amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** August 30, 2005 (70 FR 51382).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 2006.

*No significant hazards consideration comments received:* No.

*R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of application for amendment:* November 7, 2005, as supplemented on May 5, 2006.

*Brief description of amendment:* The amendment revises Technical Specification 3.9.3, "Containment Penetrations," to allow an emergency egress door, access door, or roll up door, as associated with the equipment hatch penetration, to be open, but capable of being closed, during core alterations or movement of irradiated fuel within containment.

*Date of issuance:* July 26, 2006.

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment No.:* 98.

*Renewed Facility Operating License No. DPR–18:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** January 3, 2006 (71 FR 154). The May 5, 2006, letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 2006.

*No significant hazards consideration comments received:* No.

*R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of application for amendment:* November 18, 2005.

*Brief description of amendment:* The amendment revises the frequency in Technical Specification Surveillance Requirement 3.6.6.15, which verifies

that each containment spray nozzle is unobstructed. The frequency is changed from "10 years" to "following maintenance which could result in nozzle blockage."

*Date of issuance:* July 31, 2006.

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment No.:* 99.

*Renewed Facility Operating License No. DPR–18:* Amendment revised the Technical Specifications and the License.

*Date of initial notice in* ***Federal Register:*** January 3, 2006 (71 FR 154).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 2006.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket No. 50–259 Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama*

*Date of application for amendment:* December 6, 2004 (TS 428) as supplemented by letter dated June 16, 2005.

*Brief description of amendment:* The amendment revised the reactor vessel Pressure-Temperature curves depicted in the Technical Specification (TS) Figure 3.4.9–1 and adds a new TS Figure 3.4.9–2.

*Date of issuance:* July 26, 2006.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment No.:* 256.

*Facility Operating License No. DPR–33:* Amendment revised the TS.

*Date of initial notice in* ***Federal Register:*** January 18, 2005 (70 FR 2899). The supplement dated June 16, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 2006.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of application for amendment:* December 15, 2005 (TS–05–09), as supplemented by letter dated June 7, 2006.

*Brief description of amendment:* The amendment revises the Watts Bar Nuclear Plant (WBN) Technical Specification Surveillance Requirements to increase the minimum required average ice basket weight, thus, increasing the corresponding total weight of the stored ice in the WBN ice condenser. The changes to the ice basket and total ice weights are due to the additional energy associated with the Replacement Steam Generators.

*Date of issuance:* July 25, 2006.

*Effective date:* As of the date of issuance and shall be implemented prior to Mode 4 at startup to begin Cycle 8 fuel cycle.

*Amendment No.* 62.

*Facility Operating License No. NPF–90:* Amendment revises the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** February 14, 2006 (71 FR 7814). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2006.

*No significant hazards consideration comments received:* No.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* March 28, 2006.

*Brief description of amendment:* The amendment revised Technical Specification 5.0, "Administrative Controls," by changing a position title and department name.

*Date of issuance:* July 11, 2006.

*Effective date:* As of its date of issuance, and shall be implemented within 90 days of the date of issuance.

*Amendment No.:* 173.

*Facility Operating License No. NPF–30:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** May 9, 2006 (71 FR 27005).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 2006.

*No significant hazards consideration comments received:* No.

*Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia*

*Date of application for amendment:* July 5, 2005, as supplemented by letters dated March 30, April 13, and May 11, 2006.

*Brief description of amendment:* The amendments revised the Technical Specifications (TSs) to add a reference in TS 5.65.b, "Core Operating Limits Report (COLR)," to permit the use of an alternate methodology to perform a thermal-hydraulic analysis to predict the critical heat flux and departure from nucleate boiling ratio for the AREVA Advanced Mark-BW fuel in the North Anna 1 and 2 cores.

*Date of issuance:* July 21, 2006.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 247, 227.

*Renewed Facility Operating License Nos. NPF–4 and NPF–7:* Amendments changed the Licenses and the TSs.

*Date of initial notice in* ***Federal Register:*** August 16, 2005 (70 FR 48208). The supplements dated March 30, April 13, and May 11, 2006, contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 2006.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 8th day of August, 2006.

For the Nuclear Regulatory Commission.

**Catherine Haney,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 06–6921 Filed 8–14–06; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54296; File No. SR–ISE–2006–30]**

## Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving a Proposed Rule Change, and Amendment No. 1 Thereto, Increasing the Linkage Inbound Principal Order Fee

August 9, 2006.

On June 5, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Schedule of Fees in the manner described below. On June 29,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 10, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Exchange proposes to amend its Schedule of Fees to increase the Linkage Inbound Principal Order fee from $.15 per contract to $.24 per contract. This proposed rule change will remain in effect as part of an existing pilot program, which is scheduled to expire on July 31, 2007.[5]

The Commission has reviewed carefully the proposed rule change as amended and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission notes that the proposed fee is similar to the one established by the Philadelphia Stock Exchange, Inc. earlier this year.[8]

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–ISE–2006–30) as amended be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–13334 Filed 8–14–06; 8:45 am]

**BILLING CODE 8010–01–P**

[3] Amendment No. 1 is described in Securities Exchange Act Release No. 54074 (June 30, 2006), 71 FR 38917 (July 10, 2006).

[4] *See id.*

[5] *See* Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR–ISE–2006–38) (extending the expiration date of the pilot program from July 31, 2006 to July 31, 2007).

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 53650 (April 13, 2006), 71 FR 20430 (April 20, 2006) (SR–Phlx–2006–22) (increasing the fee for inbound P Orders sent via the Linkage from $.15 per option contract to $.25 per option contract).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54287; File No. SR–ISE–2006–48]**

## Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of Rules To Govern its Electronic Trading System for Equities

August 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt rules and amend existing ISE rules to govern its new electronic trading system for equities, the ISE Stock Exchange, LLC ("ISE Stock Exchange"), which will be an equity exchange facility of the ISE. In addition, the ISE proposes to apply certain of its options rules to the trading of equity securities on the ISE Stock Exchange. The proposed rules address the electronic trading of equities under Regulation NMS under the Act, and the rules and regulations thereunder. The text of the proposed rules is available on the Commission's Web site at *http://www.sec.gov* (under Self-Regulatory Organization Rulemaking and National Market System Plans), on the ISE Web site at *http://www.iseoptions.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

*Background.* The Exchange is proposing to adopt a series of rules in connection with its ISE Stock Exchange. The ISE Stock Exchange consists of a new electronic trading system developed to trade equities ("System"), which will be a facility of the ISE. The System will provide for the electronic execution and display of orders as well as a midpoint matching system. The class of members who will be eligible to trade on the ISE Stock Exchange are electronic access members ("EAMs") that the ISE specifically authorizes to trade in the System ("Equity EAMs"). Orders will be ranked in price-time priority regardless of the identity of the entering Equity EAM. Executions on the ISE Stock Exchange will take place automatically and immediately upon order entry if trading interest is available. The System will provide a routing service for orders when trading interest is not present on the ISE Stock Exchange. The ISE Stock Exchange will not have any market makers, only Equity EAMs who will provide liquidity to the Exchange. The ISE Stock Exchange will be an order-driven marketplace. There will be no market makers that are required to provide quotes.

The proposed rules incorporate the trade-through rule of Regulation NMS[3] by requiring that, for any execution to occur on the Exchange during regular trading hours,[4] the price must be equal to, or better than, any "protected quotation" within the meaning of Regulation NMS ("Protected Bid or Protected Offer"), unless an exception to Rule 611 of Regulation NMS is available.[5] ISE Stock Exchange proposes to direct to away markets for execution all or a portion of the orders that cannot be executed at the Protected Bid or Protected Offer on the Exchange.[6]

The Exchange previously filed with the Commission pursuant to Rule 19b–5 under the Act a Form PILOT to

[1] 1 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.611.

[4] The hours of business during which transactions may be made on the ISE Stock Exchange are set forth in proposed ISE Rule 2102 and are referred to herein as "regular trading hours."

[5] *See* proposed ISE Rule 2107(c).

[6] *See* proposed ISE Rule 2107(d).

commence operation of the Exchange's MidPoint Match System.[7] Included within the Form PILOT filing are rules governing trading in the MidPoint Match System. The rules filed under Form PILOT, which have not been approved by the Commission, are included in this filing for Commission approval.

The Exchange has filed with the Commission pursuant to Rule 19b–4 under the Act a proposed rule change to establish the ISE Stock Exchange, LLC as a facility (as defined in Section 3(a)(2) of the Act)[8] of the Exchange.[9]

*Trading Rules.* The ISE proposes to adopt new Chapter 21, which will be added to the Exchange's Rules, and to amend other rules to accommodate the proposed new System. Although certain aspects of the Exchange's Rules are incorporated by reference, as noted below, the majority of the rules contained in proposed Chapter 21 are new.

*Operating Hours.* Proposed ISE Rule 2102 provides for the ISE Stock Exchange to operate during regular trading hours. Specifically, the System will accept orders each day prior to the opening. ISE Stock Exchange will open for trading each day for NYSE and Amex securities once the primary market in that security opens on a primary trade followed by a NBBO quote.[10] The ISE Stock Exchange will open for trading each day for Nasdaq securities with the first received NBBO after 9:30 a.m. The ISE Stock Exchange will close at the same time as the close of the regular trading session on the primary market.

*Opening.* ISE Stock Exchange will open based upon the opening of the primary market for a security. When the primary market is either the NYSE or the Amex, the opening trade will be executed at the midpoint of the first reported NBBO subsequent to a reported trade on the primary market. When the primary market is Nasdaq, the opening trade will be executed at the midpoint of the first reported NBBO. All orders eligible to trade at the midpoint will be processed in time sequence, beginning with the oldest order. Matches will occur until there is no remaining volume or there is an imbalance of orders. Following the opening execution process in an individual security, all orders remaining will be executed in accordance with the proposed ISE Rules, discussed in more detail below. All other orders will be displayed on the order book, canceled, or routed to other Trading Centers in accordance with proposed ISE Rule 2107(d).

Re-openings will be handled in the same manner as the opening, as discussed above.

*Regular Trading Session.* Once the opening occurs for individual securities, ISE Stock Exchange will operate during regular trading hours. All displayed orders will be automatically matched following price and time priority as soon as they are entered in the order book. Except as provided below, incoming orders will be executed at or within the NBBO.

*Closing.* The ISE Stock Exchange will cease accepting and executing orders at the time the primary market closes.

*Newly Defined Terms.* The Exchange is proposing to adopt new terms as part of proposed Chapter 21 to accommodate the trading of equities under Regulation NMS. In addition to the adoption of general terms governing equity trading, the Exchange proposes to adopt terms specific to Regulation NMS and trading thereunder.[11] Specifically, the Exchange is proposing to adopt the following definitions, each of which has the same meaning as contained in Regulation NMS: "Automated Quotation," "Automated Trading Center," "Manual Quotation," "Protected Bid or Protected Offer," "Protected Quotation," "Trade-Through," and "Trading Center."

*Eligible Securities and Eligible Orders.* As set forth in proposed ISE Rule 2101(a), the ISE Stock Exchange will trade equity securities only pursuant to unlisted trading privileges ("UTP"). While the proposed rules would allow the ISE Stock Exchange to trade common stock, Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Trust Issued Receipts including those based on Investment Shares, and Investment Company Units by either listing and/or trading pursuant to UTP, in order to list equity securities on the Exchange, the Exchange would first need to seek Commission approval and amend its rules to comply with Rule 10A–3 under the Act and to incorporate qualitative listing criteria.

For orders entered into the ISE Stock Exchange, the minimum price variation ("MPV") is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.[12]

The System will not execute odd lot orders. The System will accept round lot orders and partial round lot ("PRL") orders for execution. Round lot orders will be executed in full when contra side interest is present. The round lot portions of a PRL order will be executed when contra side interest is present; the odd lot portion of the PRL order will be cancelled upon completion of the last round lot execution of the PRL order.

To be eligible to enter routable orders into the ISE Stock Exchange, Equity EAMs must, among other things, enter into a routing agreement with the Outbound Routing Facility, as described below.[13] Despite the existence of a routing agreement, if Equity EAMs do not want certain orders routed to away Trading Centers, they may prohibit routing by entering orders that are not eligible for routing by virtue of the order type, as discussed below.

The following order types are eligible for execution on the ISE Stock Exchange:[14]

The ISE Stock Exchange will accept Market Orders. A Market Order is an order to buy or sell a stated amount of a security that is to be executed immediately and automatically at the best available price(s) when the order reaches the ISE Stock Exchange to the greatest extent possible without causing a Trade-Through. Any unexecuted shares of a Market Order may be routed in whole or in part to other Trading Centers with Protected Quotations.

The ISE Stock Exchange will accept a number of types of limited priced orders. The System will accept Limit Orders. Limit Orders are one-sided orders to buy or sell a stated quantity of a security at a specified price or better. The System will also accept Reserve Orders. Reserve Orders are limit orders with a portion of the size that is to be displayed and a reserve portion of the size at the same price that is not to be displayed, but is to be used to refresh the displayed size when the displayed size is executed in full. Limit Orders and Reserve Orders will be routable

[7] *See* Form PILOT ISE–2006–01 (July 28, 2006).

[8] 15 U.S.C. 78c(a)(2).

[9] *See* Securities Exchange Act Release No. 54273 (August 3, 2006) (SR–ISE–2006–46).

[10] Proposed ISE Rule 2106(c) defines the primary market as the listing market for a security. If a security is traded on both the NYSE and the Amex, the primary market would be considered the NYSE. If a security is listed on both the NYSE and Nasdaq, the NYSE would be considered the primary market.

[11] *See* proposed ISE Rule 2100(c).

[12] The Exchange has committed to amend its proposed MPV rule to conform with the language of Rule 612 of Regulation NMS under the Act. The amended rule would read as follows: "The minimum price variation ("MPV") for bids, offers, and orders that are displayed, ranked or accepted on the ISE Stock Exchange is $0.01, with the exception of bids, offers, and orders that are priced less than $1.00, for which the MPV is $0.0001." Telephone conversation between Laura Clare, Assistant General Counsel, ISE, and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, on August 7, 2006.

[13] *See* proposed ISE Rule 2105(d).

[14] *See* proposed ISE Rule 2104.

unless otherwise marked as discussed below by an Equity EAM.

Other limited-price orders include Fill-or-Kill ("FOK") Orders, Immediate-or-Cancel ("IOC") Orders and Intermarket Sweep Orders ("ISO"). IOC Orders are executed immediately and automatically against existing orders on the System to the greatest extent possible without causing a Trade-Through, and any unexecuted balance will be canceled. Any Equity EAM may use an IOC Order to immediately and automatically execute against the full size of the displayed quotation on the System (including any undisplayed or reserve size available at the price of the displayed quotation). As with all executions on the ISE Stock Exchange, the System will immediately and automatically transmit a response to the Equity EAM who sent the IOC Order indicating the action taken with respect to the IOC Order. Additionally, the System will immediately and automatically update its quotation as a result of the execution.

ISOs are executed immediately and automatically against existing orders on the System at their executable price, in order of their ranking, and the shares of the ISO not so executed will be cancelled.[15] An ISO will be executed on the ISE Stock Exchange without regard to any Protected Quotations.

The System will accept the following orders to be handled on the ISE Stock Exchange, without routing to another Trading Center: IOC Order, FOK Order, Not Routable Order and Post Only Order.[16] FOK Orders are to be executed in their entirety or cancelled upon receipt. Not Routable Orders are limit orders that are to be executed in whole or in part upon receipt, and if not fully executed, displayed on the ISE Stock Exchange, as long as the order would not be executable against a Protected Quotation.[17] Post Only Orders are limit orders that are to be displayed on the ISE Stock Exchange upon receipt or cancelled if they are executable upon entry, either on the ISE Stock Exchange or at another Trading Center.

The System also will accept Pegged Orders.[18] Pegged Orders are limit orders to buy or sell a stated amount of a security at a displayed price set to track the current NBBO. The tracking of the relevant NBBO for Pegged Orders will occur on a real-time basis. If the calculated price for the Pegged Order would exceed its limit price, it will no longer track and will remain displayed at its limit price.

The System will accept Midpoint Match ("MPM") Orders.[19] MPM Orders are unpriced orders to buy or sell a stated quantity of an Equity Security at the midpoint of the NBBO. A MPM Order may be entered with a boundary price, and the System will not execute such order outside of the boundary price. Any boundary price must be in whole penny increments.

*Order Routing.* When the ISE Stock Exchange does not have interest at the NBBO, it will offer a routing service for Equity EAMs. Certain order types, including Market Orders and Limit Orders, are eligible to be routed.[20]

*Market Orders and Limit Orders Executable on the ISE Stock Exchange.* An IOC or ISO will automatically be sent to one or more Trading Centers with a Protected Bid or Protected Offer that is better than the ISE Stock Exchange quote for the lesser of the full displayed size of the Protected Bid or Protected Offer or the balance of the order. Any additional balance of the order will be executed on the ISE Stock Exchange simultaneously. If the market is crossed, the order may be executed as described below.

*Limit Orders Unexecutable on the ISE Stock Exchange.* If display of a limit order (or any balance thereof) on the ISE Stock Exchange would lock or cross a Protected Bid or Protected Offer, an ISO order will automatically be sent to one or more Trading Centers with a Protected Bid or Protected Offer that would be locked or crossed by the display of the order for up to the full displayed size of the Protected Bid or Protected Offer. Any additional balance of the order will be displayed on the ISE Stock Exchange immediately.

*Market Orders Unexecutable on the ISE Stock Exchange.* An IOC will automatically be sent to one or more Trading Centers with a Protected Bid or Protected Offer for the full size of the market order that is not executable on the ISE Stock Exchange.

The following order types are, by their terms, never routed: FOK Orders, IOC Orders, MPM Orders, Not Routable, and Post Only. The System will not route orders to away quotations that are not Protected Quotations, unless required by ISE Rules. Additionally, the System may trade through the price of away quotations that are not Protected Quotations.

*Priority of Orders.* The ISE Stock Exchange will rank displayed orders on the System in strict price-time priority.[21] Orders are ranked beginning with the highest priced orders to buy and the lowest priced orders to sell. For the purposes of ranking, the System uses the price at which the order is displayed.[22] Within each price, orders are ranked in time priority based on the time that an order is displayed or "updated" at that price, except that the undisplayed portion of the Reserve Orders will be ranked after all other orders and displayed portions of Reserve Orders at the same price. Orders that are updated or changed are ranked based on the time of change.

*Anonymity.* Except as provided below, transactions executed on the ISE Stock Exchange will be processed anonymously.[23] This means that the ISE Stock Exchange transaction reports will indicate the details of the transaction, but will not reveal contra party identities.[24] The Exchange believes that post trade anonymity should benefit investors because preserving anonymity until and after the settlement of a trade should limit the potential market impact

[15] The ISE Stock Exchange intends the ISO Order to be equivalent to the Intermarket Sweep Order defined in Rule 600(b)(30) of Regulation NMS under the Act.

[16] *See* proposed ISE Rules 2107(b)(2)(i), (ii), (iii), (iv), respectively.

[17] *See* proposed ISE Rule 2112.

[18] *See* proposed ISE Rule 2104(j).

[19] *See* proposed ISE Rule 2128.

[20] *See* proposed ISE Rule 2107(d).

[21] *See* proposed ISE Rule 2107.

[22] According to the Exchange, Equity EAMs can choose to place orders into MPM or into the displayed market. Orders placed into the displayed market will be eligible, by default, to interact with MPM Orders for purposes of gaining price improvement. Optionally, orders in the displayed market can bypass MPM by being marked as No MPM. The Exchange represented that it will amend the proposed rule change to set forth more clearly how orders entered into the displayed market would interact with MPM Orders. Telephone conversation among Laura Clare, Assistant General Counsel, and Robert Books, ISE, and Nancy Sanow, Assistant Director, and David Orlic, Special Counsel, Division of Market Regulation, Commission, on August 8, 2006.

[23] *See* proposed ISE Rule 2117.

[24] The ISE has submitted a request for a limited exemption from paragraph (a)(2)(i)(A) of Rule 10b–10 under the Act on behalf of Equity EAMs that execute trades on the ISE for their customers and a request for no-action relief with respect to the corresponding books and records requirements of Rules 17a–3 and 17a–4 under the Act. Rule 10b–10, among other things, requires a broker-dealer to disclose to its customers the identity of the party the broker-dealer sold to, or bought from, to fill the customer's order. The ISE Stock Exchange will not routinely reveal the identity of the actual contra-party when the order is executed against another ISE Equity EAM. Therefore, the Equity EAMs will not be able to comply with the contra-party identification requirement of Rule 10b–10. To permit Equity EAMs to utilize the ISE Stock Exchange without violating Rule 10b–10, the Exchange is seeking an exemption, on behalf of such Equity EAMs from the contra-party identification requirement. Additionally, the Exchange has asked the Commission not to recommend enforcement action for violations of the corresponding books and records requirements of Rules 17a–3 and 17a–4 if, in lieu of making and preserving a separate record, a broker-dealer relies on the Exchange's retention of the identities of Equity EAMs that execute anonymous trades on the ISE Stock Exchange.

that disclosing the Equity EAMs identity may have. Specifically, when contra party identity is revealed, Equity EAMs may be able to detect trading patterns and make assumptions about the potential direction of the market based on the Equity EAM's presumed client base. For example, if the Equity EAM handles large institutional orders and becomes an active buyer in a security, others could anticipate such demand and adjust their trading strategy accordingly. The Exchange believes that this could result in increased costs. The Exchange believes that post-trade anonymity should not compromise an Equity EAM's ability to settle an erroneous trade, because under proposed ISE Rule 2127, the clearly erroneous execution resolution process is coordinated by the Exchange, without the need for contra parties to know each other's identities. By masking the Equity EAM's identity, the Exchange believes it may help Equity EAMs meet their best execution obligations by mitigating market impact.[25]

The Exchange only will reveal the identity of the Equity EAM or the Equity EAM's clearing firm in the following circumstances: (1) For regulatory purposes or to comply with an order of a court or arbitrator; (2) when the National Securities Clearing Corporation ("NSCC") ceases to act for the Equity EAM or the Equity EAM's clearing firm and NSCC determines not to guarantee the settlement of the Equity EAM's trades; or (3) on risk management reports provided to the contra party of the Equity EAM or Equity EAM's clearing firm each day after 4 p.m. that discloses trading activity on an aggregate dollar value basis. Also, the Exchange will reveal to an Equity EAM, no later than the end of the day on the date an anonymous trade was executed, when that Equity EAM submits an order that has executed against an order submitted by that same Equity EAM.[26]

To satisfy the Equity EAM's recordkeeping obligations under Rules 17a–3(a)(1)[27] and 17a–4(a) under the Act,[28] the ISE Stock Exchange will, with the exception of those circumstances described below, retain for the period specified in Rule 17a–4(a) the identity of each Equity EAM that executes an anonymous transaction. In addition, Equity EAMs will retain the obligation to comply with Rules 17a–3(a)(1) and 17a–4(a) whenever they possess the identity of their contra party. In either case, the information will be retained in its original form or a form approved under Rule 17a–6 under the Act.[29]

*Prevention of Trade-Throughs.* The System is designed to automatically prevent trade-throughs of Protected Quotations. The System will accomplish this in two principal ways: (1) Through the use of outbound routing for those orders that will be available to route; and (2) by displaying orders at prices that would not cause a trade-through when executed. Additionally, the System will take advantage of various exceptions to Rule 611 of Regulation NMS under the Act.[30] The Exchange has proposed to adopt an exception ("self-help") to allow for the System to trade through a Protected Quotation displayed by a Trading Center that is experiencing a failure, material delay, or malfunction of its systems or equipment. The System may bypass those Protected Quotations by: (1) Notifying the non-responding Trading Center immediately after (or at the same time as) electing self-help; and (2) assessing whether the cause of the problem lies with its own systems and, if so, taking immediate steps to resolve the problem. ISOs may, by definition, trade through Protected Quotations when the System has simultaneously routed an intermarket sweep order to execute against the full displayed size of that Protected Quotation. Additionally, transactions executed while the Protected Quotations are crossed are permissible.

*Locked and Crossed Markets.* The ISE Stock Exchange will not intentionally lock or cross any away Protected Quotations on another Trading Center,[31] except in certain circumstances. For instance, the System may lock or cross an away Protected Quotation: (1) When a Protected Bid is higher than a Protected Offer or (2) if the System has first routed an order to that quotation and all better priced quotations for their full displayed size.

*Clearly Erroneous Executions.* Pursuant to proposed ISE Rule 2127, an Equity EAM that receives an execution on an order that was submitted erroneously to the ISE Stock Exchange for its own or customer account may request that the Market Control, along with a member of the regulatory staff, review the transaction under ISE Rule 2127(b) within the time limits described therein. Market Control will review the transaction with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. A member of the regulatory staff will advise and participate in all steps of Market Control's review of the transaction. Based upon this review, Market Control will decline to "break" a disputed transaction if Market Control believes that the transaction under dispute is not clearly erroneous. However, if Market Control determines the transaction in dispute is clearly erroneous, Market Control will declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, Market Control will seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For purposes of the clearly erroneous rule, the terms of a transaction are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

Market Control may, on its own motion, review transactions on the ISE Stock Exchange that arose during any disruption or malfunction in the use or operation of any electronic communications or trading facilities of the ISE Stock Exchange, or extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Each Equity EAM will be notified as soon as practicable, and the Equity EAM aggrieved by the action may appeal such action to the Trade Panel.

*Access to the ISE Stock Exchange.* The class of members who will be eligible to trade on the ISE Stock Exchange are Equity EAMs. There are no differences in access offered to different classes of members. However, only Equity EAMs that use the Financial Information Exchange ("FIX") Protocol—as opposed to the Common Message Switch ("CMS") Protocol—will be able to receive information regarding Solicitations of Interest, as discussed below.

All current EAMs are eligible to become Equity EAMs. They will need to certify that they have operational connectivity to the System. In addition, they will have to pay any standard ISE Stock Exchange access fees. Any broker-dealer that is not currently an EAM can

[25] *See* Securities Exchange Act Release No. 49053 (January 12, 2004), 69 FR 2642, (January 16, 2004) (SR—PCX–2003–63) (notice of filing and immediate effectiveness of proposed rule change by the Pacific Exchange, Inc. relating to post-trade anonymity to its ETP Holders).

[26] *See* proposed ISE Rule 2117(d) and (e).

[27] 17 CFR 240.17a–3(a)(1).

[28] 17 CFR 240.17a–4(a).

[29] 17 CFR 240.17a–6.

[30] *See* proposed ISE Rule 2107(c).

[31] *See* proposed ISE Rule 2112.

become an Equity EAM first by applying for EAM status through the existing membership process and then by connecting to the ISE Stock Exchange and paying any applicable fees. Such fees will be the same for current and new EAMs seeking to become Equity EAMs. All Equity EAMs also will need the ability to clear ISE Stock trades at DTCC, either by self-clearing or through the use of a DTCC member.

*Outbound Routing Facility.* In connection with the proposed changes to the trading rules described above, the Exchange intends to have a contractual relationship with a broker-dealer that will function solely as the outbound routing facility ("ORF") of the Exchange.[32] ORF will be both a member of the NASD and the ISE. ORF will provide an optional routing service for the Exchange, in which ORF will route orders from the Exchange to Trading Centers with Protected Quotations or, when required, Manual Quotations through other brokers ("Access Brokers") that are members or participants of those Trading Centers. As an Outbound Router, ORF will receive routing instructions from the System, route orders to another Trading Center through an Access Broker and be responsible for reporting resulting executions back to the System, which in turn will report resulting executions back to the Equity EAM. All orders routed through ORF will be subject to the Exchange's rules. Use of the ORF is optional for Equity EAMs, as discussed above.

The Outbound Router function of ORF will operate as a facility (as defined in Section 3(a)(2) of the Act) of the Exchange.[33] As such, the Outbound Router function of ORF is subject to the Commission's continuing oversight. In particular, and without limitation, under the Act, the Exchange is responsible for filing with the Commission proposed rule changes and fees relating to the ORF Outbound Router function, and ORF is subject to exchange non-discrimination requirements.[34]

Pursuant to Rule 17d–1 under the Act,[35] where a member of the Securities Investor Protection Corporation is a member of more than one self-regulatory organization ("SRO"), the Commission will designate to one of such organizations the responsibility for examining such member for compliance with the applicable financial responsibility rules.[36] The SRO designation by the Commission is referred to as a "Designated Examining Authority" ("DEA"). As noted above, ORF will apply to become a member organization of the Exchange, and a member of the NASD. The NASD is an SRO not affiliated with the Exchange or its affiliates and is a DEA pursuant to Rule 17d–1 under the Act.[37] The Exchange will also enter into a 17d–2 Agreement with the NASD to delegate to the NASD all regulatory oversight and enforcement responsibilities with respect to ORF pursuant to applicable laws.

The Exchange will establish and maintain procedures and internal controls to restrict the flow of confidential and proprietary information between the Exchange and its ORF and any other entity or affiliate of the ORF.[38] The books, records, premises, officers, directors, agents, and employees of the ORF, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Act. The books and records of the ORF, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Exchange and the Commission.

*MidPoint Match.* The MidPoint Match System is a mechanism of the ISE Stock Exchange for trading common stocks and similar securities in a continuous mid-point matching system.[39] Equity EAMs will be able to enter unpriced orders into the MidPoint Match System.[40]

In entering an order, a member must specify: the security; whether it is a buy or sell order; and the number of shares the member seeks to buy or sell. Although unpriced, members also may specify a boundary price above which they will not buy (or below which they will not sell). The System will continuously monitor buy and sell orders in the System and will execute orders at the mid-point of the NBBO as long as the execution does not violate the boundary price on an order.

When entering an order, a member can specify what, if any, information the system should disseminate:

(1) The member can specify that the system not disseminate any information regarding the order ("Standard Order"); or

(2) The member can specify that the system disseminate that there is a pending order in a particular security, but without identifying whether it is a buy or sell order (a "Solicitation of Interest" or "SOI").

The System will reject an SOI (but not a Standard Order) with a boundary price that is not then currently executable. Upon arrival of an SOI, the System will immediately generate a single broadcast internally to all Equity EAMs that have programmed to accept this message announcing the arrival of the order. An Equity EAM entering an SOI may not cancel that SOI for five seconds. In addition, if an SOI is not executed within ten seconds, the SOI will convert into a Standard Order.

Because MPM will execute all trades at the mid-point of the NBBO, the MidPoint Match System never will execute a trade outside of the NBBO. In addition, the system will not execute a trade if the quotation for a security is "crossed," with the best national bid being greater than the best national offer; in that situation, the system will suspend executions, since both buyers and sellers may be able to receive executions in other markets at prices better than the NBBO midpoint. If the quotation is "locked," with the best national bid equaling the best national offer, the system will execute all trades at the locked price.

*Other Rule Changes.* Proposed Rules 2122 (Investment Company Unit), 2123 (Trust Issued Receipts), 2124 (Commodity-Based Trust Shares), 2125 (Currency Trust Shares), and 2126 (Partnership Units) are proposed rules to permit the trading of derivative products on the ISE Stock Exchange. While these proposed rules would allow the ISE Stock Exchange to trade Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Trust Issued Receipts including those based on Investment Shares, and Investment Company Units by either listing and/or trading pursuant to UTP, the Exchange will only trade these products pursuant to UTP. In order to list such products on the Exchange, the Exchange would first need to seek Commission approval and amend its applicable rules.

[32] ORF is engaged solely in the business of acting as a routing agent. Telephone conversation between Laura Clare, Assistant General Counsel, ISE, and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, on August 7, 2006.

[33] 15 U.S.C. 78c(a)(2).

[34] 34 15 U.S.C. 78f(b)(6).

[35] 17 CFR 240.17d–1.

[36] Pursuant to Rule 17d–1 under the Act, in making such designation the Commission will take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among SROs, and the development of a national market system for the clearance and settlement of securities transactions.

[37] 17 CFR 240.17d–1.

[38] *See* proposed ISE Rule 2108.

[39] *See* proposed ISE Rule 2128.

[40] *See supra* note 22 regarding interaction of orders entered into the displayed market with MPM Orders.

Proposed ISE Rule 2117 (Settlement Through Clearing Corporations) adds provisions governing the settlement and clearing of equities.

Proposed ISE Rules 2113 (Long and Short Sales) and 2114 (Doing Business With the Public) have been filed separately.[41]

The following Rules have been incorporated from the Exchange's options rules: ISE Rule 100 (Definitions) is being expanded to include equities in the following definitions: bid, clearing corporation, offer and order; ISE Rule 500 (Designation of Securities) is being amended to accommodate for the newly adopted rules in Chapter 21; ISE Rules 702 and 703 (Trading Halts and Trading Halts Due to Extraordinary Market Volatility, respectively) are being amended to account for halting trading in equity securities. In addition, the Exchange proposes to apply certain of its options rules to the trading of equity securities on the ISE Stock Exchange, as set forth in Appendix A to proposed Chapter 21 of the ISE Rules.

2. Statutory Basis

ISE believes the proposal is consistent with the requirements of the Act and the rules and regulations promulgated thereunder that are applicable to a national securities exchange, and in particular, with Section 6(b) of the Act.[42] ISE believes that the proposal is consistent with Section 6(b)(5) of the Act,[43] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the ISE believes that the proposal is designed to enable it to promote competition in the trading of equity securities through establishing a new marketplace.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[41] *See* File Nos. SR–ISE–2006–42 (filed on July 25, 2006) and SR–ISE–2006–41 (filed on July 25, 2006), respectively.

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments on this proposal from members, participants, or others.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2006–48 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–48 and should be submitted on or before September 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–13335 Filed 8–14–06; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54285; File No. SR–NASDAQ–2006–023]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Technical and Conforming Changes to Nasdaq Rule 7018

August 8, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act,[3] and rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to conform Nasdaq Rule 7018 to changes made to Rule 7010(i) of the rules of the National Association of Securities Dealers, Inc. ("NASD") since approval of Nasdaq's rules by the Commission in January 2006, and to make changes to the rule to reflect Nasdaq's operation as an exchange for Nasdaq-listed securities in advance of its operation for other securities. Nasdaq proposes to implement the proposed rule change on August 1, 2006. The text of the proposed rule change is available on Nasdaq's Web site at *http://www.nasdaq.com*, at the principal office of Nasdaq, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq is filing this proposed rule change to conform Nasdaq rule 7018 to changes made to NASD rule 7010(i) since approval of Nasdaq's rules by the Commission in January 2006, and to make changes to the rule to reflect Nasdaq's operation as an exchange for Nasdaq-listed securities in advance of its operation for other securities. Specifically, Nasdaq is amending Nasdaq Rule 7018 to reflect changes made to NASD rule 7010(i) by SR–NASD–2005–141, SR–NASD–2006–013, SR–NASD–2006–023, SR–NASD–2005–057, and SR–NASD–2006–061.[5] Nasdaq is also adding language to the rule to clarify that until Nasdaq begins to operate as an exchange for non-Nasdaq stocks, the charges or credits for transactions in non-Nasdaq securities through the ITS/CAES System operated by The Nasdaq Stock Market, Inc. and Brut and Inet are set forth in NASD Rule 7010(i). Finally, because the fee schedule for Nasdaq-listed stocks traded on Nasdaq is based directly on the predecessor fee schedule of The Nasdaq Stock Market, Inc., which in turn has based the level of certain fees and credits on a market participants' combined volume in all securities traded through The Nasdaq Stock Market, Inc., Nasdaq is adding language to provide that its fees and credits will be based on volume in all securities traded through both Nasdaq exchange systems and systems operated by The Nasdaq Stock Market, Inc. for trading non-Nasdaq-listed securities. Nasdaq believes the effect of this language is to ensure that Nasdaq's fees and credits remain consistent with the fees and credits previously in effect.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[6] in general, and with section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Nasdaq operates or controls. Nasdaq believes the proposed rule change conforms Nasdaq Rule 7018 to changes made to NASD Rule 7010(i) since approval of Nasdaq's rules by the Commission in January 2006, and makes changes to the rule to reflect Nasdaq's operation as an exchange for Nasdaq-listed securities in advance of its operation for other securities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is subject to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2006–023 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2006–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[5] Securities Exchange Act Release Nos. 52978 (December 19, 2005), 70 FR 76842 (December 27, 2005) (SR–NASD–2005–141); 53256 (February 8, 2006), 71 FR 8020 (February 15, 2006) (SR–NASD–2006–013); 53320 (February 15, 2006), 71 FR 9395 (February 23, 2006) (SR–NASD–2006–023); 54160 (July 17, 2006), 71 FR 42696 (July 27, 2006) (SR–NASD–2006–057); and 53931 (June 1, 2006), 71 FR 33325 (June 8, 2006) (SR–NASD–2006–061).

[6] 15 U.S.C. 78f.

[7] 7 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2006–023 and should be submitted on or before September 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–13316 Filed 8–14–06; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54284; File No. SR–NASDAQ–2006–016]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Eliminate Registration of Foreign Associates Under Nasdaq Membership Rules

August 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to eliminate the requirement for "foreign associates" to register with Nasdaq. Nasdaq will implement the proposed rule change immediately upon approval by the Commission. The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

1060. Persons Exempt from Registration.

(a) The following persons associated with a member are not required to be registered with Nasdaq:

(1)–(4) No change.

*(5) Persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions and that will conduct all of their securities activities in areas outside the jurisdiction of the United States and will not engage in any securities activities with or for any citizen, national or resident of the United States.*

For purposes of Rule 1060(a)(4), the terms "option" and "direct participation program" shall have the meanings assigned to such terms by NASD Rules 2860 and 1022(e)(1)(A), respectively, and the definitions contained in such NASD rules shall apply to Nasdaq members as if such Rules were part of Nasdaq's Rules.

(b) No change.

1100. [Foreign Associates] *Reserved*

[(a) All persons associated with a member who are designated as Foreign Associates shall be required to be registered but shall be exempt from the requirement to pass a Qualification Examination. Persons associated with a member shall be designated as Foreign Associates if they meet the following criteria:]

[(1) They are not citizens, nationals, or residents of the United States or any of its territories or possessions;]

[(2) They will conduct all of their securities activities in areas outside the jurisdiction of the United States and they will not engage in any securities activities with or for any citizen, national or resident of the United States.]

[(b) Prior to the time the exemption provided for in paragraph (a) hereof may become effective, the member desiring to employ any such person must file with Nasdaq a "Uniform Application for Securities Industry Registration or Transfer" for each such person and must certify that such person meets the criteria of paragraph (a), as well as that:]

[(1) Such person is not subject to any of the prohibitions to registration with Nasdaq;]

[(2) Service of process for any proceeding instituted by Nasdaq in respect to such person may be sent to an address designated by the member.]

[(c) In the event of the termination of the employment of a Foreign Associate, the member must notify Nasdaq immediately by filing a notice of termination.]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.*

1. Purpose.

Nasdaq proposes to eliminate the "foreign associate" registration category under Nasdaq Rule 1100 and add an exemption to Nasdaq Rule 1060 for persons formerly covered by this registration category. Nasdaq's rule is based on NASD Rule 1100, which provides that an associated person of a member may be designated as a "foreign associate" if the person (i) is not a citizen, national, or resident of the United States, and (ii) will conduct all of his or her securities activities outside the jurisdiction of the United States and will not engage in any securities activities with or for any citizen, national or resident of the United States. The NASD rule provides that a foreign associate is not required to pass any qualification examinations but must register with NASD.

In its current form, Nasdaq Rule 1100 duplicates the NASD requirement. Nasdaq believes, however, that it does not have a compelling policy reason for duplicating the NASD's registration requirement or extending it to non-NASD members. Nasdaq members that are NASD members will already be required to register their foreign associates with the NASD. The NASD's role as the primary regulator with respect to firms with public customers may be indicative of a need to pursue broad registration of broker-dealer employees even if such employees have no nexus with U.S. securities markets, but a duplicative requirement by Nasdaq would serve no regulatory purpose. With respect to the small number of non-NASD members that become Nasdaq members, Nasdaq has no reason to expect that any would have associated persons categorized as foreign associates and believes that there would be no regulatory benefit

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

associated with the registration of those that might fit within this category. Accordingly, Nasdaq proposes to amend its rule to exempt foreign associates from registration with Nasdaq.

2. Statutory Basis.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change will mitigate unnecessary burdens on its members and their associated persons without diminishing the regulatory protections associated with its membership rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2006–016 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NASDAQ–2006–016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2006–016 and should be submitted on or before September 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–13317 Filed 8–14–06; 8:45 am]

**BILLING CODE 8010–01–P**

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 20:30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54286; File No. SR–NASDAQ–2006–028]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a New Service Called FilterView

August 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On February 22, 2006, The Nasdaq Stock Market, Inc. (Nasdaq Inc."), as a subsidiary of the National Association of Securities Dealers, Inc. ("NASD"), initially provided notice pursuant to Rule 19b–4(f)(6)(iii) under the Act of its intent to file the proposed rule change as an NASD rule. NASD, through Nasdaq Inc., then filed the proposed rule change (SR–NASD–2006–034) on March 3, 2006, and received confirmation through the electronic filing system that the proposed rule change was received by the Commission.[6] Later that same day, after reviewing the proposed rule change, the Commission rejected the proposed rule change because it contained inconsistencies that rendered the proposed rule change unacceptable. Due to a systems error that is still being investigated, Nasdaq Inc. did not receive notice that the Commission had rejected the proposed rule change. On July 24, 2006, Nasdaq Inc. contacted Commission Staff to inquire as to why notice of the proposed rule change had not appeared in the **Federal Register**. At

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] On August 1, 2006, Nasdaq began to operate as a national securities exchange for purposes of trading Nasdaq-listed securities.

that time, Commission Staff explained that the proposed rule change had been rejected on March 3, 2006. Because Nasdaq Inc. never received notice of the rejection, Nasdaq Inc. waited until the 30-day pre-operative waiting period expired, and then implemented FilterView and its fees as originally proposed in April.

Nasdaq filed the instant proposed rule change to allow the public the opportunity to comment on FilterView and its fees, despite the fact that the service has been implemented since April.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq established a new service called FilterView that allows market data distributors to receive a sub-set of existing real-time data feed products to control bandwidth and computer processing costs. The text of the proposed rule change is below. Proposed new language is in italics; there are no proposed deletions.[7]

*7037. Nasdaq FilterView Service*

*The Nasdaq FilterView service shall allow a Distributor to receive a sub-set of an existing real-time data feed distributed by Nasdaq. FilterView service shall be available for a subscription fee of $500 per month per sub-set of data, in addition to the fees associated with the relevant underlying data feed. There shall be no incremental user charges for distributors related to use of the FilterView service.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[7] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *www.complinet.com/nasdaq*. These rules became effective on August 1, 2006 when Nasdaq commenced operations as a national securities exchange for Nasdaq-listed securities.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

General industry trends have driven a significant increase in the rates of market-data message traffic. For example, since January 2004 the 15-second peak message rate for TotalView, Nasdaq's full depth-of-book data feed for Nasdaq-listed securities, has risen over 190 percent. Other data feeds, most notably in the options markets, are experiencing similar rates of increase. Nasdaq believes this trend is likely to continue, if not accelerate, due to the implementation of Regulation NMS and other market changes that place an even greater emphasis on automation.

As a result, distributors and brokers that use and distribute real-time market data have incurred significant incremental costs. First, the telecommunications bandwidth a firm purchases must be increased to handle the message traffic without material increases in latency or dropped information. Second, once the data is received it must be processed, with resulting hardware expenses. In some cases, the cost of receiving and processing real-time data can surpass the cost of the explicit fees charged for receiving such data. As a result, brokers and distributors are seeking ways to "filter" the data they receive (*i.e.*, reduce the amount of data received without losing information necessary for their trading activities). Any service that can successfully filter the data without impacting data performance or integrity is considered valuable, given the savings obtained from lower telecommunications and hardware costs.

To respond to this demand, Nasdaq offers the Nasdaq FilterView service, whereby Nasdaq provides a sub-set of an existing data feed to distributors seeking to limit the network and processing costs of market data usage. Specifically, FilterView offers a variety of options to receive only a portion of a pre-existing data feed. Original offerings include pre-packaged portions of existing feeds, such as a filtered version of TotalView that only contains Net Order Imbalance Indicator information. Ultimately, clients may select their own filtering parameters (requesting to receive data only for certain stocks or other criteria) for a variety of data feeds, including data feeds sourced from third parties.

Filtered data feeds are made available through current Nasdaq data dissemination architecture. Pricing for filtered data feeds is pursuant to the existing fee structure applicable to the relevant feed, plus an additional fee of $500 per month, per sub-set of data. For example, a firm that requested a filtered version of TotalView would pay the TotalView distributor fee (currently between $1,000 and $5,000 per month) plus an additional fee of $500 per month for receiving the data in filtered format. There is no incremental user fees assessed for distribution of data feeds provided through FilterView to end users, though normal per user fees for the relevant data feed continue to apply.

The Nasdaq FilterView service is an entirely voluntary service. Firms can either take the feed as it exists currently for the fee that is already in place, or they can voluntarily choose to filter out some of the elements for the added fee for their own pricing or competitive reasons.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Sections 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using Nasdaq's facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[12] Because FilterView and its fees have been in operation since April 2006 and imposition of the 30-day operative delay could result in the discontinuation of current services, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2006–028 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–028 and should be submitted on or before September 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–13319 Filed 8–14–06; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 5496]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Biedermeier: The Invention of Simplicity"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Biedermeier: The Invention of Simplicity", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Milwaukee Art Museum, Milwaukee, Wisconsin, from on or about September 13, 2006, until on or about January 1, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 5, 2006.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–13353 Filed 8–14–06; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 5495]**

### Culturally Significant Objects Imported for Exhibition Determinations: Canaletto's "Venedig: at the Mouth of the Grand Canal" and "Venice: The Grand Canal"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that two objects to be exhibited, Canaletto's "Venedig: at the mouth of the Grand Canal" and "Venice: The Grand Canal," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the objects at The Getty Center, Los Angeles, California, from on or about January 2, 2007, until on or about July 15, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of

the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: August 8, 2006.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–13352 Filed 8–14–06; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability of a Record of Decision (ROD) and a Written Reevaluation of the 1999 Final Environmental Impact Statement (FEIS) To Select Another Alternative for the Location of the Proposed Third Runway, as Analyzed in the FEIS and Approved in the 2000 ROD at Charlotte Douglas International Airport, Charlotte, NC

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

**ACTION:** Notice of availability of a ROD and a written reevaluation of the FEIS.

**SUMMARY:** The Federal Aviation Administration (FAA) is making available a ROD and a Written Evaluation of the FEIS in response to FAA procedure changes that have rendered the previously approved third runway unable to accomplish the purpose and need of triple-independent approach operations, thereby minimizing any capacity enhancement that the runway was intended to accomplish. Charlotte Douglas International Airport, Charlotte, North Carolina, has therefore proposed acceptance of another alternative located 600 feet west of the previously approved runway location that was fully analyzed in the EIS as Alternative 5 and that meets the current FAA Airport Design Standards.

*Point of Contact:* Mr. Scott Seritt, Manager, Airports District Office, Southern Region Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337–2747, (404) 305–7151.

**SUPPLEMENTARY INFORMATION:** Notice of availability is given of a ROD and a Written Reevaluation of the FEIS to select another alternative for the location of the proposed third runway, as analyzed in the FEIS and approved in the 2000 ROD at Charlotte Douglas International Airport, Charlotte, North Carolina. The new runway location is 600 feet west of the previously approved site, and was fully analyzed as Alternative 5 in the FEIS. The purpose of the ROD and Written Reevaluation was to evaluate potential environmental impacts arising from the approval of the location previously analyzed as Alternative 5 in the FEIS that may not have existed at the time of the original analysis.

These documents will be available during normal business hours at the following locations:

FAA Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building 2–260, College Park, GA 30337–2747 (Due to current security requirements, arrangements must be made with the point of contact prior to visiting these offices.);

Charlotte Douglas International Airport, P.O. Box 19066, Charlotte, NC 28219;

Mecklenburg County Library System, Freedom Regional Library, 1516 Alleghany Street, Charlotte, NC 28208;

Mecklenburg County Library System, Main Branch, 310 North Tyron Street, Charlotte, NC 28202;

Mecklenburg County Library System, West Blvd. Branch, 2157 West Blvd., Charlotte, NC 28208;

Mecklenburg County Library System, 13620 Steele Creek Rd., Charlotte, NC 28273.

Issued in Atlanta, Georgia, August 2, 2006.

**Scott Seritt,**

*Manager, Atlanta Airports District Office, FAA, Southern Region.*

[FR Doc. 06–6864 Filed 8–14–06; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2006–25474]**

### Agency Information Collection Activities: Request for Comments for New Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on June 2, 2006. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by September 14, 2006.

**ADDRESSES:** You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2006–25474.

**FOR FURTHER INFORMATION CONTACT:** Bethaney Bacher, 202–366–4196, or Matthew Leffler Schulman, 202–366–1929, Office of Natural & Human Environment, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Evaluate the Effects of National Scenic Byways Program Grants.

*Background:* Title 23, Section 162 of the United States Code describes the creation of the National Scenic Byways Program. This legislation was most recently amended in 2005 upon passage of the P.L. 109–59 Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU). The legislation also includes provisions for review and dissemination of grant monies by the U.S. Secretary of Transportation. Grant applications are solicited on an annual basis. Eligible projects are on State designated byways, National Scenic Byways and All-American Roads, or Indian tribe scenic byways. Applications are completed by Federal, State, or local governmental agencies; Tribal governments; and non-profit organizations. The application information is collected electronically via the online Grant system and used to determine project eligibility. We are seeking approval from OMB for the forms used to collect the application information and used on *www.grants.gov*. Additional information on the National Scenic Byways Program

and its grant program is available at *www.bywaysonline.org.*

*Respondents:* An estimated total of 60, to include 50 State Departments of Transportation, the District of Columbia and Puerto Rico, Federal Land Management Agencies, State and local governments, non-profit agencies and Tribal Governments. It is estimated that 400 applications will be received annually.

*Frequency:* Annual.

*Estimated Average Burden per Response:* 40 hours.

*Estimated Total Annual Burden Hours:* 16,000 hours.

*Electronic Access:* Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 9, 2006.

**James R. Kabel,**

*Chief, Management Programs and Analysis Division.*

[FR Doc. E6–13394 Filed 8–14–06; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No. FTA–2006–24143]**

### Public Transportation on Indian Reservations Program; Tribal Transit Program

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of funding availability: Solicitation of grant applications for FY 2006 tribal Transit Program Funds.

**SUMMARY:** This Notice accomplishes several purposes. First, the U.S. Department of Transportation, Federal Transit Administration (FTA) summarizes and responds to written comments FTA received in response to a March 22, 2006, **Federal Register** Notice regarding proposed grant program provisions for this new program and to oral comments FTA received during two announced public meetings on this program that were held on April 4, 2006, in Denver, Colorado, and on April 7, 2006, in Kansas City, Missouri. Second, this Notice announces the availability of funds in fiscal year (FY) 2006 for the Public Transportation on Indian Reservations Program, a new program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Finally, this Notice announces a national solicitation for applications, with grantees and projects to be selected on a competitive basis; the grant terms and conditions that will apply to this new program; and grant application procedures and selection criteria for FY 2006 projects.

**ADDRESSES:** This announcement is available on the FTA's Web site at: *http://www.fta.dot.gov.* FTA will announce final selections on the Web site and in the **Federal Register**. A synopsis of this announcement will be posted on the governmentwide electronic grants Web site at: *http://www.GRANTS.GOV.* Applications may be submitted in one of three ways: electronically through *GRANTS.GOV,* in hard copy to Federal Transit Administration, 400 Seventh Street, SW., Room 9315,Washington, DC 20590, Attention: Lorna R. Wilson; or sending by e-mail to *fta.tribalprogram@dot.gov.*

**DATES:** Complete applications for Public Transportation on Indian Reservations Program grants must be submitted in hard copy to the FTA, via e-mail by October 16, 2006, or submitted electronically through the *GRANTS.GOV* Web site by October 16, 2006. Anyone intending to apply electronically should initiate the process of registering on the *GRANTS.GOV* site immediately to ensure completion of registration before the deadline for submission. FTA will announce grant selections in the **Federal Register** when the competitive selection process is complete.

Applicants should be aware that materials sent through the U.S. Postal Service are subject to significant delays in delivery due to the security screening process. Use of courier or express delivery services is recommended if unable to apply electronically.

**FOR FURTHER INFORMATION CONTACT:** Contact the appropriate FTA regional Tribal Liaison (Appendix A) for application-specific information and issues. For general program information, contact Lorna R. Wilson, Office of Transit Programs, (202) 366-2053, e-mail: *Lorna.Wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:**

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### I. Overview

Section 3013 of SAFETEA–LU amended 49 U.S.C. 5311(c) by establishing the Public Transportation on Indian Reservations Program (hereinafter referred to as the Tribal Transit Program). This new program authorizes direct grants "under such terms and conditions as may be established by the Secretary" to Indian tribes for any purpose eligible under FTA's Nonurbanized Area Formula Program, 49 U.S.C. 5311. The funding level authorized for this new program will increase from $8 million in FY 2006 to $15 million in FY 2009. The Conference Report to SAFETEA–LU indicated that the funds set aside for Indian tribes in the Tribal Transit Program are not meant to replace or reduce funds that Indian tribes receive from States through FTA's Nonurbanized Area Formula Program.

## II. Background

FTA published a Notice in the **Federal Register** dated November 30, 2005 (70 FR 71950), "FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users: Notice" which announced changes to current FTA programs and new programs, including the Tribal Transit Program. In the November 30, 2005, **Federal Register** Notice, FTA set forth and requested public comments on the proposed basis for formula apportionment for the Tribal Transit Program, eligible grant purposes, and proposed program requirements.

On March 22, 2006, FTA published a Notice in the **Federal Register** (71 FR 14618), "Public Transportation on Indian Reservations Program (49 U.S.C. 5311(c)(1): Notice of Public Meetings, Proposed Grant Program Provisions; Notice." FTA responded to comments that were received from the public in response to the November 30, 2005 **Federal Register** Notice, and requested additional comment on the following issues: the proposed basis for allocating funds; grantee eligibility; eligible purposes for grant funds; proposed terms and conditions for the grant program, and local share options. The Notice also announced two one-day outreach meetings on the Tribal Transit Program. The comment period on the March 22, 2006, **Federal Register** Notice ended on April 21, 2006, but comments submitted after that date were considered.

## III. Comments and Responses

FTA received 28 written comments in response to the March 22, 2006, **Federal Register** Notice and additional oral comments were received from the Indian tribes and other organizations at the two public outreach meetings that were held in April 2006. A summary of the oral comments were placed in the docket for this Notice. All of the written and oral comments received by FTA during the comment period can be divided into the following categories: (a) The process and the criteria that should be established by FTA to allocate funding under the Tribal Transit Program; (b) the terms and conditions that should be applied to grants awarded under the Tribal Transit Program, which includes the proposed options for local match; and (c) other issues that were not specifically proposed or addressed in the March 22, 2006 **Federal Register** Notice. The comments received from the Indian tribes and others were generally very favorable to the establishment and implementation of this new program and proposed program requirements. However, the Indian tribes and others strongly disagreed with some of FTA's proposals in the March 22, 2006, **Federal Register** Notice. The Indian tribes also offered recommendations and changes to FTA's proposals based on their unique perspective and experience in providing public transportation on Indian reservations.

### *A. Process and Criteria*

The March 22, 2006, **Federal Register** Notice proposed a single annual competitive selection process to fund both new and existing tribal transit systems and suggested not establishing minimum or maximum awards. In addition, the Notice proposed the following five criteria that would be evaluated and rated by FTA in making an award selection: Demonstration of need; benefits of the project; adequacy of project planning; financial commitment; and coordination. The Indian tribes were mostly in agreement on FTA's proposal to make single annual competitive selections for awards under the Tribal Transit Program. However, there were divergent comments received concerning the criteria proposed by FTA for project funding under this new program. We will address the comments that were submitted by the Indian tribes and others in the following section of this document.

*Comment*: There were multiple comments concerning FTA's proposal for allocating funds in this new program. Several comments from small Indian tribes observed that FTA's criteria appeared to be biased in favor of existing tribal transit systems. Comments from larger Indian tribes stated that the criteria should be based on established transit systems or for tribes that have identified their transit needs in the Tribal Transportation Improvement Program. Other comments suggested an additional criterion that would consider the reasonableness of the amount requested or that projects should be funded for multiple years to ensure successful implementation of transit projects.

*Response*: FTA will ensure that there will be an equitable distribution of funds in this new program for eligible transit projects that are planned, constructed, or operated by the Indian tribes. FTA has decided to include the following four criteria: project planning and coordination; demonstration of need; benefits of project; and financial commitment and operating capacity.

In addition, to further ensure an equitable distribution of funds in this new program, FTA will separately evaluate proposals under the following three categories: (1) Start-up operations; (2) enhancements or expansions of existing transit services; and (3) transit planning and/or operational planning grants. The application process will also allow a tribal government to apply for multiple years of funding, subject to the availability of appropriations.

### *B. Terms and Conditions*

*Comment*: There was a clear consensus that strongly disagreed with FTA's interpretation of section 5311(c) prohibiting the use of funds in the Tribal Transit Program for planning purposes. Commenters argued that the statute permits funds in the Tribal Transit Program to be used for any purpose eligible under section 5311. The commenters stated that other subsections of section 5311 permit the use of section 5311 funds for planning. Therefore, planning should be an eligible purpose under section 5311(c).

*Response*: FTA's interpretation that planning was not an eligible use of Tribal Transit Program funds was based on the program's history. As originally enacted, Nonurbanized Area Formula Program funds could be used only for capital and operating purposes. Although planning was permitted under certain situations set forth in subsections (e) and (f) of section 5311, FTA viewed the limited eligibility of planning in these subsections as an exception to the general rule that planning was not an eligible purpose. It followed that "any purpose eligible under [section 5311]" meant that section 5311(c)(1) funds could only be used for capital and operating purposes.

Based on the comments submitted to the docket from the Indian tribes and other organizations, and comments heard at the two public outreach meetings held in April 2006 concerning the issue that planning should be eligible under this new program, FTA reviewed section 5311(c), as amended by SAFETEA-LU, to determine whether a more expansive interpretation of the statute might be justified. Under a general rule of statutory construction that gives weight to the plain meaning of a statute, we construe the word "any" in section 5311(c)(1) to be synonymous with "all" eligible purposes under section 5311. This rule of statutory construction is consistent with U.S. Supreme Court decisions which have long held that there is no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression

to its wishes. *U.S.* v. *American Trucking Ass'ns.*, 310 U.S. 534, 543 (1940). By applying this rule of statutory construction, FTA has determined that a broader interpretation of this statute will more effectively carry out the purpose of this new program. FTA therefore interprets Section 5311(c) to allow funds apportioned to Indian tribes to be used for "any" purpose identified under section 5311, which includes planning activities.

FTA notes, however, that because section 5311(c)(1) also states that the Tribal Transit Program funds are to be apportioned under such terms and conditions established by FTA, FTA has the discretion to limit the amount of funds available for each eligible purpose under this program. Accordingly, FTA will limit the amount of funds that are available for planning in the Tribal Transit Program to 15 percent of the grant award. In addition, for grants that are exclusively for planning purposes, FTA will limit the amount of funds to $25,000 per applicant.

*Comment:* Many of the Indian tribes, and several State Departments of Transportation, commented on FTA's proposal for planning requirements. They disagreed with FTA's proposal that Tribal Transportation Improvement Plans (TTIP) or Long Range Transportation Plans be attached or included in the Statewide Transportation Improvement Program (STIP). The State DOT's specifically contended that a TTIP which did not meet various legal requirements (*e.g.*, public participation, fiscally constrained plans) could potentially disqualify the State's STIP process. Therefore, they suggested that this proposed planning requirement be omitted entirely or, alternatively, that the TTIP be attached to a STIP for informational purposes only and that the TTIP not be considered a formal part of the STIP.

*Response:* FTA agrees with this concern. FTA recognizes that Indian tribes are not subject to Federal planning requirements. To require the attachment of tribal transportation plans to a STIP could not only cause unnecessary delay to the grant making process but also potentially invalidate the State's STIP. Accordingly, FTA will not require Indian tribes to attach tribal transportation plans to a STIP. However, because it would assist both the Indian tribes and State Departments of Transportation to coordinate and assess their planned transportation projects, FTA encourages Indian tribes, for informational purposes only, to submit a copy of their tribal transportation plans to State Departments of Transportation.

*Comment:* Many comments were received from the Indian tribes on FTA's two proposed options for local share. Most of the comments opposed both options and recommended that FTA eliminate the local share requirement. Others generally favored a 20 percent local match for both capital and operating expenses.

*Response:* FTA's first option proposed a Federal share of 80 percent and a local share of 20 percent for both capital and operating assistance projects. The second option proposed the highest Federal share allowed under the Title 23 Section sliding scale for States with large public lands. The second option would thus allow a Federal share of 95 percent for capital projects and a federal share of 60 percent for operating assistance projects. Under both of the two proposed options, FTA believes that a Tribal financial contribution was important to register commitment to projects. However, FTA recognizes that many Indian tribes have limited financial resources. In fact, because tribes often lack financial resources, other Federal assistance programs, such as the Federal Highway Administration Indian Reservations Road program, require no Tribal contribution. Since these concerns outweigh FTA's interest in a financial expression of a tribal commitment to the program, FTA will not require a non-Federal matching share for Tribal Transit Program grants. FTA believes that the intent of this new program will be more quickly achieved without a tribal share matching requirement.

*Comment:* Two commenters disagreed with FTA's proposal not to apply the labor protective provisions in 49 U.S.C. section 5333(b) to grants under this new program. It was argued that the Tribal Transit Program is a program under section 5311 (which is subject to statutory labor protections) and there is no indication that Congress specifically intended for section 5333(b) labor protections to not apply to this new program.

*Response:* FTA stated in the March 22, 2006 **Federal Register** Notice that direct grants from FTA to Indian tribes do not involve State-subrecipient relationships. Therefore, the administrative procedures the U.S. Department of Labor (DOL) uses to apply the section 5311 special warranty do not apply.

Accordingly, FTA proposed not to apply the labor protective provisions of 49 U.S.C. 5333(b) to this new program. However, FTA is aware that DOL is currently initiating a Notice of Proposed Rulemaking to revise its labor protective arrangements for all FTA grants (including the special warranty that is applied in the section 5311 program). Also, although Congress chose not to apply section 5333(b) to several other new programs enacted in SAFETEA-LU, Congress amended section 5311(i) to apply section 5333(b) "if the Secretary of Labor utilizes a special warranty that provides a fair and equitable arrangement to protect the interests of employees." Congress did not exempt the Tribal Transit Program from this requirement. FTA therefore intends to apply the special warranty to the Tribal Transit Program in the future. However, FTA will postpone the application of the special warranty arrangement to the Tribal Transit Program until DOL adopts procedures for the new program.

*Comment:* Several comments questioned the applicability of Federal Disadvantaged Business Enterprise (DBE) regulations, 49 CFR part 26, to Indian tribes.

*Response:* The U.S. Department of Transportation's DBE regulation requires a grant recipient to implement a DBE program and to establish annual DBE goals for all contracting opportunities, except for vehicle procurements, where Federal financial assistance exceeds $250,000. However, due to the relatively small size of the grants that will be awarded under this new program and to streamline program requirements for this new program to the benefit of Indian tribes, FTA has determined that the FTA DBE regulation, 49 CFR part 26, will not apply to the Tribal Transit Program.

*Comment:* A few comments were received from Indian tribes regarding FTA's interpretation and application of the Civil Rights Act of 1964 to tribal employment rights ordinances (TEROs), which provide for Indian preference in employment and contracting.

*Response:* FTA will not require Indian tribes under this new program to comply with FTA's program-specific guidance for Title VI and Title VII of the Civil Rights Act of 1964. Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. Title VII of the Civil Rights Act prohibits discrimination in employment in any business on the basis of race, color, religion, sex, or national origin. Indian tribes are specifically excluded from the definition of an "employer" under the Act. Thus, to the extent that TEROs are consistent with federal statutes that authorize a general preference for Indians in employment or contracting

for Federally funded work on or around Indian reservations, FTA will of course comply with applicable law. However, although Indian tribes will not be subject to FTA's program-specific requirements under Title VI and Title VII of the Civil Rights Act, Indian tribes under the Tribal Transit Program will nonetheless still be subject to the provisions of Title VI and Title VII of the Civil Rights Act, unless they are specifically exempt from the Act.

*C. Other*

*Comment:* A number of the Indian tribes commented on the obligation of FTA to properly consult with the Indian tribes on a government-to-government basis for this new program in accordance with Presidential executive orders and U.S. Department of Transportation procedures.

*Response:* FTA recognizes that the Federal government has a unique legal relationship with Indian Indian tribes. When FTA implements a program that might have substantial direct effects on the Indian tribes or on the sovereignty of the Indian tribes, FTA must consult and coordinate using established principles. These principles are set forth in Presidential Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," November 6, 2000, and U.S. Department of Transportation Order 5301.1, "Department of Transportation Programs, Policies, and Procedures affecting American Indians, Alaska Natives and tribes for programs affecting Indian tribal governments."

During the development of policies and procedures for the Tribal Transit Program, FTA consulted and coordinated with the Indian tribes consistent with these Executive Orders. Specifically, FTA announced and invited comments from the Indian tribes concerning the Tribal Transit Program in two separate **Federal Register** Notices. The first **Federal Register** Notice, (70 FR 71950), "FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users: Notice," was published on November 30, 2005. This first Notice invited comment from the Indian tribes and others on the proposed basis for formula apportionment for the Tribal Transit Program, eligible grant purposes, and proposed program requirements. A second **Federal Register** Notice, published on March 22, 2006, responded to comments received from the Indian tribes on the November 30, 2005 Notice. The second Notice further solicited comments from the Indian tribes and others on FTA's proposed basis and criteria to allocate funding under this new program, proposed eligible activities, and proposed grant requirements. The second Notice also announced two one-day public outreach meetings on the Tribal Transit Program. In the two public meetings held in Denver, Colorado, and Kansas City, Missouri, FTA presented its proposals as set forth in the March 22, 2006 Notice and received further comments from the Indian tribes in attendance. In addition, prior to the March 22, 2006, Notice, FTA conducted several national teleconferences with the Indian tribes to obtain their input and views on issues concerning the development and implementation of the Tribal Transit Program.

*Comment:* Although FTA did not solicit comments, or propose guidance, on the following issue, several Indian tribes suggested that FTA should administer grants under this program in a manner that is either the same or similar to contracts and agreements under the Indian Self-Determination and Education Assistance Act (ISDEAA).

*Response:* FTA recognizes Indian tribes as sovereign governments that can independently administer certain Federal government programs as authorized by the ISDEAA. Although the statutory authority to enter into contracts with Indian tribes under ISDEAA does not include the FTA, FTA is nonetheless implementing this new program in a manner consistent with the principles of self-determination that are embodied in ISDEAA. To do so, FTA is streamlining and omitting many of the U.S. Department of Transportation and FTA regulatory requirements that apply to other FTA programs as authorized in SAFETEA–LU. FTA will make grants directly to Indian Indian tribes. The Tribal Transit grants will not be administered by the Bureau of Indian Affairs or any other Federal agency.

*Comment:* A few commenters indicated that Indian tribes should not be required to comply with the intercity bus service provisions in section 5311(f).

*Response:* FTA agrees with these comments. We do not intend to require tribes to spend 15 percent of funds received under the Tribal Transit Program for intercity bus service. This section 5311(f) requirement only applies to section 5311 funds that are apportioned to the States, and not to section 5311 funds disbursed directly to tribes under the Tribal Transit Program. Therefore, Indian tribes that are recipients of funds under the Tribal Transit Program are not required to expend any part of those funds for intercity bus service. However, Indian tribes may use Tribal Transit program funds for purposes eligible under section 5311(f).

*Comment:* One commenter inquired whether a regional transit district, which is a political body within a State, would be able to apply for grants under the Tribal Transit Program on behalf of several Indian tribes.

*Response:* As defined in section 5311(a), as amended by SAFETEA–LU, a recipient means a "State or Indian tribe that receives a Federal transit program grant directly from the Federal Government." Indian tribes, in accordance with this definition, are thus eligible direct recipients of funds under this new program. Under this statutory definition, however, a local government, such as a regional transit district, would not be eligible to be a direct recipient and therefore a regional transit district or any other local government could not directly apply for grants on behalf of Indian tribes under the Tribal Transit Program. Although local governments will not be eligible direct recipients under this new program, Indian tribes may enter into intergovernmental agreements with local governments for the purpose of assisting Indian tribes in grant-related administrative requirements, such as grant preparation, grant reporting, etc.

*Comment:* Some commenters strongly encouraged FTA to provide funding for technical and planning assistance to tribal transit programs through the seven (7) Tribal Technical Assistance Programs (TTAP) because SAFETEA–LU authorized an increased funding level for FTA's Rural Technical Assistance Program.

*Response:* FTA's Rural Transit Assistance Program (RTAP) provides funding to assist in training and technical assistance projects and other support services for transit operators in nonurbanized areas. The RTAP program provides an annual allocation to each State in conjunction with the State's administration of the section 5311 formula assistance program. Because TTAPs are experienced in technical assistance to the tribes, FTA will encourage States to work with TTAP centers to provide technical assistance to tribes. FTA is currently creating a partnership between the TTAPs and the National RTAP.

*Comment:* Commenters requested FTA to either exclude or limit the eligibility of indirect costs for funds received under the Tribal Transit Program. They maintained that high indirect cost rates of many tribes would dampen the program's benefits.

*Response:* FTA agrees with this comment. FTA has determined that the eligible indirect costs will be limited to 10 percent of each Tribal Transit grant award.

*Comment:* One commenter inquired whether an Indian tribe that is within an urbanized area would be eligible to receive funds under the Tribal Transit Program.

*Response:* The Tribal Transit Program is a program established under the section 5311 program. The purpose of the section 5311 program is to carry out transit projects in rural areas. The general authority for the section 5311 program is set forth in subsection (b) which provides that FTA may award grants to recipients located in areas other than urbanized areas (*i.e.*, areas with a population less than 50,000). Therefore, because the set aside of section 5311 funds for the Tribal Transit Program is authorized by statute only for areas other than urbanized areas (*i.e.*, rural areas), an Indian tribe that is located within an urbanized area would not be eligible to receive funds under the Tribal Transit Program.

## IV. Funding Opportunity Description

### *A. Authorized Funding for FY 2006*

The Tribal Transit Program was established by section 3013 of SAFETEA-LU. This section authorized $45 million from the Nonurbanized Area Formula Grants Program (49 U.S.C. 5311) for FY 2006–FY 2009 to be apportioned for grants directly to Indian tribes. The actual amount each year is subject to the availability of appropriations. Under the Tribal Transit Program, Indian tribes are eligible direct recipients. The funds are to be apportioned for grants to Indian tribes for any purpose eligible under the Nonurbanized Area Formula Program (section 5311). In FY 2006, $7.92 million is available for allocation to projects selected through the process announced in this Notice.

### *B. Background*

Prior to SAFETEA-LU, the section 5311 program did not include a separate public transit program for tribes. Instead, tribes were eligible under the section 5311 program as subrecipients. SAFETEA-LU has now authorized a Tribal Transit Program and has authorized eligible tribes to be direct recipients of section 5311 Program funds. As expressed in the Conference Report for SAFETEA-LU, it is the intent of Congress that funds for the Tribal Transit Program not replace or reduce funds tribes receive from States under the section 5311 program.

## V. Award Information

The number and amount of awards will be determined by a competitive process. However, funding is available for start up services, enhancements or expansion of existing transit services, and for planning studies and operational planning. Approximately 25% of the funding is set aside for start up grants. Planning grants will be limited to $25,000 per applicant. Multiple year projects will be considered for funding, subject to the availability of annual appropriations.

## VI. Eligibility Information

### *A. Eligible Applicants*

Eligible direct recipients include federally-recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior. To be eligible recipients, tribes must have the requisite legal, financial and technical capabilities to receive and administer Federal funds under this program.

### *B. Eligible Projects*

Tribal Transit Program funds may be used for any purpose authorized under section 5311. This means that grants can be awarded to recipients located in rural and small urban areas with populations under 50,000 not identified as an urbanized area by the Bureau of the Census for public transportation capital projects, operating costs of equipment and facilities for use in public transportation, planning, and the acquisition of public transportation services, including service agreements with private providers of public transportation services. Service funded under this program must be designed to be accessible to members of the general public who have disabilities. Coordinated human service transportation that primarily serves elderly persons and persons with disabilities, but which is not restricted from carrying other members of the public, is considered available to the general public if it is marketed as public transportation.

## VII. Cost Sharing or Matching

No cost sharing is required for this program; the Federal grant may fund up to 100 percent of eligible project costs. However, FTA encourages tribes to leverage the program funds and demonstrate commitment to the project through in-kind contributions and use of other funding sources that are available to support public transportation service.

## VIII. Terms and Conditions

Section 3013 of SAFETEA-LU amended 49 U.S.C. 5311(c) by authorizing funds for the Tribal Transit Program "under such terms and conditions as may be established by the Secretary." Pursuant to this discretionary statutory authority in SAFETEA-LU, FTA published a Notice dated March 22, 2006, in the **Federal Register** (71 FR 14618), "Public Transportation on Indian Reservations Program (49 U.S.C. 5311(c)(1): Notice of Public Meetings, Proposed Grant Program Provisions," and proposed certain statutory and regulatory terms and conditions that should apply to grants awarded under this new program. The statutory and regulatory terms and conditions that were proposed by FTA for the Tribal Transit Program pertained only to U.S. Department of Transportation and FTA requirements. As we indicated in the March 22, 2006, **Federal Register** Notice, FTA does not possess the authority to waive cross-cutting or government-wide statutory and regulatory requirements (*e.g.*, National Environmental Policy Act). However, to the extent permitted by law and in recognition of the unique status and autonomy of Indian Indian tribes, FTA has made every effort in establishing the terms and conditions to balance the objective of this new program, which will directly benefit transit projects for Indian tribes, with other national objectives (*e.g.*, safety) that are important not only to Indian tribes but also to the general public.

FTA received a substantial number of comments from Indian tribes and other groups concerning certain proposed terms and conditions for the Tribal Transit Program and FTA's responses to these comments were specifically addressed earlier in this Notice. However, except for a few proposed terms and conditions, such as FTA's proposal that Tribal transportation plans be attached or included on a STIP, the comments for the most part reflected a consensus that was in agreement with FTA's proposed terms and conditions for this new program. Therefore, after careful review and consideration of the comments received from Indian tribes and others, FTA has established appropriate grant requirements for the Tribal Transit Program. These specific terms and conditions are set forth in a new FTA Master Agreement for the Tribal Transit Program. This Master Agreement is available on FTA's Web site at *http://www.fta.dot.gov/17861_18441_ENG_HTML.htm*.

The following terms and conditions, which were initially proposed in the

March 22, 2006, **Federal Register** Notice, apply to the Tribal Transit Program:

1. Common Grant Rule (49 CFR Part 18), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." This is a government-wide regulation that applies to all Federal assistance programs.

2. Civil Rights Act of 1964. Unless Indian tribes are specifically exempted from civil rights statutes, compliance with civil rights statutes will be required, including compliance with equity in service. However, Indian tribes will not be required to comply with FTA program-specific guidance for Title VI and Title VII.

3. Section 504 and ADA requirements in 49 CFR parts 27, 37, and 38. These are government-wide requirements that apply to all Federal programs.

4. Drug and Alcohol Testing requirements (49 CFR part 655). FTA will apply this requirement because it addresses a national safety issue for operators of public transportation.

5. National Environmental Policy Act. This is a government-wide requirement that applies to all Federal programs.

6. Charter Service and School Bus transportation requirements in 49 CFR parts 604 and 605. The definition of "public transportation" in 49 U.S.C. 5302 specifically excludes school bus and charter service.

7. National Transit Database (NTD) Reporting requirement. 49 U.S.C. 5335 requires NTD reporting for all direct recipients of section 5311 funds. The Tribal Transit Program is a section 5311 program that will provide funds directly to Indian tribes and this reporting requirement will therefore apply.

8. Bus Testing (49 CFR 665) requirement. To ensure that vehicles acquired under this program will meet adequate safety and operational standards, this requirement will apply.

A comprehensive list and description for all of the statutory and regulatory terms and conditions that will apply to the Tribal Transit Program are set forth in FTA's Master Agreement for the Tribal Transit Program available on FTA's Web site at: *http://www.fta.dot.gov/17861_18441_ENG_HTML.htm*. In addition, as part of their application for grant award, tribes that are selected for award will be required to sign the Certifications and Assurances for the fiscal year in which they apply for a grant. The Certifications and Assurances are set forth for informational purposes in Appendix B of this Notice. Notably, FTA has required each applicant to submit certifications and assurances for each fiscal year in which the applicant seeks funding and an award is made. But because less than two months remain before the end of fiscal year 2006, FTA will treat certifications and assurances submitted by an Indian tribe in either fiscal year 2006 or 2007 as having fulfilled Federal certification and assurance requirements for Tribal Transit Program applications submitted and awards made in both fiscal years 2006 and 2007.

## IX. Application and Submission Information

This announcement includes all of the information that a tribal government will need to apply for competitive selection. It is available on the FTA Web site at *http://www.fta.dot.gov*. FTA will announce final selections on the Web site and in the **Federal Register**. A synopsis of this announcement will be posted on the government-wide electronic grants Web site at *http://www.GRANTS.GOV*.

## X. Guidelines for Preparing Grant Application

FTA is conducting a national solicitation for applications under the Tribal Transit Program. Project selection will be made on a competitive basis. FTA will divide the applications into three categories for the purpose of reviewing and selecting projects to be funded:

A. Start ups—applications for funding of new transit service;
B. Existing transit services—applications for funding of enhancements or expansion of existing transit services; and
C. Planning—applications for funding of planning studies and operational planning

The application should provide information on all items for which Indian tribes are requesting funding in FY 2006, and indicate the specific category in which the tribe is applying.

## XI. Application Content

### *A. Applicant Information*

1. Name of federally-recognized tribe and, if appropriate, the specific tribal agency submitting the application.

2. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number if available. (Note: if selected, applicant will be required to provide DUNS number prior to grant award and DUNS number is required for submitting through *GRANTS.GOV*).

3. Contact information for notification of project selection: Contact name, address, and fax and phone number.

4. Description of public transportation services currently provided by tribe, if any, including areas served.

5. Name of person (s) authorized to apply on behalf of tribe (signed transmittal letter should accompany application if submitted in hard copy or e-mail).

### *B. Technical, Legal, and Financial Capacity To Implement the Proposed Project*

Indian tribes that cannot demonstrate adequate capacity in technical, legal and financial areas will not be considered for funding. Every application must describe the tribe's technical, legal, and financial capacity to implement the proposed project (see attached Appendix B, Section B).

1. *Legal Capacity:* Provide documentation or other evidence to show that the applicant is a Federally Recognized tribe. Also, who is the authorized representative to execute legal agreements with FTA on behalf of the Indian tribes? If currently operating transit service, does the Indian tribes have appropriate Federal or State operating authority?

2. *Technical Capacity:* Give examples of the tribe's management of other Federal projects. What resources does the tribal government have to implement a transit project?

3. *Financial Capacity:* Does the Indian tribes have adequate financial systems in place to receive and manage a Federal grant? Describe the tribal government's financial systems and controls.

### *C. Project Information*

1. *Budget:* Provide the Federal amount requested for each purpose for which funds are sought and any funding from other sources that will be provided. If applying for a multi year project (not to exceed 4 years), show annual request for each year by budget line item.

2. *Project Description:* Indicate the category for which funding is requested *i.e.*, start-ups, enhancements or replacements of existing transit services or planning studies or operational planning grants to address project development *i.e.* development of vehicle and equipment specifications and provide a summary description of the proposed project and how it will be implemented (*e.g.* number and type of vehicles, service area, schedules, type of services, fixed route or demand responsive, route miles (if fixed route) and size of service area, major origins and destinations, population served, and whether the tribe provide the service directly or contract for services? How will vehicles be maintained?

3. *Project Timeline:* Include significant milestones such as date of contract for purchase of vehicle(s), actual or expected delivery date of vehicles, and service start up dates.

*D. Application Evaluation Criteria*

Applications for funding of transit services should address the application criteria based on project to be funded (for more detail see section XII)

1. *Criterion 1:* Project Planning and Coordination.
2. *Criterion 2:* Demonstration of Need.
3. *Criterion 3:* Benefits of Project.
4. *Criterion 4:* Financial Commitment and Operating Capacity.

Applications for planning grants should address the criteria in section XII, C of this Notice.

*E. Submission Dates and Times*

Complete applications for Tribal Transit Program must be submitted in one of the three ways: electronically through *GRANTS.GOV*, in hard copy to Federal Transit Administration, 400 Seventh Street, SW., Room 9311,Washington, DC 20590, Attention: Lorna R. Wilson; or sending by e-mail to *fta.tribalprogram@dot.gov*. by October 16, 2006 or submitted electronically through the *GRANTS.GOV* Web site by the same date. FTA will announce grant selections when the competitive selection process is complete.

*F. Intergovernmental Review*

This program is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

*G. Funding Restrictions*

Only applications from eligible recipients for eligible activities will be considered for funding (see section VI). Due to funding limitations, applicants that are selected for funding may receive less than the amount requested. The application process will allow an tribal government to apply for multiple years of funding not to exceed four years, subject to the availability of annual appropriations. Up to $2 million will be made available for start up or new systems, no more than $25,000 will be awarded per planning grant. The remaining funds will be made available for applications for funding of enhancements or expansion of existing transit service.

*H. Other Submission Requirements*

Applicants submitting hard copies should submit 3 copies of their project proposal application to the Federal Transit Administration, 400 Seventh Street, SW., Room 9311, Washington, DC 20059, Attention Lorna Wilson, or apply electronically through the government wide electronic grant application portal at www.GRANTS.GOV. Alternatively applications may be submitted as an attachment to mailbox: *fta.tribalprogram@dot.gov*. If applying by e-mail, fax signature documents to 202–366–7951, Attention: Lorna Wilson.

**XII. Application Review Process**

*A. Competitive Selection Process*

FTA will divide applications into three categories. The three evaluation categories are as follows:

- Start-ups—applications for funding of new transit service.
- Existing transit services—applications for funding of enhancements or expansion of existing transit services.
- Planning—applications for funding of transit planning studies and/or operational planning.

Applications will be grouped into their respective category for review and scoring purposes. Applications for planning will be evaluated using a pass/fail system, whereas start-up and existing transit services applications will be scored based on the evaluation criteria to determine rank for funding award determination purposes. An applicant can receive up to 25 points for each evaluation criteria.

FTA intends to award the full amount of funding available in FY 2006 for the Tribal Transit Program. FTA encourages applicants to review the evaluation criteria and all other related application information prior to preparation of application. Applicants may receive technical assistance for application development by contacting their FTA regional Tribal liaison, TTAP center, or the National RTAP office. Contact information for technical assistance can be found in Appendix C.

*B. Evaluation Criteria for Start-up and Existing Transit Service Proposals*

The use of quantitative data and estimates, whenever possible, improves the proposal's clarity in comparison to all the evaluation criteria.

1. Criterion 1: Project Planning and Coordination (25 points)

In this section, the applicant should describe how the proposed project was developed and demonstrate that there is a sound basis for the project and that it is ready to implement if funded. Information may vary depending on whether the tribe has a formal plan that includes transit.

a. Applicants without a formal plan that includes transit are advised to consider and address the following areas:

i. Provide a detailed project description including the proposed service, vehicle and facility needs and other pertinent characteristics of the proposed service implementation.

ii. Identify existing transportation services available to the tribe and discuss whether the proposed project will provide opportunities to coordinate service with existing transit services including human service agencies, intercity bus services, or other public transit providers.

iii. Discuss the level of support either by the community and/or tribal government for the proposed project.

iv. Describe the implementation schedule for the proposed project including time frame, staffing, procurement, etc.

b. Applicants with a formal transit plan are advised to consider and address the following areas:

i. Describe the planning document and/or the planning process conducted to identify the proposed project.

ii. Describe how the mobility and client access needs of tribal human service agencies were considered in the planning.

iii. Describe what opportunities for public participation were provided in the planning process and how the proposed transit service or existing service has been coordinated with transportation provided for the clients of human service agencies, with intercity bus transportation in the area, or with any other rural public transit providers.

iv. Describe how the proposed service complements rather than duplicates any currently available services.

v. Describe the implementation schedule for the proposed project, including time frame, staffing, procurements, etc.

vi. Describe any other planning or coordination efforts that were not mentioned above.

Based on the information provided as discussed in the above section, proposals will be rated on the following:

i. How sound is the basis for the proposed project?

ii. Is the project ready to implement?

2. Criterion 2: Demonstration of Need (25 points)

In this section, the application should demonstrate the transit needs of the tribe and discuss how the proposed transit improvements will address the identified transit needs of the tribe. Applications may include information such as destinations and services not currently accessible by transit, need for

access to jobs or health care, special needs of the elderly and individuals with disabilities, income-based community needs, or other mobility needs.

Based on the information provided the proposals will be rated on the following:

a. What is the demonstrated need for the project?

b. How well does the project reduce the need?

3. Criterion 3: Benefits of Project (25 points)

In this section applications should identify expected project benefits. Possible examples include increased ridership and daily trips, improved service, improved operations and coordination, and economic benefits to the community.

Benefits can be demonstrated by identifying the population of tribal members and non-tribal members in the proposed project service area and estimating the number of daily, one-way trips the transit service will provide and the number of individual riders. There may be many other, less quantifiable, benefits to the tribe and surrounding community from this project. Please document, explain or show the benefits in whatever format is reasonable to present them.

Proposals will be rated on the basis of:

a. Improved transit efficiency or increased ridership;
b. Improved mobility for the tribe;
c. Improved access to important destinations
d. Expected average cost per trip on the proposed service.
e. Other qualitative benefits.

4. Criterion 4: Financial Commitment and Operating Capacity (25 points)

In this section, the application should identify any other funding sources used by the tribe to support existing or proposed transit services, including human service transportation funding, Indian Reservation Roads, or other FTA programs such as Job Access and Reverse Commute (JARC), New Freedom, section 5311, section 5310, or section 5309 bus and bus facilities funding.

For existing services, the application should show how Tribal Transit Program funding will supplement (not duplicate or replace) current funding sources. If the transit system was previously funded under section 5311 through the State's apportionment, describe how requested Tribal Transit Program funding will expand available services.

Describe any other resources the tribe will contribute to the project, including in-kind contributions, commitments of support from local businesses, donations of land or equipment, and human resources. To what extent does the new project or funding for existing service leverage other funding?

The tribe should show its ability to manage programs by demonstrating the existing programs it administers, in any area of expertise such as human services.

Points will be awarded based on the degree to which:

a. The project deploys new services or complements existing services.

b. Tribal Transit Program funding does not replace existing funding.

c. Tribe has or will provide non-financial support to project.

d. Tribe has demonstrated the ability to provide other services or manage other programs.

e. Project funds are used in coordination with other services for efficient utilization of funds.

*C. Evaluation Criteria for Planning Grants Proposals*

Criterion: Need for Study

For planning grants the applications should describe in no more than three pages the need for and a general scope of the proposed study.

Based on the information provided, proposals will be rated pass/fail based on the following:

a. Is the tribe committed to planning for transit?

b. Is the scope of the proposed study for tribal transit?

*D. Review and Selection Process*

Each application will be screened by a panel of members including FTA headquarters regional staff, and representatives of the Indian Reservations Roads Program. Incomplete or non-responsive applications will be disqualified. FTA will make an effort to award a grant to every qualified applicant.

**XIII. Award Administration Information**

FTA will award grants directly to Federally recognized Indian tribes for the projects selected through this competition. Following publication of the selected recipients, projects, and amounts, FTA regional staff will assist the successful applicants to prepare an electronic application for grant award. At that time, the tribe will be required to sign the Certification and Assurances contained in Appendix B. The Master Agreement is available on FTA's Web site at *http://www.fta.dot.gov/17861_18441_ENG_HTML.htm.*

Applicants that are selected for grant awards under the Tribal Transit Program will be required to formally designate, by resolution or other formal tribal action, an authorized representative who will have the authority to execute grant agreements on behalf of the Indian tribes with FTA and who will also have the authority on behalf of the Indian tribes to execute FTA's Annual List of Certifications and Assurances.

FTA will notify all applicants, both those selected for funding and those not selected, when the competitive selection process is complete. Projects selected for funding will be published in a **Federal Register** Notice.

**XIV. Other**

*A. Technical Assistance*

Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding procedures for making the required certifications and assurances to FTA before grants are made and will provide assistance in preparing the documentation necessary for grant award.

*B. Certifications and Assurances*

Applicants that are selected and formally notified of FTA's intention to award a grant under the Tribal Transit Program will be required to complete and execute FTA's Annual List of Certification and Assurances in accordance with the procedures described in this Notice of Funding Availability. The Annual List of Certifications and Assurances is attached in Appendix B for informational purposes only.

*C. Reporting*

49 U.S.C. 5335 National Transit Database requires NTD reporting for all direct recipients of section 5311 funds including tribes. Specific procedures and data requirements for tribes have not yet been developed and will be provided to grantees at a later date. Annual progress reports and financial status reports will be required of all grantees.

*D. Agency Contact(s)*

Contact the appropriate FTA regional Tribal Liaison (Appendix A) for application-specific information and issues for general program information, contact Lorna R. Wilson, Office of Transit Programs, (202) 366-2053, e-mail: *Lorna.Wilson@dot.gov.* A TDD is

available at 1–800–877–8339 (TDD/FIRS).

Issued in Washington, DC, this 8th day of August 2006.

**Sandra K. Bushue,**

*Deputy Administrator.*

**Appendix A—FTA Regional Offices and Tribal Transit Liaisons**

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine, Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, *Phone:* (617) 494–2055, *Fax:* (617) 494–2865, *Regional Tribal Liaison:* Judi Molloy.

Region II—New York, New Jersey, Virgin Islands, Letitia Thompson, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, *Phone:* (212) 668–2170, *Fax:* (212) 668–2136, *Regional Tribal Liaison:* Rebecca Reyes-Alicea.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC, Susan Borinsky, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, *Phone:* (215) 656–7100, *Fax:* (215) 656–7260.

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico, Yvette G. Taylor, FTA Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303, *Phone:* (404) 562–3500, *Fax:* (404) 562–3505, Regional Tribal Liaisons: Jamie Pfister and James Garland.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan, Marisol R. Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, *Phone:* (312) 353–2789, *Fax:* (312) 886–0351, Regional Tribal Liaisons: Victor Austin and William Wheeler.

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma, Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, *Phone:* (817) 978–0550, *Fax:* (817) 978–0575, *Regional Tribal Liaison:* Lynn Hayes.

Region VII—Iowa, Nebraska, Kansas, Missouri, Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, *Phone:* (816) 329–3920, *Fax:* (816) 329–3921, *Regional Tribal Liaisons:* Joni Roeseler and Cathy Monroe.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah, Lee Waddleton, FTA Regional Administrator, 12300 West Dakota Avenue, Suite 310, Lakewood, CO 80228–2583, *Phone:* (720) 963–3300, *Fax:* (720) 963–3333, *Regional Tribal Liaisons:* Jennifer Stewart and David Beckhouse.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam, Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 1650, San Francisco, CA 94105–1831, *Phone:* (415) 744–3133, *Fax:* (415) 744–2726, *Regional Tribal Liaison:* Donna Turchie.

Region X—Washington, Oregon, Idaho, Alaska, Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, *Phone:* (206) 220–7954, *Fax:* (206) 220–7959, *Regional Tribal Liaisons:* Bill Ramos and Annette Clothier.

**Appendix B—Federal Fiscal Years 2006 and 2007 Certifications and Assurances for the Federal Transit Administration Tribal Transit Program**

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for the Federal Transit Administration (FTA) Public Transportation on Indian Reservation Program (Tribal Transit Program) authorized by 49 U.S.C. 5311(c)(1). It is customary for FTA to require each applicant to submit certifications and assurances for each fiscal year in which the applicant seeks funding. But because less than two months remain before the end of Federal Fiscal Year 2006, FTA will treat certifications and assurances submitted by an Indian tribe in either Federal Fiscal Year 2006 or 2007 applicable to applications for Tribal Transit Program assistance submitted and awards made in Federal Fiscal Years 2006 and 2007.

The Indian tribe, as an eligible applicant for Tribal Transit Program assistance, understands and agrees that these certifications and assurances are pre-award requirements and do not encompass all statutory and regulatory requirements that may apply to the Indian tribe or its Project. A comprehensive list of those requirements will be contained in the Grant Agreement including the Master Agreement accompanying an award under the Tribal Transit Program.

FTA and the Indian tribe also understand and agree that not every certification and assurance will apply to every Project for which FTA provides Federal financial assistance through the Tribal Transit Program. The type of Project will determine which requirements apply. For example FTA believes that the following requirements within the listed certifications and assurances will have limited, if any, impact:

1. Many provisions required by the Office of Management and Budget (OMB) set forth in Certification F involve requirements that in most cases will not be invoked, such as:

a. Title III of the Uniform Relocation and Real Property Acquisition Policies Act, as amended, and implementing U.S. DOT regulations will apply only when the Indian tribe acquires real property with FTA assistance.

b. Title II of the Uniform Relocation and Real Property Acquisition Policies Act, as amended, and implementing U.S. DOT regulations will apply only when the Indian tribe's project requires relocation of a person or business; and the Lead-Based Paint Poisoning Prevention Act is invoked only in connection with residential construction, not likely to take place under the Tribal Transit Program

c. The Flood Disaster Protection Act applies to projects in flood hazard areas.

d. Only for construction projects will the Davis-Bacon Act, Seismic Safety regulations, and OMB engineering supervision requirements apply.

e. Many environmental protection requirements are limited to the specific problem addressed by the statute. If, for example, the project will not affect endangered species, the requirements of the Endangered Species Act will not be invoked.

2. With respect to Certification H, "Bus Testing," only if the Indian tribe acquires the first bus of a new bus model or the first bus of a new major configuration of a new bus will FTA's Bus Testing requirements be invoked.

Except to the extent that FTA determines otherwise in writing, each Indian tribe that applies for Tribal Transit Program assistance, however, must provide all certifications and assurance set forth below. FTA may not award any Federal assistance under the Tribal Transit Program until the Indian tribe provides these certifications and assurances.

*A. Assurance of Authority of the Indian Tribe and Its Representative*

The authorized representative of the Indian tribe and the attorney who sign these certifications, assurances, and agreements affirm that both the Indian tribe and its authorized representative have adequate authority under Federal and Indian tribal law, regulations, or by-laws to:

(1) Execute and file the application for Federal assistance on behalf of the Indian tribe;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Indian tribe binding the Indian tribe; and

(3) Execute grant agreements with FTA on behalf of the Indian tribe.

*B. Standard Assurances*

The Indian tribe assures that it will comply with all applicable Federal laws and regulations in carrying out any project supported by an FTA grant. The Indian tribe agrees that it is under a continuing obligation to comply with the terms and conditions of the Grant Agreement issued for its project with FTA. The Indian tribe recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Indian tribe understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Indian tribe or its project. The Indian tribe agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

*C. The Indian Tribe's Capacity To Comply With Relevant Section 5311 Requirements*

The Indian tribe assures that:

(1) It has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;

(2) It has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) The project equipment and facilities will be adequately maintained; and

(4) Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources.

*D. Nondiscrimination Assurance*

As required by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Indian tribe assures that it will comply with all requirements imposed by or issued pursuant to 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, or national origin, will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Indian tribe receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Indian tribe retains ownership or possession of the project property, whichever is longer, the Indian tribe assures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements imposed by or issued pursuant to 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Indian tribe assures that it will submit the required information pertaining to its compliance with these provisions.

(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.

(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.

(6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 42 U.S.C. 2000d and 49 CFR part 21.

*E. Assurance of Nondiscrimination on the Basis of Disability*

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Indian tribe assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Indian tribe assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

*F. U.S. Office of Management and Budget (OMB) Assurances*

Consistent with OMB assurances set forth in SF–424B and SF–424D, the Indian tribe assures that, with respect to itself and its project, the Indian tribe:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with

generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, 21 U.S.C. 1174 *et seq.* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, 42 U.S.C. 4581 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd-3 and 290ee-3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and

(i) Any other nondiscrimination statute(s) that may apply to the project;

(6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Indian tribe assures that it has the requisite authority under its applicable tribal government law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:

(a) The Indian tribe will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Indian tribe will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Indian tribe will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;

(d) Within a reasonable time before displacement, the Indian tribe will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Indian tribe will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Indian tribe will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Indian tribe will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Indian tribe's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Indian tribe will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Indian tribe agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted projects;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Indian tribe and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;

(11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) To the extent applicable, will comply with FTA provisions concerning

the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j–6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, local, or tribal government significance or any land from a historic site of national, state, local, or tribal government significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) Because a tribal government is not covered by the Hatch Act, the Indian tribe is not required to comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal grant agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) To the extent applicable, will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) To the extent applicable, will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable OMB A–133 Compliance Supplement provisions for the U.S. DOT; and

(19) To the extent applicable, will comply with all applicable provisions of all other Federal laws, regulations, and directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

*G. Procurement Compliance*

In accordance with 49 CFR 18.36(g)(3)(ii), the Indian tribe certifies that its procurement system will comply with the requirements of 49 CFR 18.36, or will inform FTA promptly that its procurement system does not comply with 49 CFR 18.36.

*H. Bus Testing*

As required by 49 U.S.C. 5318 and FTA regulations, "Bus Testing," at 49 CFR 665.7, the Indian tribe certifies that, before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665), the bus model:

A. Will have been tested at FTA's bus testing facility; and

B. Will have received a copy of the test report prepared on the bus model.

*I. Charter Service Agreement*

(1) As required by 49 U.S.C. 5323(d) and (g) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Indian tribe agrees that it and each subrecipient and third party contractor at any tier will:

(a) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized under 49 U.S.C. chapter 53 (except 49 U.S.C. 5310 or 5317), or under 23 U.S.C. 133 or 142 for transportation projects, only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its subrecipients or third party contractors at any tier desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(b) Comply with the requirements of 49 CFR part 604 before providing any charter service using equipment or facilities acquired with Federal assistance authorized under 49 U.S.C. chapter 53 (except 49 U.S.C. 5310 or 5317), or under 23 U.S.C. 133 or 142 for transportation projects.

(2) The Indian tribe understands that:

(a) The requirements of 49 CFR part 604 will apply to any charter service it or its subrecipients or third party contractors provide,

(b) The definitions of 49 CFR part 604 will apply to this Charter Service Agreement, and

(c) A violation of this Charter Service Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

*J. School Transportation Agreement*

(1) As required by 49 U.S.C. 5323(f) and (g) and FTA regulations at 49 CFR 605.14, the Indian tribe agrees that it and each subrecipient or third party contractor at any tier will:

(a) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f) and (g), and Federal regulations; and

(b) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C. 133 or 142 for transportation projects.

(2) The Indian tribe understands that:

(a) The requirements of 49 CFR part 605 will apply to any school transportation service it or its subrecipients or third party contractors provide,

(b) The definitions of 49 CFR part 605 will apply to this School Transportation Agreement, and

(c) A violation of this School Transportation Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

*K. Demand Responsive Service*

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Indian tribe certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. When the Indian tribe's service is viewed in its entirety, the Indian tribe's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

*L. Alcohol Misuse and Prohibited Drug Use*

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Indian tribe certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

*M. National Intelligent Transportation Systems Architecture and Standards*

If the Indian tribe's project involves the acquisition of an Intelligent Transportation System (ITS), defined as technology or system of technologies that provides or significantly contribute to the provision of one or more ITS user services as defined in the National ITS Architecture, the Indian tribe will use its best efforts to ensure that any Intelligent Transportation System solutions used in its Project do not preclude interface with other Intelligent Transportation Systems in the Region. (See FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 FR 1455 *et seq.* January 8, 2001 and other FTA Program Guidance that may be issued.)

BILLING CODE 4910–57–C

## FEDERAL FISCAL YEARS 2006 AND 2007 CERTIFICATIONS AND ASSURANCES FOR THE TRIBAL TRANSIT PROGRAM

### SIGNATURE PAGES

*(Required of all Indian tribes that apply for FTA's Tribal Transit Program assistance)*

AFFIRMATION OF INDIAN TRIBE

Name of the Indian Tribe:

_____

Name and Relationship of Authorized Representative:

_____

BY SIGNING BELOW, on behalf of the Indian tribe, I declare that the Indian tribe has duly authorized me to make these certifications and assurances and bind the Indian tribe's compliance. Thus, the Indian tribe agrees to comply with all Federal statutes, regulations, executive orders, and Federal requirements applicable to each application for Tribal Transit Program assistance authorized by 49 U.S.C. 5311(c)(1) it makes to the Federal Transit Administration (FTA) in Federal Fiscal Years 2006 and 2007.

The Indian tribe affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Tribal Transit Program and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Indian tribe are true and correct.

Signature_____

Date: _____

Name_____

Authorized Representative of the Indian Tribe

AFFIRMATION OF THE INDIAN TRIBE'S ATTORNEY

For (Name of the Indian Tribe):

_____

As the undersigned Attorney for the above named Indian tribe, I hereby affirm to the Indian tribe that it has authority under its tribal government law and Federal law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Indian tribe.

I further affirm to the Indian tribe that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____

Date: _____

Name_____
Attorney for the Indian tribe

*[Each Indian tribe that applies for FTA Tribal Transit Program assistance must provide an Affirmation of the Indian tribe's attorney pertaining to the Indian tribe's legal capacity. The Indian tribe may enter its signature in lieu of the attorney's signature, provided the Indian tribe has on file this Affirmation, signed by the attorney and dated this Federal fiscal year, and the attorney's affirmation has been entered into FTA's TEAM-Web system as an attachment.]*

**Appendix C—Technical Assistance Contacts**

*Tribal Technical Assistance Program (TTAP) Centers*

TTAP-Alaska

Alaska Tribal Technical Assistance Program, NW & AK TTAP, 329 Harbor Dr. #208, Sitka, AK 99835, *Contact:* Dan Moreno, *Telephone:* (800) 399–6376, *Fax:* (907) 747–5032, *E-mail: dmoreno@mail.ewu.edu, Web: www.ewu.edu/TTAP.*

TTAP-California

TTAP-California-Nevada, The National Center for American Indian Enterprise Development, 11138 Valley Mall, Suite 200, El Monte, CA 91731, *Contact:* Lee Bigwater, *Telephone:* (626) 350–4446, *Fax:* (626) 442–7115.

TTAP-Colorado

Tribal Technical Assistance Program at Colorado State University, Rockwell Hall, Rm. 321, Colorado State University, Fort Collins, CO 80523–1276, *Contact:* Ronald Hall, *Telephone:* (800) 262–7623, *Fax:* (970) 491–3502, *E-mail: ronald.hall@colostate.edu, Web: http://ttap.colostate.edu/.*

TTAP-Michigan

Tribal Technical Assistance Program, 301–E Dillman Hall, Michigan Technological University, 1400 Townsend Dr., Houghton, MI 49931–1295, *Contact:* Bernard D. Alkire, *Telephone:* (888) 230–0688, *Fax:* (906) 487–1834, *E-mail: balkire@mtu.edu, Web: http://www.ttap.mtu.edu.*

TTAP-North Dakota

Northern Plains Tribal Technical Assistance Program, United Tribes Technical College, 3315 University Drive, Bismarck, ND 58504, *Contact:* Dennis Trusty, *Telephone:* (701) 255–3285 ext. 1262, *Fax:* (701) 530–0635, *E-mail: nddennis@hotmail.com or dtrusty@uttc.edu, Web: http://www.uttc.edu/organizations/ttap/ttap.asp.*

TTAP-NW

Northwest Tribal Technical Assistance Program, Eastern Washington University Department of Urban Planning, Public & Health Administration, 216 Isle Hall, Cheney, WA 99004, *Contact:* David Frey, *Telephone:* (800) 583–3187, *Fax:* (509) 359–7485, *E-mail: rrolland@ewu.edu, Web: www.ewu.edu/TTAP.*

TTAP-Oklahoma

Tribal Technical Assistance Program at Oklahoma State University, Oklahoma State University, 5202 N. Richmond Hills Road, Stillwater, OK 74078–0001, *Contact:* James Self, *Telephone:* (405) 744–6049, *Fax:* (405) 744–7268, *E-mail: jim.self@okstate.edu, Web: http://ttap.okstate.edu.*

National RTAP (National Rural Transit Assistance Program), *E-mail: nationalrtap@apwa.net, http://www.nationalrtap.org/,* Dave Barr 202–218–6722, Community Transportation Association of America), The Resource Center—1800–891–0590, *http://www.ctaa.org/.*

[FR Doc. 06–6911 Filed 8–14–06; 8:45 am]
BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2006–25592]**

### Morgan Motor Company Limited; Receipt of Application for a Temporary Exemption From Air Bag Provisions of Federal Motor Vehicle Safety Standard No. 208

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

**ACTION:** Notice of receipt of application for a temporary exemption from air bag provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant crash protection.*

**SUMMARY:** In accordance with the procedures of 49 CFR Part 555, Morgan Motor Company, Limited (Morgan) has applied for a Temporary Exemption from the air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," for the Morgan "traditional roadster." The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

**DATES:** You should submit your comments not later than August 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ed Glancy or Eric Stas in the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Founded in 1909, Morgan is a small, privately-owned vehicle manufacturer producing approximately 600 specialty sports cars per year.[1] Morgan manufactures several models, but at present, only sells the Aero 8 in the U.S. Morgan intended to produce a vehicle line specific to the U.S. market, with Ford supplying the engine and transmission. However, for technical reasons, the project did not come to fruition, and Morgan temporarily stopped selling vehicles in the U.S. in 2004. In May 2005, Morgan obtained a temporary exemption from this agency's bumper standard and began selling the Aero 8 in the U.S.

On July 12, 2006 (71 FR 39386), NHTSA published a notice of receipt of five applications for temporary exemptions from the advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* Among these petitions was one from Morgan, for the Aero 8, which is discussed at pages 39390–39391. Morgan's petition is included in the docket for that notice, *i.e.*, Docket NHTSA–2006–25324.

That notice of receipt did not address a second request by Morgan. In a document dated February 6, 2006, Morgan petitioned for an exemption for a different vehicle, its "traditional roadster," from all air bag requirements in FMVSS No. 208 (i.e., the standard's requirement that vehicles be equipped with air bags as well as the advanced air bag requirements) from September 2006 through September 2009. That company titled this document "Supplement to Pending Morgan Part 555 Temporary Exemption." Morgan explained that it did not file a petition for the traditional roadster at the same time as it petitioned for the Aero 8 because in October 2005 (when the Aero 8 petition was filed), Morgan planned to sell only the Aero 8 in the U.S. from September 2006–September 2009. The company did not plan to sell the traditional roadster during that period because the Rover engine used in the U.S. version of the traditional roadster for 35 years was no longer able to meet more stringent U.S. emissions standards.

In late 2005, Morgan found a U.S.-certified Ford V6 engine for the U.S. traditional roadster and built a limited production run of 80 vehicles. The traditional roadster "immediately sold out." In order to maintain U.S. sales and to produce revenue, Morgan then decided to continue to sell the U.S. traditional roadster. However, while the traditional roadster had a mechanical Breed standard air bag system since 1996, those air bags are now out of production and are no longer available. Morgan indicated that the final limited production run of 80 vehicles using the Ford V6 engine used the last of these air bag systems. In addition, Morgan stated that the Aero standard air bag system cannot be fitted to the traditional roadster because the interiors and chassis are completely different.

We note that in its February 2006 document, Morgan asked that its exemption requests for the traditional roadster and Aero be considered independently. As indicated above, we have already requested public comments on Morgan's petition concerning the Aero, and expect to issue a decision shortly on that request. The agency will make a decision concerning Morgan's petition concerning the traditional roadster after considering public comments submitted in response to this notice.

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what is commonly known as "advanced air bags."[2] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate to high speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the complex nature of the requirements for protecting out-of-position occupants, "off-the-shelf" systems could not be readily adopted. Further, the high costs of developing custom advanced air bag systems, compared to limited potential profits from selling those air bags to small volume manufacturers, discouraged some air bag suppliers from working with those manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As indicated above, for its traditional roadster, Morgan is requesting an exemption not only from the advanced

[1] A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (15 U.S.C. 1410(d)(1)).

[2] See 65 FR 30680; May 12, 2000.

air bag requirements, but also from the standard's requirements for air bags altogether. As always, we are concerned about the potential safety implications of any temporary exemptions granted by this agency. The agency is accepting comment on whether to grant Morgan's application.

**II. Morgan's Statement of Economic Hardship**

Morgan stated that without the sales of the U.S. traditional roadster from September 2006–September 2009, it would lose an additional $315,000 on top of the losses estimated in the October 2005 petition for the Aero.[3] It further stated that if it were able to sell the traditional roadster in the U.S. during the exemption period, "the resulting revenues would also be critical to funding the development of the new advanced air bag for use in all Morgan vehicles destined for the U.S. after September 2009." Morgan's previous financial submission indicates that the company's losses over the last 5 years have totaled more than $3,600,000. In 2004, Morgan made a small profit for the first time in three years. Morgan predicted a net loss for fiscal year 2005.

Morgan stated that even adding the projected sales of the traditional roadster, the total U.S. "exempted-car sales" forecast for September 2006–September 2009 remain about the same: For 2006, 50 vehicles; for 2007, 250 vehicles; for 2008, 250 vehicles; and for 2009, 250 vehicles. Morgan also provided information on the sales of the 80 model year 2005 traditional roadsters (with the Ford V6 engine).

We note that in commenting on the agency's July 2006 notice concerning its request for a temporary exemption for the Aero, Morgan indicated that the temporary exemptions it was seeking would involve 400 Aeros over three years, and 400 Roadsters over three years.

**III. Morgan's Statement of Good Faith Efforts To Comply**

In its October 2005 submission, Morgan stated that it has been working with the air bag supplier Siemens to develop an advanced air bag system for the Aero 8. However, a lack of funds and technical problems precluded the implementation of an advanced air bag system for the Aero 8. It said that the minimum time needed to develop an advanced air bag system (provided that there is a source of revenue) is 2 years. Specific technical challenges include the following matters. Morgan does not have access to the necessary sensor technology to pursue the "full suppression" passenger air bag option. Due to the design of the Aero 8 platform dashboard, an entirely new interior solution and design must be developed. Chassis modifications are anticipated due to the originally stiff chassis design.

In its February 2006 petition, Morgan stated that it cannot install airbags in the U.S. traditional roadster to be built between September 2006–September 2009 even though the Aero 8 vehicles built during that period will have standard air bags. Morgan provided two reasons why the traditional roadster "cannot have air bags" while the Aero 8 can. First, since 1996, the traditional roadsters have had a mechanical Breed standard air bag system. In 1997, Breed stopped production of the air bags fitted to the traditional roadsters. Thus, these bags are no longer available. Morgan states that it cannot obtain any more components. The final run of the 80 traditional roadsters with the Ford V6 engine used the last of the air bag systems.

Second, the Aero 8 standard air bag system cannot be fitted into the traditional roadster because the interiors and chassis are completely different. Morgan asserts that it would not be possible to integrate the Aero 8 air bag components into the traditional roadster's design because of both physical and operational differences. The Aero 8 air bag steering wheel will not fit in the traditional roadster's design, and the Aero 8 passenger air bag will not fit into the traditional roadster's instrument panel. In terms of air bag operation, to use the Aero 8 system in the traditional roadster, there would have to be a new deployment control/trigger system developed due to the significantly different crash pulses between the Aero 8 aluminum tub and the traditional roadster steel chassis.

Morgan stated that the traditional roadster will have an advanced air bag system at the same time that the Aero 8 will. At present, the traditional roadster uses the same design as it has had since 1936, a steel chassis with a wooden frame for the body panels. As part of the development of the advanced air bag system, Morgan plans to switch the traditional roadster onto the aluminum tub chassis used by the Aero 8. In this way, the advanced air bag program (through Siemens) that Morgan outlined in its Part 555 exemption petition for the Aero 8 will also be applicable to the traditional roadster. Morgan believes that when its advanced air bag system is ready in 2009, the air bag system will simultaneously be installed in both the Aero and traditional roadster models. Morgan asserts that it "obviously cannot expend the resources to develop an air bag system—advanced or standard" for the traditional roadster that is separate from the air bag system being developed for the Aero 8. Morgan cites this inability as the reason why there cannot be an interim standard air bag system for the traditional roadster during the period September 2006–September 2009.

**IV. Morgan's Statement of Public Interest**

In its original petition, which concerned the Aero, Morgan put forth several arguments supporting its view that the requested exemption is consistent with the public interest. According to Morgan, if the exemption was denied and Morgan stops U.S. sales, Morgan's U.S. dealers would unavoidably have numerous lay-offs, resulting in U.S. unemployment. Denial of an exemption would reduce consumer choice in the specialty sports car market sector in which Morgan cars compete. That company argued that the Morgan vehicles will not be used extensively by owners, and are unlikely to carry small children. Finally, according to Morgan, granting an exemption would assure the continued availability of proper parts and service support for existing Morgan owners. Without an exemption, Morgan would be forced from the U.S. market, and Morgan dealers would find it difficult to support existing customers.

We note that in its February 2006 document requesting an exemption for the traditional roadster, that company generally did not discuss whether or how these arguments would apply to its request concerning the traditional roadster. We invite Morgan to address this issue. As indicated above, Morgan did argue that revenues from selling the traditional roadster would be critical to funding the development of the new advanced air bag for use in all Morgan vehicles destined for the U.S. after September 2009.

**V. How You May Comment on the Morgan "Traditional Roadster" Application**

We invite you to submit comments on the application described above.

You may submit comments (identified by the DOT Docket number in the heading of this document) by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket

[3] Estimated to be between $3,196,179 and $5,066,938. When costs for interior redesign, crash cars, and tooling are included, the estimate rises to between $5,648,679 and $7,519,438. (See 71 FR at 39391.)

site by clicking on "Help and Information" or "Help/Info."

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

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

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

We are providing a 15-day comment period in light of the short period of time between now and September 1, 2006. We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 9, 2006.

**H. Keith Brewer,**

*Director, Crash Avoidance Standards.*

[FR Doc. E6–13314 Filed 8–14–06; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–290 (Sub–No. 267X)]**

### Norfolk Southern Railway Company—Abandonment Exemption—in Kanawha County, WV

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 12.22-mile line of railroad between milepost TP 14.69 at Blue Creek, and milepost TP 26.91 at Acup (Sanderson), in Kanawha County, WV. The line traverses United States Postal Service Zip Codes 25026 and 25045.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 14, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 25, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 5, 2006, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 18, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by August 15, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 7, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E6–13244 Filed 8–14–06; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 9, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW. Washington, DC 20220.

**DATES:** Written comments should be received on or before September 14, 2006 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0228.
*Type of Review:* Extension.
*Title:* Installment Sale Income.
*Form:* 6252.
*Description:* Information is needed to figure and report an installment sale for a casual or incidental sale of personal property, and a sale of real property by someone not in the business of selling real estate. Data is used to determine whether the installment sale has been properly reported and the correct amount of profit is included in income on the taxpayer's return.
*Respondents:* Business and other for-profit institutions.
*Estimated Total Burden Hours:* 1,597,008 hours.

*OMB Number:* 1545–0314.
*Type of Review:* Extension.
*Title:* Form 6466, Transmittal of Forms W–4 Reported Magnetically/Electronically; Form 6467, Transmittal of Forms W–4 Reported Magnetically/Electronically (Continuation).
*Form:* 6466 and 6467.
*Description:* Under Regulation Section 31.3402(f)(2)–1(g), employers are required to submit certain withholding certificates (Form W–4) to the IRS. Transmittal Form 6466 and the continuation sheet Form 6467 are submitted by an employer, or authorized agent of the employer, who will be reporting submissions of Form W–4 on magnetic/electronic media.
*Respondents:* Business and other for-profit institutions.
*Estimated Total Burden Hours:* 133 hours.

*Clearance Officer:* Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
*OMB Reviewer:* Alexander T. Hunt Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

**Robert Dahl,**
*Treasury PRA Clearance Officer.*

[FR Doc. E6–13309 Filed 8–14–06; 8:45 am]
BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### Comment Request: Community Development Financial Institutions Fund: Comment Request on the Release of Transaction Level Report Data and Allocation Tracking System Data Provided by New Markets Tax Credit Program Allocatees

**ACTION:** Notice and request for comments.

**SUMMARY:** Currently, the Community Development Financial Institutions Fund (the Fund), a government corporation within the Department of the Treasury, is soliciting comments on the release of Transaction Level Report Data and Allocation Tracking System Data provided to the Fund by New Markets Tax Credit (NMTC) Program allocatees.

**DATES:** Written comments must be received on or before October 16, 2006 to be assured of consideration.

**ADDRESSES:** Comments must be submitted in writing and sent to Donna Fabiani, Manager for Financial Strategies and Research, as follows: (i) By mail to: Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (ii) by e-mail to: *NMTCTLRcomment@cdfi.treas.gov;* or (iii) by fax to: (202) 622–7754.

**FOR FURTHER INFORMATION CONTACT:** Donna Fabiani, Manager for Financial Strategies and Research, as noted above.

**SUPPLEMENTARY INFORMATION:**

*Title:* Release of Transaction Level Report Data and Allocation Tracking System Data Provided by New Markets Tax Credit (NMTC) Program Allocatees.

*Abstract:* The Fund's mission is to expand the capacity of financial institutions to provide credit, capital and financial services to underserved populations and communities in the United States. The Fund's strategic goal is to improve the economic conditions of underserved communities by providing capital and technical assistance to Community Development Financial Institutions (CDFIs), capital to insured depository institutions, and tax credit allocations to Community Development Entities (CDEs), which provide credit, capital, financial services, and development services to these markets. The Fund certifies entities as CDFIs and/or CDEs.

In June 2004, the Fund launched a new web-based data collection system called the Community Investment Impact System (CIIS). Certified CDFIs, CDFIs that have received monetary awards from the Fund through its other programs, and CDEs that have received NMTC allocations use CIIS to report their annual performance and compliance information to the Fund. The data include institution level information on CDFIs and CDEs including financial condition, staffing, ownership, markets served, loan and investment portfolios, loan sales and purchases, financial services provided, technical assistance and training provided, and community development impacts. For CDEs and a portion of reporting CDFIs, the CIIS data also include detailed transaction level data on each loan or investment in the institutions' portfolios. This transaction level data includes borrower characteristics, loan terms and repayment status, and community development outcomes associated with the transaction, such as jobs created, housing units developed, and square feet of real estate developed. The CIIS database is the only source of standardized transaction level data on CDFI and CDE loans and investments.

The Fund has a second reporting system, called the Allocation Tracking System (ATS), that CDEs that have received NMTC allocations (allocatees) use to report on their Qualified Equity Investments (QEIs). Through the ATS, an allocatee reports to the Fund timely information regarding the issuance of QEIs by the allocatee or any of the subsidiary CDEs to which the allocatee transfers its NMTC allocation (i.e., subsidiary allocatees). ATS data include the amount and date of each QEI as well as various investor characteristics, including investor type.

The Fund intends to make the Transaction Level Report data and the ATS data available to the public within the parameters of all applicable Federal information protection, privacy and confidentiality laws. The Fund expects that said data could be used by CDFIs, CDEs, funders, investors, researchers and others to gain a better understanding of the community

development finance industry. The Fund has developed a draft protocol for releasing the Transaction Level Report data and the ATS data submitted by NMTC allocatees. Because the data contain information on businesses and individuals that may be considered sensitive and/or confidential, the Fund seeks public comment on its draft data release protocol. This draft protocol seeks to release as much data as possible without violating the Freedom of Information Act (FOIA), the Privacy Act, or other applicable Federal law. To that end, the Fund proposes not to release data that it has determined to be: (a) Confidential financial or business information of allocatees, investors, or the businesses that allocatees are lending to or investing in, the disclosure of which would cause substantial harm to the competitive position of the person from whom the information was obtained; or (b) confidential information about individuals, such as name, address, gender, race, and income.

To view the Proposed Data Release Protocol (providing a description of each data field and whether the Fund proposes that the field be displayed, suppressed, or modified in the public release), a sample data release, and definitions of each data point, visit the Fund's Web site *http://www.cdfifund.gov* and click on the links under "Comment Request on the Release of TLR Data and ATS Data Provided by NMTC Program Allocatees."

*Request for Comments:* Comments submitted in response to this notice will become a matter of public record. Comments are invited on all aspects of the release of the Transaction Level Report data and ATS data, but commentators may wish to focus particular attention on the following questions:

(a) Are any of the identified data points proposed for release trade secrets or commercial financial information that is privileged or confidential?

(b) Would the release of any such information cause substantial harm to the competitive position of NMTC Program allocatees, allocatees' investors, or the businesses that allocatees are lending to or investing in?

(c) Would the release of any of the data points not currently proposed for release be useful to the public?

(d) Are any of the data points not currently proposed for release, but potentially of interest to the public, trade secrets or commercial or financial information that is privileged or confidential? Would the release of any such information cause substantive harm to the competitive position of NMTC Program allocatees, their investors, or the businesses that allocatees are lending to or investing in? Would the release of any such information cause the identity of individuals to be revealed?

(e) Is the proposed Excel spreadsheet format for releasing these data acceptable to a wide range of users? If not, what is a better alternative?

**Authority:** 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1T.

Dated: August 8, 2006.

**Arthur A. Garcia,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E6–13321 Filed 8–14–06; 8:45 am]

**BILLING CODE 4810–70–P**

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open public hearing—August 22, 2006, Washington, DC.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

*Name:* Larry M. Wortzel, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to investigate "the extent of Chinese access to, and use of United States capital markets, and whether the existing disclosure and transparency rules are adequate to identify Chinese companies which are active in United States markets and are also engaged in proliferation activities or other activities harmful to United States security interests."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on August 22, 2006, to assess the nature and consequences of interaction between the Chinese and U.S. capital markets. China agreed to open its financial system to foreign participation when it joined the World Trade Organization. This process is already underway and accelerating, and the Commission, therefore, believes it is important and timely to assess the nature and consequences of interaction between the Chinese and U.S. capital markets.

**Background**

This event is the seventh in a series of public hearings the Commission will hold during its 2006 report cycle to collect input from leading experts in academia, business, industry, government and the public on the impact of the economic and national security implications of the U.S. growing bilateral trade and economic relationship with China. The August 22 hearing is being conducted to obtain commentary about the economic and national security implications of Chinese macroeconomic policies on U.S. capital markets, exchange rates and interest rates. Information on upcoming hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site *http://www.uscc.gov*.

This hearing will address "China's Financial System and Monetary Policies: The Impact on U.S. Exchange Rates, Capital Markets, and Interest Rates" and will be Co-chaired by Chairman Larry M. Wortzel and Commissioner Patrick A. Mulloy.

**Purpose of Hearing**

At this hearing the Commission seeks to assess the health of the Chinese financial system, evaluate the nature of foreign participation and understand the relationship between China's financial system and domestic Chinese politics. The Commission also seeks to explore the nature of capital flows into and out of China in order to understand how those flows affect U.S. interest rates and the value of the dollar.

The hearing is designed to assist the Commission in fulfilling its mandate by examining the condition of China's financial system, its increasing openness to foreign competition as required under WTO rules, China's WTO commitments to the financial sector, and the impact of Chinese macroeconomic policies on U.S. capital markets.

Copies of the hearing agenda will be made available on the Commission's Web site *http://www.uscc.gov*. Any interested party may file a written statement by August 22, 2006, by mailing to the contact below. The hearing will be held in two sessions, one in the morning and one in the afternoon, where Commissioners will take testimony from invited witnesses. There will be a question and answer period between the Commissioners and the witnesses.

**DATE AND TIME:** Tuesday, August 22, 2006, 8:30 a.m. to 4:30 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the

Commission's Web site *http://www.uscc.gov* in the near future.

**ADDRESSES:** The hearing will be held on Capitol Hill in Room 385 Russell Senate Office Building. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1409, or via E-mail at *kmichels@uscc.gov*.

**Authority:** Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: August 9, 2006.

**Kathleen J. Michels,**

*Associate Director, U.S.-China Economic and Security Review Commission.*

[FR Doc. E6–13303 Filed 8–14–06; 8:45 am]

**BILLING CODE 1137–00–P**

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open public hearing—September 14, 2006, Washington, DC.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

*Name:* Larry M. Wortzel, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to "analyze and assess the Chinese role in the proliferation of weapons of mass destruction (WMD) and other weapons (including dual-use technologies) to terrorist-sponsoring states, and suggest possible steps which the United States might take, including economic sanctions, to encourage the Chinese to stop such practices." Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on September 14, 2006.

**Background**

This event is the eighth and final hearing in a series of public hearings the Commission will hold during its 2006 report cycle to collect input from leading experts in academia, business, industry, government and the public on the impact of the economic and national security implications of the U.S. growing bilateral relationship with China. The September 14, 2006, hearing is being conducted to obtain commentary about the economic and national security implications of Chinese proliferation practices and its role in the North Korean and Iranian nuclear program, and the impact of these issues on U.S. security interests. In particular, the hearing will examine China's involvement in the North Korean and Iranian nuclear situations and the role it is, or should be, playing to resolve the current crises. Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site *http://www.uscc.gov*.

This hearing will address "China's Proliferation to North Korea and Iran, and Its Role in Addressing the Nuclear and Missile Situations in Both Nations" and will be co-chaired by Commissioners Daniel Blumenthal and William Reinsch.

**Purpose of Hearing**

The hearing is designed to assist the Commission in fulfilling its mandate by examining China's proliferation activities, transfers of WMD technology by Chinese entities to Iran, North Korea and other states of concern, and developments in connection with China's role in the Six-Party Talks with North Korea.

Copies of the hearing agenda will be made available on the Commission's Web site *http://www.uscc.gov*. Any interested party may file a written statement by September 14, 2006, by mailing to the contact below. The hearing will be held in two sessions, one in the morning and one in the afternoon, where Commissioners will take testimony from invited witnesses. There will be a question and answer period between the Commissioners and the witnesses.

**DATE AND TIME:** Thursday, September 14, 2006, 8:30 a.m. to 4:30 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

**ADDRESSES:** The hearing will be held on Capitol Hill in Room 385 Russell Senate Office Building. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1409, or via E-mail at *kmichels@uscc.gov*.

**Authority:** Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: August 9, 2006.

**Kathleen J. Michels,**

*Associate Director, U.S.-China Economic and Security Review Commission.*

[FR Doc. E6–13304 Filed 8–14–06; 8:45 am]

**BILLING CODE 1137–00–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0319]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 14, 2006.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7045 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0319."

Send comments and recommendations concerning any aspect of the information collection to

VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0319" in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Fiduciary Agreement, VA Form 21–4703.

*OMB Control Number:* 2900–0319.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 21–4703 is a legal binding contract between VA and Federally appointed fiduciaries receiving VA funds on behalf of beneficiaries who were determined to be incompetent or under legal disability by reason of minority or court action. The form outlines the fiduciary's responsibility regarding the use of VA funds.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published April 06, 2006 at page 17563.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, local or tribal government.

*Estimated Annual Burden:* 1,467 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 17,600.

Dated: August 7, 2006.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E6–13291 Filed 8–14–06; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0090]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 14, 2006.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–70458 or E-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0090."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0090" in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Voluntary Service, VA Form 10–7055.

*OMB Control Number:* 2900–0090.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Individuals expressing interest in volunteering at a VA medical center complete VA Form 10–7055 to request placement in the nationwide VA Voluntary Service Program. VA will use the data collected to place applicants in assignments most suitable to their special skills and abilities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2006 at pages 17562–17563.

*Affected Public:* Individuals or households, not-for-profit institutions.

*Estimated Total Annual Burden:* 8,000 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 32,000.

Dated: August 7, 2006.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E6–13292 Filed 8–14–06; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0518]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's entitlement to income-dependent benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2006.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0518" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Income Verification, VA Form 21–0161a.

*OMB Control Number:* 2900–0518.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 21–0161a is completed by employers of VA beneficiaries who have been identified has having inaccurately reported their income to VA. VA uses the data collected to determine the beneficiary's entitlement to income dependent benefits.

*Affected Public:* Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, local or tribal government.

*Estimated Annual Burden:* 15,000 hours.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 30 minutes.

*Estimated Annual Responses:* 30,000.

Dated: August 4, 2006.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E6–13294 Filed 8–14–06; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–New (22–0803)]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed existing collection in use without an OMB Control Number, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a applicant's eligibility for reimbursement of licensing and certification tests.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2006.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–New (22–0803)" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Application for Reimbursement of Licensing or Certification Test Fees.

*OMB Control Number:* 2900–New (22–0803).

*Type of Review:* Existing collection in use without an OMB Control Number.

*Abstract:* Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,590 hours.

*Frequency of Response:* On occasion.

*Estimated Average Burden per Respondents:* 15 minutes.

*Estimated Annual Responses:* 6,361.

Dated: August 3, 2006.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E6–13295 Filed 8–14–06; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0649]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify and track veterans diagnosed with amyotrophic lateral sclerosis.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2006.

**ADDRESSES:** Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@.va.gov*. Please refer to "OMB Control No. 2900–0649" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ann W. Bickoff (202) 273–8310 or fax (202) 273–9386.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* VA Cooperative Studies Project #500A, National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), VA Forms 10–21047, 10–21047a, and 10–21047b.

*OMB Control Number:* 2900–0649.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA will use the amyotrophic lateral sclerosis registry to obtain epidemiological data on veterans affected with ALS and as a mechanism to inform the veteran of clinical drug trials and studies.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,330.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* Semi-annually.

*Estimated Number of Respondents:* 1,715.

*Estimated Number of Responses:* 2,740.

Dated: August 2, 2006.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E6–13296 Filed 8–14–06; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0648]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 14, 2006.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374 or fax (202) 565–7045, or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0648.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0648 in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Foreign Medical Program, VA Form 10–7959f–1 and 10–7959f–2.

*OMB Control Number:* 2900–0648.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* a. Veterans with service connected disabilities living or traveling overseas complete VA Form 10–7959f–1 to enroll in the Foreign Medical Program.

b. Healthcare providers complete VA Form 10–7959f–2 to submit claims for payments or reimbursement of expenses relating to veterans living or traveling overseas (except for Canada and the Philippines) with service-connected disability. VA will accept provider's generated billing statement, Uniform Billing-Forms (UB) 92, and Medicare Health Insurance Claims Form, HCFA 1500 for payments or reimbursements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 1, 2006, at pages 31261–31262.

*Affected Public:* Individuals or households, business or other for profit, and not for profit institutions.

*Estimated Total Annual Burden:* 3,763 hours.

a. Foreign Medical Program, VA Form 10–7959f–1—111 hours.

b. Claim Cover Sheet, VA Form 10–7959–2—3,652 hours

*Estimated Average Burden Per Respondent:*

a. Foreign Medical Program, VA Form 10–7959f–1—4 minutes.

b. Claim Cover Sheet, VA Form 10–7959–2—11 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 3,320.

a. Foreign Medical Program, VA Form 10–7959f–1–1,660.

b. Claim Cover Sheet, VA Form 10–7959f–2—1,660.

*Estimated Total Annual Responses:* 21,580.

a. Foreign Medical Program, VA Form 10–7959 –1—1,660.

b. Claim Cover Sheet, VA Form 10–7959–2—19,920.

Dated: August 7, 2006.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E6–13297 Filed 8–14–06; 8:45 am]

**BILLING CODE 8320–01–P**

# Corrections

Federal Register
Vol. 71, No. 157
Tuesday, August 15, 2006

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.

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

**RIN 0960–AF33**

### Revised Medical Criteria for Evaluating Immune System Disorders

*Corrections*

In proposed rule document 06–6655 beginning on page 44432 in the issue of Friday, August 4, 2006, make the following corrections:

**Appendix 1 to Subpart P of Part 404—[Corrected]**

1. On page 44452, in Appendix 1 to Subpart P of Part 404, in the first full paragraph, in the ninth line, "$mm^6$" should read "$mm^3$".

2. On the same page, in the same appendix, in the same paragraph, in the 12th line, "*alone*" should read "alone".

3. On the same page, in the same appendix, in the same paragraph, in the 18th line, "alone " should read"*alone*".

[FR Doc. C6–6655 Filed 8–14–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
August 15, 2006

Part II

# Department of Housing and Urban Development

24 CFR Part 15

**Public Access to HUD Records Under the Freedom of Information Act (FOIA) and Production of Material or Provision of Testimony by HUD Employees; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 15**

**[Docket No. FR–5015–P–01]**

**RIN 2501–AD18**

## Public Access to HUD Records Under the Freedom of Information Act (FOIA) and Production of Material or Provision of Testimony by HUD Employees

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is intended to clarify and explain the various types of requests for HUD documents and testimony by HUD employees that are intended to be covered by the Department's document production and testimony approval regulations. This proposed rule describes the procedures to be followed by a party in making a demand for HUD documents and HUD testimony. The proposed rule also explains the standards that are to be followed by HUD in determining whether production of documents or testimony should be permitted and, if so, any conditions or restrictions imposed.

**DATES:** Comment Due Date: October 16, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section.

*Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

*Public Inspection of Public Comments.* All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nancy Christopher, Associate General Counsel for Litigation, Office of Litigation, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10258, Washington, DC 20410–5000; telephone (202) 708–0300 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

HUD's regulations at 24 CFR part 15 describe the policies and procedures governing public access to HUD records under the Freedom of Information Act (FOIA) (5 U.S.C. 552), and the policies and procedures governing the production of material or provision of testimony by HUD employees, which § 15.2 defines to include all current or former employees who are not employees of the Office of the Inspector General. On January 22, 2001, the Department published a final rule (66 FR 6973) that amended the Department's FOIA regulations and redesignated former subparts H and I of part 15 that deal with the production of documents and provision of testimony by HUD employees, as subparts C and D, respectively. Aside from the designations and conforming amendments to reflect these new designations, no revisions were made to those subparts at that time.

HUD's regulations at 24 CFR part 15 were amended again on October 23, 2002 (67 FR 65276). That amendment delegated authority to the General Counsel to authorize an employee, upon a show of good cause, to testify as an expert or opinion witness in matters in which the United States is a party, as well as in matters exclusively among non-federal litigants. Prior to this amendment, only the Secretary was authorized to permit expert or opinion testimony.

This proposed rule would revise and amend subparts C and D in order to clarify the various types of requests for HUD documents and testimony by HUD employees that are intended to be covered by the regulations in 24 CFR part 15. The proposed rule also describes the procedures to be followed by a party in making a demand to HUD for documents or testimony. The proposed rule also explains the standards that are to be followed by HUD in determining whether production or testimony should be permitted and, if so, any conditions or restrictions imposed. In addition to these changes, the proposed rule would make certain technical corrections in both subparts C and D.

As proposed to be amended by this rule, the organization of part 15 would no longer be based on a distinction between production of material and provision of testimony, but rather would be based on the parties involved in the legal proceeding. Subpart C would govern litigation between private parties, while subpart D would govern litigation where one of the parties is the federal government. In order to improve clarity and highlight the processes to be followed, subparts C and D would be revised in their entirety.

The following sections of this preamble provide a summary of the existing subparts and a discussion of the proposed changes to 24 CFR part 15, subparts C and D.

### II. Proposed Changes to 24 CFR Part 15, Subpart C

Subpart C of 24 CFR part 15, currently titled "Production in Response to Subpoenas or Demands of Courts or Other Authorities," was designed to contain HUD's procedures to be followed when a subpoena, order, or other demand of a court or other authority is issued to HUD for the production of material, or the disclosure of information in its possession or the disclosure of information acquired by an employee or former employee as a part of the performance of the employee's official duties or because of his or her official status. The current subpart C prohibits production of material without the prior approval of the Secretary or General Counsel (24 CFR 15.202).

Though not expressly referred to in the title of the subpart, subpart C was also intended to address the provision of testimony by HUD employees, and

not just the production of material. In addition to the need to clarify the inclusion of demands for testimony, subpart C requires clarification. This clarification is needed because subpart C does not explicitly contain the standards that must be followed in determining: (1) Whether production of material or provision of testimony should be permitted and (2) if it is permitted, whether the production or testimony should or will be subject to conditions or restrictions. Furthermore, the current subpart C regulations cross-reference to 24 CFR part 15, subpart I, for the standards to be followed in deciding whether to approve such demands. Under this proposed rule, these standards would instead be found in subpart D.

This proposed rule would also make several amendments to subpart C, to clearly set forth the procedures to be followed and standards to be applied by HUD in processing demands for the production of material or provision of testimony in legal proceedings among private litigants. The purpose and scope of the subpart would largely be unchanged and prior approval by the Secretary or the General Counsel would still be required before the release of material or the provision of testimony by HUD employees.

This proposed rule would revise the title of subpart C to more clearly describe the scope of the regulations contained in the subpart (the proposed new title would be "Production of material or provision of testimony in response to demands in legal proceedings among private litigants"). The proposed rule would also revise § 15.203 to list, with specificity, the requirements that must be included in a demand to HUD for the production of material or the provision of testimony. Section 15.203 would also be revised to provide that the Associate General Counsel for Litigation or a designee shall be notified immediately of all demands, is to be provided with a copy of the demand, will maintain a record of all demands served upon the Department, and will refer the demand to the appropriate designee for processing and determination.

Further, the proposed rule would revise § 15.204 to explain how HUD will consider demands for material or testimony. The Secretary or the General Counsel would have to evaluate demands to determine what material will be produced or testimony provided. The revised regulation will make clear that material or testimony cannot be used for expert or opinion purposes unless authorized by the Secretary or General Counsel for good cause shown. Once a determination is made, the requester will be notified, will be given the underlying reasoning for the decision, and will be apprised of any applicable conditions imposed on the material or testimony provided. The determination by the Secretary constitutes final agency action, meaning administrative appeals of the determination could not be made.

In the event that a response to a demand for material or the production of testimony is required before the Secretary renders a determination, the U.S. Attorney or such other attorney as may be designated for the purpose will furnish the court or other authority a copy of HUD's public access to records regulations and respectfully request that the demand be stayed until a prompt determination can be made. If the court or other authority requires compliance, regardless of the fact that the Secretary has not made a determination, or the fact that the Secretary decided either not to respond or decided to respond subject to conditions or restrictions, the employee must choose if so directed by an attorney representing the Department, to respectfully decline to comply with the demand.

## III. Proposed Changes to 24 CFR Part 15, Subpart D

Subpart D of 24 CFR part 15, currently titled "Testimony of Employees in Legal Proceedings," addresses testimony of HUD employees, including expert or opinion testimony, with respect to material or information contained in the files of the Department, or information learned as part of the performance of their official duties or because of their official status in any legal proceeding. However, subpart D does not expressly list the standards that are followed in determining whether testimony or production should be permitted and subject to what conditions or restrictions, other than an express prohibition against any HUD employee being called to testify as an expert or opinion witness by any party other than the federal government, unless specifically authorized by the Secretary or the General Counsel for good cause shown. This proposed rule would amend Subpart D to set forth and clarify the procedures to be followed and standards to be applied in processing demands for the production of material or provision of testimony in legal proceedings in which the United States is a party.

This proposed rule would revise the title of subpart D to more clearly describe the scope of the regulations contained in the subpart (the proposed new title would be "Production of material or provision of testimony in response to demands in legal proceedings in which the United States is a party").

The proposed rule would also revise § 15.302 to provide that demands for production of material or provision of testimony in any legal proceeding in which the United States is a party will be directed to the agency by the attorney representing the United States, after which the Associate General Counsel for Litigation or designee will be internally notified of the demand. Additionally, the blanket authorization of factual testimony would be removed and the determination of what testimony to approve would be made by HUD in consultation with the attorney representing the federal government. The content of § 15.304 has been removed from the regulations because, as a result of the other amendments now being proposed to this part, it would no longer be necessary. The procedures governing legal proceedings among private litigants are set forth in §§ 15.201 through 15.206.

## IV. Other Proposed Regulatory Changes

This proposed rule would also make certain technical corrections to both subparts C and D of 24 CFR part 15. One such technical correction is that the rule would not apply to any legal proceeding in which an employee would testify, not on official time, as to opinions or facts that do not involve covered material or information (i.e., are in no way related to the duties the employee performs for, or to the functions of, the Department). Such legal proceedings are outside the scope of this proposed rule.

This proposed rule would also amend § 15.1, which describes the scope of each subpart in part 15, to conform the descriptions of subparts C and D to the proposed regulatory changes. In addition, the proposed rule would revise § 15.2, which contains the definitions for 24 CFR part 15, to set forth the defined terms applicable to revised subparts C and D.

## V. Findings and Certifications

### *Paperwork Reduction Act*

The proposed information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this collection of information is estimated to include the time for reviewing the instructions, for gathering and preparing the information required to be included in demands, and for completing and reviewing the information to be provided.

The following table provides information on the estimated public reporting burden:

| Information collection | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| § 15.301 | 106 | 1 | 106 | 1.5 | 159 |

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology (e.g., permitting responses to be submitted electronically). Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, any comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. However, this time frame does not affect the deadline for comments to the agency on the proposed rule. Comments must refer to the proposal by the proposal's name and docket number (FR–5015–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and

Celestine R. Smith, Regulations and Directives Clearance Officer, Office of the General Counsel, Office of Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–5000.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and subject to comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulatory amendments that would be made by this proposed rule are procedural. Accordingly, the rule would not have any impact on the substantive rights or duties of small entities requesting HUD records under the Freedom of Information Act. Furthermore, because the fees charged under this rule are limited by FOIA to direct costs of searching for, reviewing, and duplicating the records processed for requesters, the fees are not economically significant.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

*Environmental Impact*

This proposed rule does not direct, provide for assistance, or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C.1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

**List of Subjects in 24 CFR Part 15**

Classified information, Courts, Freedom of information, Government employees, reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 15 to read as follows:

## PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

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

**Authority:** 42 U.S.C. 3535(d).

2. Revise § 15.1(b) and (c) to read as follows:

**§ 15.1 What is the purpose of this part?**

* * * * *

(b) *Subpart C of this part.* Subpart C of this part describes the procedures to be followed and standards to be applied in processing demands for the production of material or provision of

testimony in legal proceedings among private litigants.

(c) *Subpart D of this part.* Subpart D of this part describes the procedures to be followed and standards to be applied in processing demands for the production of material or provision of testimony in legal proceedings in which the United States is a party.

* * * * *

3. In § 15.2(b) add, in alphabetical order, definitions of the terms "*Demand,*" "*Good cause,*" "*Material,*" "*Production,*" "*Testimony,*" and "*United States*" to read as follows:

**§ 15.2 Definitions.**

* * * * *

*Demand* means a subpoena, order, or other demand of a court or other authority that is issued in a legal proceeding and any accompanying submissions.

* * * * *

*Good cause* means necessary to prevent a miscarriage of justice or to promote a significant interest of the Department.

* * * * *

*Material* means either documents or information contained in or relating to contents of the files of the Department or documents or information acquired by any person while such person was an employee of the Department as a part of the performance of his or her official duties or because of his or her official status.

* * * * *

*Production* refers to the provision of material by any means other than through the provision of oral testimony.

* * * * *

*Testimony* refers to any oral or written statements made in litigation under oath or penalty of perjury.

* * * * *

*United States* refers to the Federal Government of the United States (including the Department), the Secretary, and any employees of the Department in their official capacities.

4. Revise subpart C to read as follows:

## Subpart C—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants

Sec.



**§ 15.201 Purpose and scope.**

(a) This subpart contains the regulations of the Department concerning the procedures to be followed and standards to be applied when demand is issued in a legal proceeding among private litigants for the production or disclosure of any material, whether provided through production of material or provision of testimony.

(b) This subpart does not apply to demands, which are covered by part 2004 of this title, for production of material in the files of the Office of Inspector General or provision of testimony by employees within the Office of Inspector General.

**§ 15.202 Production of material or provision of testimony prohibited unless approved by the Secretary or General Counsel.**

Neither the Department nor any employee of the Department shall comply with any demand for production of material or provision of testimony in a legal proceeding among private litigants, unless the prior approval of the Secretary or General Counsel has been obtained in accordance with this subpart. This rule does not apply to any legal proceeding in which an employee may be called to participate, either through the production of documents or the provision of testimony, not on official time, as to facts or opinions that are in no way related to material described in § 15.201.

**§ 15.203 Making a demand for production of material or provision of testimony.**

(a) Any demand made to the Department or an employee of the Department to produce any material or provide any testimony in a legal proceeding among private litigants, must:

(1) Be submitted in writing to the Department or employee of the Department, with a copy to the Associate General Counsel for Litigation, no later than 30 days before the date the material or testimony is required;

(2) State, with particularity, the material or testimony sought;

(3) State whether expert or opinion testimony will be sought from the employee;

(4) State whether the production of such material or provision of such testimony could reveal classified, confidential, or privileged material;

(5) Summarize the need for and relevance of the material or testimony sought in the legal proceeding;

(6) State whether the material or testimony is available from any other source and, if so, state all such other sources;

(7) State why no document[s], or declaration or affidavit, could be used in lieu of oral testimony that is being sought;

(8) Estimate the amount of time the employee will need in order to prepare for, travel to, and attend the legal proceeding, as appropriate;

(9) State why the production of the material or provision of the testimony is appropriate under the rules of procedure governing the legal proceeding for which it is sought (*e.g.*, not unduly burdensome or otherwise inappropriate under the relevant rules governing discovery); and

(10) Describe how producing such material or providing such testimony would affect the interests of the United States.

(b) Whenever a demand is made upon the Department or an employee of the Department for the production of material or provision of testimony, the Associate General Counsel for Litigation or designee shall be notified immediately. The Associate General Counsel for Litigation or designee shall maintain a record of all demands served upon the Department and refer the demand to the appropriate designee for processing and determination.

**§ 15.204 Consideration of demands for production of material or provision of testimony.**

(a) The Secretary or General Counsel shall determine what material is to be produced or what testimony is to be provided, based upon the following standards:

(1) *Expert or opinion material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in § 15.201 that is of an expert or opinion nature, unless specifically authorized by the Secretary or the General Counsel for good cause shown.

(2) *Factual material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in § 15.201 unless specifically authorized by the Secretary or General Counsel. Such authorization may be granted if the Secretary or General Counsel determines that it is warranted based upon an assessment of whether:

(i) Producing such material or providing such testimony would violate a statute or regulation;

(ii) Producing such material or providing such testimony would reveal classified, confidential, or privileged material;

(iii) Such material or testimony is relevant to the legal proceeding;

(iv) Such material or testimony can be obtained from any other source;

(v) One or more documents, or a declaration or affidavit, could reasonably be provided in lieu of oral testimony;

(vi) The amount of employees' time necessary to comply with the demand is reasonable;

(vii) Production of the material or provision of the testimony is appropriate under the rules of procedure governing the legal proceeding for which it is sought (*e.g.*, unduly burdensome or otherwise inappropriate under the relevant rules governing discovery); and

(viii) Producing such material or providing such testimony would impede a significant interest of the United States.

(b) Once a determination has been made, the requester will be notified of the determination, the reasons for the grant or denial of the demand, and any conditions that have been imposed upon the production of the material or provision of the testimony demanded.

(c) The Secretary or General Counsel may impose conditions or restrictions on the production of any material or provision of any testimony. Such conditions or restrictions may include the following:

(1) A requirement that the parties to the legal proceeding obtain a protective order or execute a confidentiality agreement, the terms of which must be acceptable to the Secretary or General Counsel, to limit access to, and limit any further disclosure of, material or testimony;

(2) A requirement that the requester accept examination of documentary material on HUD premises in lieu of production of copies;

(3) A limitation on the subject areas of testimony permitted;

(4) A requirement that testimony of a HUD employee be provided by deposition at a location prescribed by HUD or by written declaration or affidavit;

(5) A requirement that the parties to the legal proceeding agree that a transcript of the permitted testimony be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was demanded;

(6) A requirement that the requester provide the Department with a copy of a transcript of the employee's testimony free of charge; or

(7) Any other condition or restriction deemed to be in the best interests of the United States.

(d) The determination made with respect to the production of material or provision of testimony is within the sole discretion of the Secretary or General Counsel and shall constitute final agency action from which no administrative appeal is available.

**§ 15.205 Method of production of material or provision of testimony.**

(a) Where the Secretary or General Counsel has authorized the production of material or provision of testimony, the Department shall produce such material or provide such testimony in accordance with this section and any conditions imposed upon production of material or provision of testimony pursuant to § 15.204.

(b) In any legal proceeding where the Secretary or General Counsel has authorized the production of documents, the Department shall respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed, in accordance with its authentication procedures. That authentication shall be evidence that the documents are true copies of documents in the Department's files and be sufficient for the purposes of Rule 902 of the Federal Rules of Evidence.

(c) If response to the demand is required before the determination from the Secretary or General Counsel is received, the U.S. Attorney, or such other attorney as may be designated for the purpose, will appear or make such filings as are necessary to furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for prompt consideration. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested determination from the Secretary or General Counsel.

**§ 15.206 Procedure in the event of an adverse ruling regarding production of material or provision of testimony.**

If the court or other authority declines to stay the demand made in accordance with § 15.205 pending receipt of the determination from the Secretary or General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the determination by the Secretary or General Counsel not to produce the material or provide the testimony demanded or to produce subject to conditions or restrictions, the employee upon whom the demand has been made shall, if so directed by an attorney representing the Department, respectfully decline to comply with the demand. (*United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951)).

5. Revise subpart D to read as follows:

## Subpart D—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings in Which the United States is a Party

Sec.



**§ 15.301 Purpose and scope.**

(a) This subpart contains the regulations of the Department concerning the procedures to be followed and standards to be applied when demand is issued in a legal proceeding in which the United States is a party for the production or disclosure of any material, whether provided through production of material or provision of testimony.

(b) This subpart does not apply to demands, which are covered by part 2004 of this title, for production of material in the files of the Office of Inspector General or provision of testimony by employees within the Office of Inspector General.

**§ 15.302 Procedure for review of demands for production of material or provision of testimony in any legal proceeding in which the United States is a party.**

All demands for production of material or provision of testimony in any legal proceeding in which the United States is a party shall be directed to the agency through the attorney representing the United States in the proceeding. Whenever the Department or an employee of the Department is notified by the attorney representing the United States of the demand for the production of material or provision of testimony in any legal proceeding in which the United States is a party, the Associate General Counsel for Litigation or designee shall be notified immediately.

**§ 15.303 Consideration of demands for production of material or provision of testimony.**

(a) The Secretary or General Counsel shall consult with the attorney representing the United States, as to the response to the demand for production of material, or to the provision of testimony.

(b) An employee of the Department may not testify as an expert or opinion witness unless specifically authorized by the Secretary or the General Counsel for good cause shown.

**§ 15.304 Method of production of material or provision of testimony.**

Where the Secretary or General Counsel has authorized the production of material or provision of testimony, the Associate General Counsel for Litigation or designee shall arrange for the production of any authorized material or provision of any authorized testimony through the attorney representing the United States. Where the Secretary or General Counsel has authorized the production of documents, the Department may respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed in accordance with its authentication procedures. That authentication shall be evidence that the documents are true copies of documents in the Department's files and be sufficient for the purposes of Rule 902 of the Federal Rules of Evidence.

Dated: July 12, 2006.

**Roy A. Bernardi,**

*Deputy Secretary.*

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Part III

# Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for 11 Species of Picture-Wing Flies From the Hawaiian Islands; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AU93**

## Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for 11 Species of Picture-Wing Flies From the Hawaiian Islands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for 11 species of Hawaiian picture-wing flies (*Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. obatai, D. substenoptera,* and *D. tarphytrichia*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 18 acres (ac) (7.3 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in four counties (City and County of Honolulu, Hawaii, Maui, and Kauai) in Hawaii. Critical habitat has not been proposed for *D. neoclavisetae*, a species for which we determined critical habitat to be prudent, because the specific areas and physical and biological features essential to its conservation in the Puu Kukui Watershed Management Area are not in need of special management considerations or protection. Therefore, we are not proposing critical habitat for *D. neoclavisetae* because these specific areas and features do not meet the definition of critical habitat in the Act.

**DATES:** We will accept comments from all interested parties until October 16, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by September 29, 2006.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850.

2. You may hand-deliver written comments to our Office at the above address.

3. You may send comments by electronic mail (e-mail) to *fw1pie_pwfchp@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to 808/792–9581.

5. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI (telephone 808/792–9400; facsimile 808/792–9581).

**FOR FURTHER INFORMATION CONTACT:** Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, (see **ADDRESSES** section) (telephone 808/792–9400; facsimile 808/792–9581). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether it is prudent to designate critical habitat.

(2) Specific information on the amount and distribution of *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia* habitat, and what areas should be included in the designations that were occupied at the time of listing that contain the features essential for the conservation of the species and why, and what areas that were not occupied at the time of listing that are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) We are requesting specific information from the public on *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia* and their habitat, and which habitat or habitat components (*i.e.*, physical and biological features) are essential to the conservation of these 12 species and why; and

(7) Whether the benefit of exclusion in any particular area will outweigh the benefits of inclusion of that area from critical habitat under Section 4(b)(2) of the Act.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw1pie_pwfchp@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: RIN 1018–AU93" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Pacific Islands Fish and Wildlife Office at phone number 808/792–9400. Please note that the Internet address *fw1pie_pwfchp@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will make all comments available for public inspection in their entirety. Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment during normal business hours at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

### Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of

critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under ESA section 4(b)(2), there are significant limitations on the regulatory effect of designation under ESA section 7(a)(2). In brief, (1) designation provides additional protection to habitat only where there is a federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,310 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, the Section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004). In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this proposed designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

**Procedural and Resource Difficulties in Designating Critical Habitat**

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

**Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the 11 species of Hawaiian picture-wing flies for which we are proposing to designate critical habitat, refer to the final listing rule for the 12 species picture-wing flies published in the **Federal Register** on May 9, 2006 (71 FR 26835—pages 26835–26852). For reasons explains later in this document, we are not proposing critical habitat for one of the listed species' *Drosophila neoclavisetae*.

**Previous Federal Actions**

For more information on previous Federal actions concerning the 11 species of Hawaiian picture-wing flies, refer to the Determination of Status for 12 Species of Picture-Wing Flies from the Hawaiian Islands, published in the **Federal Register** on May 9, 2006 (71 FR 26835). In accordance with an amended settlement agreement approved by the United States District Court for the District of Hawaii on August 31, 2005 (*CBD* v. *Allen*, CV–05–274–HA), the Service published in the May 9, 2006, **Federal Register**, a determination that designation of critical habitat for the 12 species of Hawaiian picture-wing flies, pursuant to the Act's sections 4(b)(6)(A) and (C), is prudent. Since critical habitat is prudent, the settlement stipulates that we must submit, for publication in the **Federal Register**, a proposed critical habitat designation for the listed species for which critical habitat is prudent on or by September 15, 2006, and a final critical habitat determination by April 17, 2007.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures to bring species to the point at which the protection under the Act measures is no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific 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)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, if there is one, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be appropriate for conservation actions implemented under section 7(a)(1) of the Act and subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases.

**Methods**

As required by section 4(b) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. neoclavisetae*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*.

We have reviewed the available information that pertains to the habitat requirements for these species and evaluated all known occurrence locations using data from numerous sources. The following geospatial, tabular data sets were used in proposing critical habitat: occurrence data for all 12 species (K. Kaneshiro 2005a—pages 1–16); vegetation mapping data for the Hawaiian Islands (GAP Data—Hawaiian Islands 2005); color mosaic 1:19,000 scale digital aerial photographs for the Hawaiian Islands (dated April to May 2005); and 1:24,000 scale digital raster graphics of USGS topographic quadrangles. Land ownership was determined from geospatial data sets associated with parcel data from Oahu County (2006); Hawaii County (2005); Kauai County (2005); and Maui County (2004).

We reviewed a variety of peer-reviewed and non-peer-reviewed articles for this proposal, which included background information on the species' biology (e.g., Montgomery 1975—pages 83, 94, 96–98, and 100; Foote and Carson 1995—pages 1–4; Kaneshiro and Kaneshiro 1995—pages 1–47), plant ecology and biology (e.g., Wagner et al. 1999—pages 45, 52–53, 971, 1,314–1,315, and 1,351–1,352), and ecology of the Hawaiian Islands and the areas considered (e.g., Smith 1985—pages 227–233; Stone 1985—pages 251–253, 256, and 260–263; Cuddihy and Stone 1990—pages 59–66, 73–76, and 88–94). Additional information

available included the final rule listing the plant species *Urera kaalae* as endangered (Service 1995—pages 81–83; 56 FR 55770, October 29, 1991,—page 55779); the final listing rule for these species (71 FR 26835, May 9, 2006,—pages 26835–26852); unpublished reports by The Nature Conservancy of Hawaii (TNCH); and aerial photographs and satellite imagery of the Hawaiian Islands.

Additional information was obtained through personal communications with scientists and land managers familiar with the species and habitats. Contributing individuals included Dr. Ken Kaneshiro (Director of the University of Hawaii at Manoa's Center for Conservation and Research Training Program; Dr. David Foote, research entomologist for the U.S. Geological Survey, Biological Resources Discipline; Dr. Steve Montgomery, Bishop Museum Research Associate; other staff from Bishop Museum; landowners; and staff from the Hawaii State Department of Land and Natural Resources, TNCH, and the U.S. Department of the Army (U.S. Army).

Specific information from these sources included estimates of historic and current distribution, abundance, and territory sizes for the 12 species, as well as data on resources and habitat requirements. A recovery plan for this group of species has not been completed.

As presented in the final listing rule (71 FR 26835; May 9, 2006), below is the specific information concerning the distribution and host-plants for each of the 11 species for which we are proposing critical habitat. This information is directly relevant to the primary constituent elements and thus repeated below. Each species of Hawaiian picture-wing fly described in this document is found only on a single island, and the larvae of each are dependant upon only a single or a few related species of plants (summarized in Table 1).

Critical habitat has not been proposed for *D. neoclavisetae*, a species for which we determined critical habitat to be prudent, because, the specific areas and physical and biological features essential to its conservation in the Puu Kukui Watershed Management Area are not in need of special management considerations or protection. Therefore, we are not proposing critical habitat for *D. neoclavisetae* because these specific areas and features does not meet the definition of critical habitat in the Act.

TABLE 1.—DISTRIBUTION OF 12 HAWAIIAN PICTURE-WING FLIES BY ISLAND, GENERAL HABITAT TYPE, AND PRIMARY HOST PLANT(S).

| Species | Island | Elevation range | General habitat type | Primary host plants |
|---|---|---|---|---|
| | | Oahu Species | | |
| *Drosophila aglaia* | Oahu | 1,700 to 2,900 ft (520–885 m). | Mesic forest | *Urera glabra.* |
| *D. hemipeza* | Oahu | 1,500 to 2,900 ft (460 to 885 m). | Mesic forest | *Cyanea sp., Lobelia sp., & Urera kaalae (E).* |
| *D. montgomeryi* | Oahu | 1,900 to 2,900 ft (580–885 m). | Mesic forest | *Urera kaalae (E).* |
| *D. obatai* | Oahu | 1,500 to 2,500 ft (460–760 m). | Dry to mesic forest | *Pleomele aurea & Pleomele forbesii.* |
| *D. substenoptera* | Oahu | 1,300 to 4,000 ft (395 to 1,220 m). | Wet forest | *Cheirodendron sp. & Tetraplasandra sp.* |
| *D. tarphytrichia* | Oahu | 1,300 to 4,000 ft (395 to 1,220 m). | Mesic forest | *Charpentiera sp.* |
| | | Hawaii (Big Island) Species | | |
| *D. heteroneura* | BI | 3,400 to 6,000 ft (1,035 to 1,830 m). | Mesic to wet forest | *Cheirodendron sp., Clermontia sp., and Delissea sp.* |
| *D. mulli* | BI | 3,150 to 3,250 ft (960–990 m). | Wet forest | *Pritchardia beccariana.* |
| *D. ochrobasis* | BI | 3,400 to 5,400 ft (1,035 to 1,645 m). | Mesic to wet forest | *Clermontia sp., Marattia sp., & Myrsine sp.* |
| | | Molokai, Kauai, and Maui Species | | |
| *D. differens* | Molokai | 3,650 to 4,500 ft (1,115 to 1,370 m). | Wet forest | *Clermontia sp.* |
| *D. musaphilia* | Kauai | 3,000 to 3,700 ft (915–1,130 m). | Mesic forest | *Acacia koa.* |
| *D. neoclavisetae* | Maui | 3,500 to 4,500 ft (1,070 to 1,370 m). | Wet forest | *Cyanea sp.* |

**Oahu Species**

*Drosophila aglaia*

*Drosophila aglaia* is historically known from five localities in the Waianae Mountains of Oahu between 1,700 and 2,900 feet (ft) (520 to 885 meters (m)) above sea level. *Drosophila aglaia* is restricted to the natural distribution of its host plant, Urera glabra (family Urticaceae), which is a small shrub-like endemic tree. The larvae of D. aglaia develop in the decomposing bark and stem of *U. glabra*. This plant does not form large stands, but is infrequently scattered throughout slopes and valley bottoms in mesic and wet forest habitat on Oahu.

*Drosophila hemipeza*

*Drosophila hemipeza* is restricted to the island of Oahu where it is historically known from seven localities between 1,500 and 2,900 ft (460 to 885 m) above sea-level (not including the Pupukea site of discovery which is considered an extripated population). Montgomery (1975—page 96)

determined that D. hemipeza larvae feed within decomposing portions of several different mesic forest plants. The larvae inhabit the decomposing bark of Urera kaalae (family Urticaceae), a federally-endangered plant (Service 1995—pages 81–83; 56 FR 55770—page 55779) that grows on slopes and in gulches of diverse mesic forest. In 2004, only 41 individuals of U. kaalae were known to remain in the wild (Service 2004—page 9). In 2005, TNCH outplanted many seedlings of this species within several locations within D. hemipeza's historic range (TNCH 2005—page 6). The larvae also feed within the decomposing stems of Lobelia sp. (family Campanulaceae) and the decomposing bark and stems of Cyanea sp. (family Campanulaceae) in mesic forest habitat (Kaneshiro and Kaneshiro 1995—page 17; Science Panel 2005—page 16).

*Drosophila montgomeryi*

*Drosophila montgomeryi* is historically known from three localities in the Waianae Mountains on western Oahu between 1,900 and 2,900 ft (580 to 885 m) above sea level. Montgomery (1975—page 97) reported that the larvae of this species feed within the decaying bark of Urera kaalae, a federally-endangered plant (Service 1995—pages 81–83; 56 FR 55770—page 55779) that grows on slopes and in gulches of diverse mesic forest (Wagner et al. 1999—pages 1,314–1,315). In 2004, only 41 individuals of U. kaalae were known to remain in the wild (Service 2004—page 9). In 2005, TNCH outplanted many seedlings of this species within several locations within D. montgomeryi's historic range (TNCH 2005—page 6).

*Drosophila obatai*

*Drosophila obatai* is historically known from two localities between 1,500 and 2,500 ft (460 to 760 m) above sea level on the island of Oahu. *Drosophila obatai* larvae feed within decomposing portions of Pleomele forbesii (family Agavaceae), a candidate for Federal listing (70 FR 24870—page 24883) (Kaneshiro and Kaneshiro 1995—page 27; Montgomery 1975—page 98). These host plants grow on slopes in dry forest and diverse mesic forest, and occur singly or in small clusters, rarely forming large stands (Wagner et al. 1999—pages 1,351–1,352).

*Drosophila substenoptera*

*Drosophila substenoptera* is historically known from seven localities in both the Koolau and Waianae Mountains on the island of Oahu at elevations between 1,300 and 4,000 ft (395 to 1,220 m) above sea level. Montgomery (1975—page 100) determined that *D. substenoptera* larvae inhabit only the decomposing bark of *Cheirodendron sp.* trees (family Araliaceae) and *Tetraplasandra sp.* trees (family Araliaceae) in localized patches of wet forest habitat.

*Drosophila tarphytrichia*

*Drosophila tarphytrichia* was historically known from both the Koolau and the Waianae Mountains between 1,900 and 2,900 ft (580 to 885 m) above sea level on the island of Oahu. *Drosophila tarphytrichia* is now apparently extirpated from the Koolau range where it was originally discovered near Manoa Falls, and is presently known from four localities in the Waianae Mountains (Kaneshiro and Kaneshiro 1995; HBMP 2005; K. Kaneshiro 2005a). The larvae of *D. tarphytrichia* feed only within the decomposing portions of the stems and branches of *Charpentiera obovata* trees (family Amaranthaceae) in mesic forest habitat (Montgomery 1975—page 100).

**Hawaii (Big Island) Species**

*Drosophila heteroneura*

*Drosophila heteroneura* has been the most intensely studied of the 12 species discussed in this proposed rule (Kaneshiro and Kaneshiro 1995—page 19). This species is restricted to the island of Hawaii where, historically, it was known to be relatively widely distributed between 3,400 and 6,000 ft (1,035 to 1,830 m) above sea level. *Drosophila heteroneura* has been recorded from 24 localities on 4 of the island's 5 volcanoes (Hualalai, Mauna Kea, Mauna Loa, and Kilauea) in 5 different montane environments (K. Kaneshiro 2005a—pages 4–8). *Drosophila heteroneura* larvae primarily inhabit the decomposing bark and stems of *Clermontia sp.* (family Campanulaceae), including *C. clermontioides,* and *Delissea sp.* (family Campanulaceae), but it is also known to feed within decomposing portions of *Cheirodendron sp.* (family Araliaceae) in open mesic and wet forest habitat (Kaneshiro and Kaneshiro 1995—page 19).

*Drosophila mulli*

*Drosophila mulli* is restricted to the island of Hawaii and is historically known from two locations between 3,150 and 3,250 ft (960 to 990 m) above sea level. Adult flies are found only on the leaf undersides of the endemic fan palm, *Pritchardia beccariana* (family Arecaceae), which is the only known association of a Drosophila species with a native Hawaiian palm species. The larval feeding site on the plant remains unknown because attempts to rear this species from decaying parts of *P. beccariana* have thus far been unsuccessful (W.P. Mull, Biologist, pers. comm. 1994—page 1; Science Panel 2005—page 21).

*Drosophila ochrobasis*

Historically, *Drosophila ochrobasis* was relatively widely distributed between 3,400 and 5,400 ft (1,035 to 1,645 m) above sea level on the island of Hawaii. Drosophila ochrobasis has been recorded from 10 localities on 4 of the island's 5 volcanoes (Hualalai, Mauna Kea, Mauna Loa, and the Kohala mountains). The larvae of this species have been reported to use the decomposing portions of three different host plant groups—Myrsine sp. (family Myrsinaceae), Clermontia sp. (family Campanulaceae), and Marattia sp. (family Marattiaceae) (Montgomery 1975—page 98; Kaneshiro and Kaneshiro 1995—page 29).

**Kauai Species**

*Drosophila musaphilia*

*Drosophila musaphilia* is historically known from only four sites, one at 1,900 ft (579 m) above sea level, and three sites between 2,600 and 3,700 ft (790 to 1,130 m) above sea level on the island of Kauai. Montgomery (1975—page 97) determined that the host plant for *D. musaphilia* is Acacia koa. The females lay their eggs upon, and the larvae develop in, the moldy slime flux (seep) that occasionally appears on certain trees with injured plant tissue and seeping sap. Understanding the full range of *D. musaphilia* is difficult because its host plant, Acacia koa, is fairly common and stable within, and surrounding, its known range on Kauai; however, the frequency of suitable slime fluxes occurring on the host plant appears to be much more restricted and temporally unpredictable (Science Panel 2005—pages 23–24).

**Maui Species**

*Drosophila neoclavisetae*

Two populations of *Drosophila neoclavisetae* were found historically along the Puu Kukui Trail within montane wet ohia forests on State land in West Maui. One habitat site was found in 1969 at 4,500 ft (1,370 m) and the other in 1975 at 3,500 ft (1,070 m) above sea level (Kaneshiro and Kaneshiro 1995—page 26; K. Kaneshiro 2005a—page 11). The host plant of *D. neoclavisetae* has not yet been confirmed, although it is likely associated with Cyanea sp. (family

Campanulaceae). Because both collections of this species occurred within a small patch of Cyanea sp. and many other species in the D. adiastola species group use species in this genus and other plants in the family Campanulaceae, researchers believe the Cyanea sp. found at Puu Kukui is likely the correct host plant for *D. neoclavisetae* (Science Panel 2005—pages 19–20; Kaneshiro and Kaneshiro 1995—page 26).

**Molokai Species**

*Drosophila differens*

*Drosophila differens* is historically known from three sites on private land between 3,650 and 4,500 ft (1,115 to 1,370 m) above sea level, within montane wet ohia forest (K. Kaneshiro 2005a—page 2) on the island of Molokai. Montgomery (1975—page 83) found that *D. differens* larvae inhabit the bark and stems of Clermontia sp. (family Campanulaceae) in wet rainforest habitat (Kaneshiro and Kaneshiro 1995—page 16).

**Primary Constituent Elements**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for these 12 picture-wing flies are derived from the biological needs of these species as described in the listing rule, published in the **Federal Register** on May 9, 2006 (71 FR 26835—pages 26835–26840), with specific requirements described below.

*Space for Individual and Population Growth and Normal Behavior*

The general life cycle of Hawaiian Drosophilidae is typical of that of most flies: after mating, females lay eggs from which larvae (immature stage) hatch; as larvae grow, they molt (shed their skin) through three successive stages (instars); when fully grown, the larvae change into pupae (a transitional form) in which they metamorphose and emerge as adults.

Breeding for all 11 species of flies included in this proposal generally occurs year-round, but egg laying and larval development increase following the rainy season as the availability of decaying matter, which the flies feed on, increases in response to the heavy rains (K. Kaneshiro 2005b—pages 1–2). In general, *Drosophila* lay between 50 and 200 eggs in a single clutch. Eggs develop into adults in about a month, and adults generally become sexually mature 1 month later. Adults generally live for 1 to 2 months.

It is unknown how much space is needed for these flies to engage in courtship and territorial displays and mating activities. Adult behavior may be disrupted or modified by less than ideal conditions such as decreased forest cover or loss of suitable food material (K. Kaneshiro 2005b—pages 1–2). Additionally, adult behavior may be disrupted and the flies themselves may be susceptible to the preying activities of nonnative hymenoptera including yellow jacket wasps and ants (Kaneshiro and Kaneshiro 1995—pages 41–42). The larvae generally pupate within the soil located below their host plant material, and it is presumed that they require relatively undisturbed and unmodified soil conditions to complete this stage before reaching adulthood (Science Panel 2005—page 5). Lastly, it is well-known that these and most picture-wing flies are susceptible to even slight temperature increases, an issue that may be exacerbated by loss of suitable forest cover (K. Kaneshiro 2005b—pages 1–2).

*Food*

Each species of Hawaiian picture-wing fly described in this document is found only on a single island, and the larvae of each are dependent upon only a single or a few related species of plants (summarized in Table 1). The adult flies feed on a variety of decomposing plant matter. The water or moisture requirements for all 12 of these species is unknown; however, during drier seasons or during times of drought, it is expected that available adult and larval stage food material in the form of decaying plant matter may decrease (K. Kaneshiro 2005b—pages 1–2).

*Primary Constituent Elements for Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera, and D. tarphytrichia*

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia*. All areas proposed as critical habitat for *these species* are based on documented occurrences within these species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined the following PCEs for *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia*.

*Oahu Species*

The PCEs for *Drosophila aglaia* are:

(1) Dry to mesic, lowland, *Diospyros* sp., ohia and koa forest; and

(2) The larval host plant *Urera glabra*.

The PCEs for *Drosophila hemipeza* are:

(1) Dry to mesic, lowland, ohia and koa forest; and

(2) The larval host plants *Cyanea angustifolia, C. calycina, C. grimesiana* ssp. *grimesiana, C. grimesiana ssp. obatae, C. membranacea, C. pinnatifida, C. sessifolia, C. superba ssp. superba, Lobelia hypoleuca, L. hiihauensis, L. yuccoides,* and *Urera kaalae*.

The PCEs for *Drosophila montgomeryi* are:

(1) Dry to mesic, lowland, diverse ohia and koa forest; and

(2) The larval host plant *Urera kaalae*.

The PCEs for *Drosophila obatai* are:

(1) Dry to mesic, lowland, ohia and koa forest; and

(2) The larval host plant *Pleomele forbesii*.

The PCEs for *Drosophila substenoptera* are:

(1) Mesic to wet, lowland to montane, ohia and koa forest; and

(2) The larval host plants *Cheirodendron platyphyllum* ssp. *platyphyllum, C. trigynum* ssp.

*trigynum*, *Tetraplasandra kavaiensis*, and *T. oahuensis*.

The PCEs for *Drosophila tarphytrichia are:*

(1) Dry to mesic, lowland, ohia and koa forest; and

(2) The larval host plant *Charpentiera obovata*.

*Hawaii (Big Island) Species*

The PCEs for *Drosophila heteroneura* are:

(1) Mesic to wet, montane, ohia and koa forest; and

(2) The larval host plants *Cheirodendron trigynum* ssp. *trigynum*, *C. clermontioides*, *C. hawaiiensis*, *C. kohalae*, *C. lindseyana*, *C. montis-loa*, *C. paviflora*, *C. peleana*, and *C. pyrularia*.

The PCEs for *Drosophila mulli* are:

(1) Wet, montane, ohia forest; and

(2) The larval host plant *Pritchardia beccariana*.

The PCEs for *Drosophila ochrobasis* are:

(1) Mesic to wet, montane, ohia, koa, and *Cheirodendron* sp. forest; and

(2) The larval host plants *Clermontia calophylla*, *C. clermontioides*, *C. drepanomorpha*, *C. hawaiiensis*, *C. kohalae*, *C. lindseyana*, *C. montis-loa*, *C. parviflora*, *C. peleana*, *C. pyrularia*, *C. waimeae*, *Myrsine lessertiana*, and *M. sandwicensis*.

*Kauai Species*

The PCEs for *Drosophila musaphilia* are:

(1) Mesic, montane, ohia and koa forest; and

(2) The larval host plant *Acacia koa*.

*Maui Species*

The PCEs for *Drosophila neoclavisetae* are:

(1) Wet, montane, ohia forest; and

(2) The larval host plants *Cyanea kunthiana* and *C. macrostegia* ssp. macrostegia.

*Molokai Species*

The PCEs for *Drosophila differens* are:

(1) Wet, montane, ohia forest; and

(2) The larval host plants *Clermontia arborescens* ssp. *waihiae*, *C. granidiflora* ssp. *munroi*, *C. oblongifolia* ssp. *brevipes*, and *C. pallida*.

This proposed designation is for the conservation of PCEs necessary to support the life history functions which were the basis for the proposal. Each of the areas proposed in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

**Criteria Used To Identify Critical Habitat**

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*. We are proposing to designate critical habitat on lands with documented occurrences and that contain the primary constituent elements for these 11 Hawaiian picture-wing flies. The primary dataset we used to document observations of these 11 picture-wing flies spans the years 1965 to 1999 (K. Kaneshiro 2005a—pages 1–16). Additional data were obtained from individuals familiar with particular species and locations, and other sources of information as described above in the Methods section. Many sites were surveyed infrequently or have not been surveyed in a long time while others have relatively complete records from 1966 to 1999. We selected areas based on sites surveyed since 1971 that were occupied during the date of the last survey (or within 1 year of that last occupied survey date) and were identified as "occupied." Surveys locate adult flies, but adult flies are relative generalists and do not have the specific habitat requirements of the larval stage, which typically require a specific species (in some cases, several species or genera) of host plants for successful development. Though the primary constituent elements of the proposed critical habitat focus on these host plants, we use known adult locations as the starting center point for each critical habitat unit and include a surrounding area measuring 1 acre (0.405 ha) in size consisting of the features essential to the conservation species.

While there has been considerable survey work conducted for Hawaiian picture-wing flies overall, some areas where these 11 species are found have not been surveyed in many years. We decided to propose critical habitat by relying on the results of the most recent surveys conducted since 1971. If that survey located adult flies of the particular species, we identified that site as occupied; if no adult flies of the species were found, we identified that site as not occupied. Because of the time that has passed since some of these surveys were conducted, it is possible that some of the sites we are considering as unoccupied (and so not included in the proposed critical habitat) have since been re-occupied by the species. However, we believe that the most recent survey results are the best information available to determine if a site is occupied.

When determining proposed critical habitat boundaries, we made every effort to avoid including within the boundaries of the map contained within this proposed rule, developed areas such as buildings, paved areas, and other structures that lack PCEs for *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule are excluded by text in this proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

We are proposing to designate critical habitat on lands that we have determined are occupied by the 11 species at the time of listing and contain sufficient primary constituent elements to support life history functions essential for the conservation of the species.

Twenty-two units are proposed based on sufficient PCEs being present to support life processes for *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*. Some units contained all PCEs and supported multiple life processes. Some segments contained only a portion of the PCEs necessary to support the particular use of that habitat for *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*.

**Special Management Considerations or Protections**

When designating critical habitat, we determine whether areas occupied at the time of listing and containing the primary constituent elements may

require special management considerations or protections.

Nonnative plants and animals pose the greatest threats to these 11 picture-wing flies. In order to alleviate and reverse the ongoing degradation and loss of habitat caused by feral ungulates and invasive nonnative plants, active management or control of nonnative species is necessary for the conservation of all populations of the 11 picture-wing flies (Kaneshiro and Kaneshiro 1995—pages 37–38). Without active management or control, native habitat containing the features that are essential for the conservation of the 11 picture-wing flies is degraded and/or destroyed. In addition, habitat degradation and destruction as a result of fire and predation by nonnative insects, such as the western yellow-jacket wasp (*Vespula pennsylvanica*) and several species of ants, pose significant threats to many populations of the 12 picture-wing flies.

All of the proposed critical habitat units for the 11 picture wing flies may require special management to address feral ungulates, invasive nonnative plants, and yellow-jacket wasps. In addition, the units in dry or mesic habitats may also require special management to address fire and ants. These threats are discussed below.

*Feral Ungulates*

Feral ungulates have devastated native vegetation in many areas of the Hawaiian Islands (Cuddihy and Stone 1990—pages 60–66). Because the endemic Hawaiian flora evolved without the presence of browsing and grazing ungulates, many plant groups have lost their adaptive defenses such as spines, thorns, stinging hairs, and defensive chemicals (University of Hawaii Department of Geography 1998—page 138). Pigs (*Sus scrofa*), goats (*Capra hircus*), and cattle (*Bos taurus*) disturb the soil, and readily eat native plants, including the native host plants for 1 or more of the 11 picture-wing flies, as well as distribute nonnative plant seeds that can alter the ecosystem. In addition, browsing and grazing by feral ungulates in steep and remote terrain causes severe erosion of whole watersheds due to foraging and trampling behaviors (Cuddihy and Stone 1990—pages 60–64 and 66).

*Feral Pigs (Sus scrofa)*

Feral pigs threaten all populations of the 11 picture-wing flies. Feral pigs are found from dry coastal grasslands through rain forests and into the subalpine zone on all of the main Hawaiian Islands (Cuddihy and Stone 1990—pages 64–65). An increase in pig densities and expansion of their distribution has caused widespread damage to native vegetation (Cuddihy and Stone 1990—pages 64–65). Feral pigs create open areas within forest habitat by digging up, eating, and trampling native species (Stone 1985—pages 262–263). These open areas become fertile ground for nonnative plant seeds spread through their excrement and by transport in their hair (Stone 1985—pages 262–263). In nitrogen-poor soils, feral pig excrement increases nutrient availability, enhancing establishment of nonnative weeds that are more adapted to richer soils than are native plants (Cuddihy and Stone 1990—pages 64–65). In this manner, largely nonnative forests replace native forest habitat (Cuddihy and Stone 1990—pages 64–65).

Foote and Carson (1995—pages 2–4) found that pig exclosures on the island of Hawaii supported significantly higher relative frequencies of picture-wing flies compared to other native and nonnative *Drosophila* species (7 percent of all observations outside of the exclosure and 18 percent of all observations inside the exclosure) and their native host plants. Loope *et al.* (1991—pages 9–10 and 19) showed that excluding pigs from a montane bog on northeastern Haleakala, Maui, resulted in an increase in native plant cover from 6 to 95 percent after 6 years of protection.

*Feral Goats (Capra hircus)*

Feral goats threaten populations of the picture-wing flies on Oahu (*Drosophila aglaia*), Hawaii (*D. heteroneura*), and Kauai (*D. musaphilia*). Feral goats occupy a wide variety of habitats on Kauai, Oahu, Molokai, Maui, and Hawaii, from lowland dry forests to montane grasslands where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote invasion of nonnative plants (van Riper and van Riper 1982—pages 34–35; Stone 1985—page 261). On Oahu, goat populations are increasing and spreading in the dry upper slopes of the Waianae Mountains, becoming an even greater threat to the native habitat (K. Kawelo, U.S. Army Environmental Division, pers. comm. 2005—page 1).

*Feral Cattle (Bos taurus)*

Feral cattle threaten populations of *Drosophila heteroneura* on the island of Hawaii. Large-scale ranching of cattle began in the 19th century on the islands of Kauai, Oahu, Maui, and Hawaii (Cuddihy and Stone 1990—pages 59–62). Large ranches, tens of thousands of acres in size, still exist on the islands of Maui and Hawaii (Cuddihy and Stone 1990—pages 59–62). In addition, cattle grazing continues in several lowland regions in the northern portion of the Waianae Mountains of Oahu. Degradation of native forests used for ranching activities is evident. Feral cattle occupy a wide variety of habitats from lowland dry forests to montane grasslands, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of nonnative plants (van Riper and van Riper 1982—page 36; Stone 1985—pages 256 and 260).

*Nonnative Plants*

The invasion of nonnative plants contributes to the degradation of native forests and the host plants of picture-wing flies (Kaneshiro and Kaneshiro 1995—pages 38–39; Wagner *et al.* 1999—pages 52–53 and 971; Science Panel 2005—page 28), and threatens all populations of the 11 picture-wing flies. Some nonnative plants form dense stands, thickets, or mats that shade or out-compete native plants. Nonnative vines cause damage or death to native trees by overloading branches, causing breakage, or by forming a dense canopy cover, intercepting sunlight and shading out native plants below. Nonnative grasses burn readily and often grow at the border of forests, and carry fire into areas with woody native plants (Smith 1985—pages 228–229; Cuddihy and Stone 1990—pages 88–94). The nonnative grasses are more fire-adapted and can spread prolifically after a fire, ultimately creating a stand of nonnative grasses where native forest once existed. Some nonnative plant species produce chemicals that inhibit the growth of other plant species (Smith 1985—page 228; Wagner *et al.* 1999—page 971).

*Fire*

Fire threatens habitat of the Hawaiian picture-wing flies in dry to mesic grassland, shrubland, and forests on the islands of Kauai (*Drosophila musaphilia*), Oahu (*D. aglaia*, *D. hemipeza*, *D. mongomeryi*, *D. obatai*, and *D. tarphytrichia*), and Hawaii (*D. heteroneura*). Dry and mesic regions in Hawaii have been altered in the past 200 years by an increase in fire frequency, a condition to which the native flora is not adapted. The invasion of fire-adapted alien plants, facilitated by ungulate disturbance, has contributed to wildfire frequency. This change in fire regime has reduced the amount of forest cover for native species (Hughes et al.1991—page 743; Blackmore and Vitousek 2000—page 625) and resulted in an intensification of feral ungulate herbivory in the remaining native forest areas. Habitat damaged or destroyed by fire is more likely to be revegetated by

nonnative plants that cannot be used as host plants by these picture-wing flies (Kaneshiro and Kaneshiro 1995—page 47).

*Nonnative Predatory Species*

Nonnative arthropods pose a serious threat to Hawaii's native *Drosophila*, both through direct predation or parasitism as well as competition for food or space (Howarth and Medeiros 1989—pages 82–83; Howarth and Ramsay 1991—pages 80–83; Kaneshiro and Kaneshiro 1995—pages 40–45 and 47; Staples and Cowie 2001—pages 41, 54–57). Due to their large colony sizes and systematic foraging habits, species of social Hymenoptera (ants and some wasps) and parasitic wasps pose the greatest threat to the Hawaiian picture-wing flies (Carson 1982—page 1, 1986—page 7; Gambino *et al.* 1987—pages 169–170; Kaneshiro and Kaneshiro 1995—pages 40–45 and 47).

*Ants*

Ants are believed to threaten populations of picture-wing flies in mesic areas on Oahu (*Drosophila aglaia*, *D. hemipeza*, D. *mongomeryi*, *D. obatai*, and *D. tarphytrichia*) and Hawaii (*D. heteroneura*). At least 44 species of ants are known to be established on the Hawaiian Islands (Hawaii Ecosystems at Risk Project (HEAR) database 2005—page 2) and 4 particularly aggressive ant species have severely affected the native insect fauna (Zimmerman 1948—page 173; HEAR database 2005—page 4). Ants are not a natural component of Hawaii's arthropod fauna, and native species evolved in the absence of predation pressure from ants. Ants can be particularly destructive predators because of their high densities, recruitment behavior, aggressiveness, and broad range of diet (Reimer 1993—pages 14–15, 17). The threat to picture-wing flies is amplified by the fact that most ant species have winged reproductive adults (Borror 1989—pages 737–738) and can quickly establish new colonies, spreading throughout suitable habitats (Staples and Cowie 2001—pages 55–57). These attributes and the lack of native species' defenses to ants allow some ant species to destroy isolated prey populations (Nafus 1993—page 151). Hawaiian picture-wing flies pupate in the ground where they are exposed to predation by ants. Newly emerging adults have been observed with ants attached to their legs (Kaneshiro and Kaneshiro 1995—page 43).

*Western Yellow-jacket Wasp*

An aggressive race of the western yellow-jacket wasp became established in the State of Hawaii in 1978, and this species is now abundant between 1,969 and 3,445 ft (600 and 1,050 m) in elevation (Gambino et al. 1990-page 1,088). On Maui, yellow-jackets have been observed carrying and feeding upon recently captured adult Hawaiian *Drosophila* (Kaneshiro and Kaneshiro 1995—page 41). While there is no documentation that conclusively ties the decrease in picture-wing fly observations at historical sites with the establishment of yellow-jacket wasps within their habitats, the concurrent arrival of wasps and decline of picture-wing fly observations for all 11 picture-wing flies on all islands (Kauai, Oahu, Maui, Molokai, and Hawaii) suggests that the wasps may have played a significant role in the decline of some picture-wing fly populations (Carson 1982—page 1, 1986—page 7; Foote and Carson 1995—page 3; Kaneshiro and Kaneshiro 1999; Science Panel 2005—page 28).

*Proposed Critical Habitat Designation*

Critical habitat has not been proposed for *D. neoclavisetae*, a species for which we determined critical habitat to be prudent, because, the specific areas and physical and biological features essential to its conservation in the Puu Kukui Watershed Management Area are not in need of special management considerations or protection. Therefore, we are not proposing critical habitat for *D. neoclavisetae* because these specific areas and features does not meet the definition of critical habitat in the Act.

We are proposing 22 units as critical habitat for *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*. In total, approximately 18 acres (ac) (7.3 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, contain the primary constituent elements, and that may require special management. The areas proposed as critical habitat are:

(1) Island of Oahu: *Drosophila aglaia*—Unit 1—Palikea; *Drosophila hemipeza*—Unit 1—Makaha Valley East; *Drosophila hemipeza*—Unit 2—Palikea; *Drosophila montgomeryi*—Unit 1—Kaluaa Gulch; *Drosophila montgomeryi*—Unit 2—Palikea; *Drosophila obatai*—Unit 1—Wailupe; *Drosophila substenoptera*—Unit 1—Mt. Kaala; *Drosophila tarphytrichia*—Unit 1—Kaluaa Gulch; *Drosophila tarphytrichia*—Unit 2—Palikea;

(2) Hawaii (Big Island): *Drosophila heteroneura*—Unit 1—Kau Forest Reserve; *Drosophila heteroneura*—Unit 2—Pauahi; *Drosophila heteroneura*—Unit 3—Waiea; *Drosophila heteroneura*—Unit 4—Waihaka Gulch; *Drosophila heteroneura*—Unit 5—Gaspar's Dairy; *Drosophila heteroneura*—Unit 6—Kipuka at 4,900 ft; *Drosophila heteroneura*—Unit 7—Pit Crater; *Drosophila mulli*—Unit 1—Olaa Forest; *Drosophila mulli*—Unit 2—Waiakea Forest; *Drosophila ochrobasis*—Unit 1—Kipuka 14; *Drosophila ochrobasis*—Unit 2—Kohala Mountains;

(3) Island of Kauai: *Drosophila musaphilia*—Unit 1—Waimea Canyon Road at 2,600 ft;

(4) Island of Molokai: *Drosophila differens*—Unit 1—Puu Kolekole.

The areas identified as containing the features essential to the conservation of the 11 Hawaiian picture-wing flies for which we are proposing critical habitat includes a variety of undeveloped, forested areas that are used for larval stage development and adult fly stage foraging. Areas that meet the definition of critical habitat, but are proposed for exclusion pursuant to section 4(b)(2) include TNCH's Kamakou Preserve on Molokai (*Drosophila differens*) and lands owned by Kamehameha Schools on the island of Hawaii (*D. heteroneura*). Proposed critical habitat includes land under State, City and County, and private ownership, with excluded Federal lands being managed by the Department of the Interior. The approximate area and land ownership within each unit are shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR DROSOPHILA AGLAIA, D. DIFFERENS, D. HEMIPEZA, D. HETERONEURA, D. MONTGOMERYI, D. MULLI, D. MUSAPHILIA, D. OBATAI, D. OCHROBASIS, D. SUBSTENOPTERA, AND D. TARPHYTRICHIA

| Proposed critical habitat unit | Land ownership | Acres/hectares | Proposed action |
|---|---|---|---|
| OAHU | | | |
| *Drosophila aglaia*—Unit 1—Palikea* | James Campbell Estate | 1 ac (.405 ha) | Proposed. |
| *Drosophila hemipeza*—Unit 1—Makaha Valley East | City & County of Honolulu | 1 ac (.405 ha) | Proposed. |
| *Drosophila hemipeza*—Unit 2—Palikea* | James Campbell Estate | 1 ac (.405 ha) | Proposed. |
| *Drosophila montgomeryi*—Unit 1—Kaluaa Gulch** | James Campbell Estate | 1 ac (.405 ha) | Proposed. |
| *Drosophila montgomeryi*—Unit 2—Palikea* | James Campbell Estate | 1 ac (.405 ha) | Proposed. |
| *Drosophila obatai*—Unit 1—Wailupe | State | 1 ac (.405 ha) | Proposed. |
| *Drosophila substenoptera*—Unit 1—Mt. Kaala | State | 1 ac (.405 ha) | Proposed. |
| *Drosophila tarphytrichia*—Unit 1—Kaluaa Gulch** | James Campbell Estate | 1 ac (.405 ha) | Proposed. |
| *Drosophila tarphytrichia*—Unit 2—Palikea* | James Campbell Estate | 1 ac (.405 ha) | Proposed. |
| HAWAII (Big Island) | | | |
| *Drosophila heteroneura*—Unit 1—Kau Forest Reserve | State | 1 ac (.405 ha) | Proposed. |
| *Drosophila heteroneura*—Unit 2—Pauahi | Koa Road LLC | 1 ac (.405 ha) | Proposed. |
| *Drosophila heteroneura*—Unit 3—Waiea | State | 1 ac (.405 ha) | Proposed. |
| *Drosophila heteroneura*—Unit 4—Waihaka Gulch | State | 1 ac (.405 ha) | Proposed. |
| *Drosophila heteroneura*—Unit 5—Gaspar's Dairy | Kamehameha Schools | 1 ac (.405 ha) | Proposed for exclusion under 4(b)2. |
| *Drosophila heteroneura*—Unit 6—Kipuka at 4,900 ft | Kamehameha Schools | 1 ac (.405 ha) | Proposed for exclusion under 4(b)2. |
| *Drosophila heteroneura*—Unit 7—Pit Crater | Kamehameha Schools | 1 ac (.405 ha) | Proposed for exclusion under 4(b)2. |
| *Drosophila mulli*—Unit 1—Olaa Forest | State | 1 ac (.405 ha) | Proposed. |
| *Drosophila mulli*—Unit 2—Waiakea Forest | State | 1 ac (.405 ha) | Proposed. |
| *Drosophila ochrobasis*—Unit 1—Kipuka 14 | State | 1 ac (.405 ha) | Proposed. |
| *Drosophila ochrobasis*—Unit 2—Kohala Mountains | State | 1 ac (.405 ha) | Proposed. |
| KAUAI | | | |
| *Drosophila musaphilia*—Unit 1—Waimea Canyon Road at 2,600 ft. | State | 1 ac (.405 ha) | Proposed. |
| MOLOKAI | | | |
| *Drosophila differens*—Unit 1—Puu Kolekole | Molokai Ranch Ltd. | 1 ac (.405 ha) | Proposed for exclusion under 4(b)2 . |
| Total | | 18 ac (7.3 ha) | 22 units. |

Several units overlap and, therefore, the proposed designation totals 18 acres:
*The units at Palikea for *D. aglaia*, *D. hemipeza*, *D. montgomeryi*, and *D. tarphytrichia* overlap each other.
**The units at Kaluaa Gulch for *D. montgomeryi* and *D. tarphytrichia* overlap each other.

All of the proposed critical habitat units for 11 of the 12 Hawaiian picture-wing flies were occupied by the species at the time of listing. We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*, below. All of the critical habitat units are 1 acre (0.405 ha) in size. For each of the units, threats to PCEs that may require special management considerations or protections are described above in the Special Management Considerations or Protections section.

**Oahu Species**

*Drosophila aglaia*

*Drosophila aglaia*—Unit 1—Palikea consists of lowland, mesic, koa, and ohia forest within the southern Waianae Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—pages 1–2). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 2,840 ft (865 m), the unit is entirely owned by the James Campbell Estate, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH.

*Drosophila hemipeza*

*Drosophila hemipeza*—Unit 1—Makaha Valley East consists of lowland, mesic, koa, and ohia forest within the southern Waianae Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—pages 2–4). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 2,780 ft (850 m), the unit is entirely owned by the City and County of Honolulu, and is adjacent to and north of the State-owned Waianae Kai Forest Reserve.

*Drosophila hemipeza*—Unit 2—Palikea consists of lowland, mesic, koa, and ohia forest within the southern Waianae Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 3). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 2,840 ft (865 m), the unit is entirely owned by the James Campbell Estate, and is part of a larger area called the

Honouliuli Preserve, administered and managed by TNCH.

*Drosophila montgomeryi*

*Drosophila montgomeryi*—Unit 1—Kaluaa Gulch consists of diverse, mesic forest within the southern Waianae Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 1,940 ft (590 m), the unit is entirely owned by the James Campbell Estate, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH.

*Drosophila montgomeryi*—Unit 2—Palikea consists of lowland, mesic, koa, and ohia forest within the southern Waianae Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 8–9). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 2,840 ft (865 m), the unit is entirely owned by the James Campbell Estate, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH.

*Drosophila obatai*

*Drosophila obatai*—Unit 1—Wailupe consists of lowland, mesic, koa, and ohia forest within the southeastern Koolau Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 12). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 1,560 ft (475 m), the unit occurs on State-owned lands and is part of a Forest Reserve administered and managed by the State.

*Drosophila substenoptera*

*Drosophila substenoptera*—Unit 1—Mt. Kaala consists of montane, wet, ohia forest within the northern Waianae Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 14). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 3,900 ft (1,190 m), the unit occurs on State-owned lands and is part of a Forest Reserve administered and managed by the State.

*Drosophila tarphytrichia*

*Drosophila tarphytrichia*—Unit 1—Kaluaa Gulch consists of diverse, mesic forest within the southern Waianae Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 1,940 ft (590 m), the unit occurs on lands owned by the James Campbell Estate, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH.

*Drosophila tarphytrichia*—Unit 2—Palikea consists of lowland, mesic, koa, and ohia forest within the southern Waianae Mountains of Oahu. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 15). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 2,840 ft (865 m), the unit occurs on lands owned by the James Campbell Estate, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH.

**Hawaii (Big Island) Species**

*Drosophila heteroneura*

*Drosophila heteroneura*—Unit 1—Kau Forest Reserve consists of montane, wet, closed and open ohia forest, and is located on the southern flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 5). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 5,380 ft (1,640 m), the unit occurs on State-owned lands and is part of a Forest Reserve administered and managed by the State.

*Drosophila heteroneura*—Unit 2—Pauahi consists of montane, mesic, open koa and ohia forest, and is located on the western flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—pages 7–8). This unit contains sufficient PCEs to support at least one of the species' life functions. The unit is located on privately-owned lands at an elevation of 4,395 ft (1,340 m).

*Drosophila heteroneura*—Unit 3—Waiea consists of montane, mesic, closed koa and ohia forest, and is located on the western flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 8). This unit contains sufficient PCEs to support at least one of the species' life functions. The unit is located on State-owned lands at an elevation of 5,400 (1,645 m).

*Drosophila heteroneura*—Unit 4—Waihaka Gulch consists of montane, wet, closed and open koa and ohia forest, and is located on the southern flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 8). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 4,200 ft (1,280 m), the unit occurs on State-owned lands and is part of a Forest Reserve administered and managed by the State.

*Drosophila heteroneura*—Unit 5—Gaspar's Dairy consists of montane, mesic, open koa and ohia forest with mixed grass species, and is located on the western flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 4). This unit contains sufficient PCEs to support at least one of the species' life functions. The unit is located on privately-owned lands at an elevation of 4,430 ft (1,350 m).

We are proposing to exclude this unit under section 4(b)(2) of the Act. Although the unit is being proposed for exclusion from final critical habitat designation, it still contributes to the conservation of the species.

*Drosophila heteroneura*—Unit 6—Kipuka at 4,900 ft consists of montane, mesic, open koa and ohia forest with mixed grass species, and is located on the western flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 6). This unit contains sufficient PCEs to support at least one of the species' life functions. The unit is located on privately-owned lands at an elevation of 4,975 ft (1,515 m).

We are proposing to exclude this unit under section 4(b)(2) of the Act. Although the unit is being proposed for exclusion from final critical habitat designation, it still contributes to the conservation of the species.

*Drosophila heteroneura*—Unit 7—Pit Crater consists of montane, mesic, open ohia forest with mixed grass species, and is located on the western flank of Hualalai and south of the Kaupulehu Lava Flow on the island of Hawaii. This unit was occupied by the species at the

time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 8). This unit contains sufficient PCEs to support at least one of the species' life functions. The unit is located on privately-owned lands at an elevation of 3,580 ft (1,090 m).

We are proposing to exclude this unit under section 4(b)(2) of the Act. Although the unit is being proposed for exclusion from final critical habitat designation, it still contributes to the conservation of the species.

*Drosophila mulli*

*Drosophila mulli*—Unit 1—Olaa Forest consists of montane, wet, open and closed ohia forest and is located to the northeast of Kilauea Caldera on the southeastern flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing according to the most recent survey data (K. Kaneshiro 2005a—page 10). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 3,210 ft (980 m), the unit occurs on State-owned lands and is part of the Olaa Forest Reserve administered and managed by the State.

*Drosophila mulli*—Unit 2—Waiakea Forest consists of montane, wet, open and closed ohia forest, and is located to the northeast of Kilauea Caldera on the southeastern flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing (K. Kaneshiro 2005a—page 10). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 3,190 ft (970 m), the unit occurs on State-owned lands and is part of the Waiakea Forest Reserve administered and managed by the State.

*Drosophila ochrobasis*

*Drosophila ochrobasis*—Unit 1—Kipuka 14 consists of montane, wet, open and closed ohia forest with native shrubs, and is located within the saddle road area on the north eastern flank of Mauna Loa on the island of Hawaii. This unit was occupied by the species at the time of listing (K. Kaneshiro 2005a—pages 12–13). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 5,110 ft (1,560 m), the unit occurs on State-owned lands and is part of a Forest Reserve administered and managed by the State.

*Drosophila ochrobasis*—Unit 2—Kohala Mountains consists of montane, wet, open and closed ohia forest with native shrubs and mixed grass species, and is located on the southeastern flank of the Kohala Mountains on the island of Hawaii. This unit was occupied by the species at the time of listing (K. Kaneshiro 2005a—page 12). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 3,860 ft (1,165 m), the unit occurs on State-owned lands and is part of a Forest Reserve administered and managed by the State.

**Kauai Species**

*Drosophila musaphilia*

*Drosophila musaphilia*—Unit 1—Waimea Canyon Road at 2,600 ft consists of lowland, mesic koa and ohia forest, and is located along the Waimea Canyon Road within the Waimea Canyon State Park on the island of Kauai. This unit was occupied by the species at the time of listing (K. Kaneshiro 2005a—page 11). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 2,600 ft (2,545 m), the unit occurs on State-owned lands administered and managed by the Hawaii Division of State Parks.

**Molokai Species**

*Drosophila differens*

*Drosophila differens*—Unit 1—Puu Kolekole consists of montane, wet, ohia forest within the Eastern Molokai Mountains on the island of Molokai. This unit was occupied by the species at the time of listing (K. Kaneshiro 2005a—page 2). This unit contains sufficient PCEs to support at least one of the species' life functions. Located at an elevation of 3,950 ft (1,200 m), the unit occurs on privately-owned lands that are part of a larger area called the Kamakou Preserve, managed and administered by TNCH.

We are proposing to exclude this area under section 4(b)(2) of the Act. Although the unit is being proposed for exclusion from final critical habitat designation, it still contributes to the conservation of the species.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. A recent decision by the 9th Circuit Court of Appeals invalidated our regulatory definition of 'adverse modification' (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to the Director's memo of August 2004, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act

requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, the Service may issue: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or 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 a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the 12 species of Hawaiian picture-wing flies or designated critical habitat for the 11 species addressed herein will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local or private lands that are not federally-funded, authorized, or permitted, do not require section 7 consultations.

*Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Eleven Species of Hawaiian Picture-wing Flies and Their Critical Habitat*

Jeopardy Standard

Prior to and following designation of critical habitat, the Service will apply an analytical framework for *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia* jeopardy analyses that relies heavily areas identified as occupied in this rule and the listing rule. The jeopardy analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis would likely express the survival and recovery needs of the 11 species of Hawaiian picture-wing flies in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected population(s), to such an extent that the continued existence of the species is jeopardized, a jeopardy finding would be considered.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum would be used to complete section 7(a)(2) analyses for Federal actions affecting *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia* critical habitat. The key factor related to the adverse modification determination would be whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of the 11 picture-wing flies' critical habitat units would be to support the populations identified in this rule.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs as described in the Director's memo of August, 2004. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia* include, but are not limited to:

(1) Activities including, but not limited to: overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species (*e.g.,* nonnative plant species that may compete with native host plants, or nonnative arthropod pests that prey upon native host plants); and taking actions that pose a risk of fire.

(2) Construction where a permit under section 404 of the Clean Water Act would be required by the U.S. Army Corps of Engineers. Construction in wetlands, where a 404 permit would be required, could affect the habitat of *Drosophila heteroneura.*

(3) Recreational activities that appreciably degrade vegetation.

(4) Introducing or encouraging the spread of nonnative plant species into critical habitat units.

(5) The purposeful release or augmentation of any dipteran predator or parasitoid.

We consider all of the units proposed as critical habitat, as well as those that have been proposed for exclusion or not included, to contain features essential to the conservation of the 11 picture-wing flies. All units are within the geographic

range of each of the species, all were occupied by the 11 species at the time of listing (based on observations made within the last 35 years), and are likely to be used by the 11 species of picture-wing flies. Federal agencies already consult with us on activities in areas currently occupied by the 12 picture-wing flies, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the 12 picture-wing flies.

*Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act*

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographical area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) which may require special management considerations or protection. Therefore, areas within the geographical area occupied by the species that do not contain the features essential to the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographical area occupied by the species that require no special management or protection also are not, by definition, critical habitat. Thus, for example, areas that do not need special management may not need protection if there is lack of pressure for change, such as areas too remote for anthropogenic disturbance.

There are multiple ways to provide management for species habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans as well as management under Federal agencies jurisdictions can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent, overall. In making this determination, we examine whether the plan provides management or protection of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management or protection actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under section 4(b)(2) the Secretary has discretion as to which factors to consider and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered. In addition, the Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be made available for public review and comment. Based on public comment on that document, the proposed designation, and the information in the final economic analysis, additional areas beyond those identified in this assessment may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 424.19. Pursuant to 50 CFR 424.19, we must propose an area as critical habitat prior to making an exclusion of that area pursuant to section 4(b)(2) of the Act from the final critical habitat designation to receive public comment. We have therefore included these units or portions thereof in the regulation portion of this proposed critical habitat rule.

**Conservation Partnerships on Non-Federal Lands**

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995) and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002—page 720). Stein *et al.* (1995—page 3) found that only about 12 percent of listed species were found almost exclusively on Federal lands (i.e., 90–100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-federal landowners (Wilcove and Chen 1998—page 1,407; Crouse *et al.* 2002—page 720; James 2002—page 270). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as Habitat Conservation Plans (HCPs), Safe Harbors, Candidate Conservation Agreements (CCAs), Candidate Conservation Agreements with Assurances (CCAAs), and conservation challenge cost-share grants. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal Government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996—pages 2 and 5; Bean 2002—pages 409, 412, 414–415, and 419–420; Conner and Mathews 2002—page 2; James 2002—page 270;

Koch 2002—pages 508–510). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999—pages 1,263–1,265).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999—pages 1,263–1,265; Bean 2002—pages 409, 412, 414–415, and 419–420). The magnitude of this negative outcome is greatly amplified in situations where active management measures (*e.g.*, reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002—pages 414 and 419–420).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the State is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. On the island of Lanai, Castle and Cooke Resorts, LLC, which owns 99 percent of the island, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (e.g., axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species) and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island we believe that the benefits of excluding the lands covered by the MOA exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

> On Lanai, simply preventing "harmful activities" will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants.

Conservation through communication, consultation, and cooperation is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private land owners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners, contractual conservation agreements, easements, and stakeholder-negotiated State regulations enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854, December 2, 1996—page 63856).

**Maui Land and Pineapple Co., Ltd.**

*Maui Pineapple Company's Puu Kukui Watershed Management Area, Located in the West Maui Mountains*

Lands within Maui Land and Pineapple Company's (ML&P's) Puu Kukui Watershed Management Area (WMA), located in the West Maui Mountains, are occupied habitat and have the features essential for the conservation of *Drosophila neoclavisetae*. In a September 2002 letter to the Service, the Puu Kukui Watershed Supervisor stated that since 1988 ML&P has proactively managed Puu Kukui Watershed and is currently in their second, 6-year contract with the State of Hawaii's NAP program to preserve the native biodiversity of their conservation lands. They are also receiving funding from the Service to survey for rare plants on their lands and build feral ungulate control fences for the protection of listed and other native plants, including the host plants for *D. neoclavisetae*. In other words, ML&P has a history of funding and conducting proactive conservation efforts in Puu Kukui that provide a benefit for *D. neoclavisetae*; they are enrolled in the State's NAP program; and they receive funding from the Service to support their conservation efforts. Therefore, we have determined that the private land within Puu Kukui WMA does not meet the definition of critical habitat under section 3(5)(A) of the Act as discussed below, and, therefore, are not proposing critical habitat for *Drosophila neoclavisetae* on ML&P land.

At just over 3,483 ha (8,600 ac), the Puu Kukui WMA is the largest privately owned preserve in the State. In 1993, the Puu Kukui WMA became the first private landowner participant in the NAP program. In the NAP program, Puu Kukui WMA staff are pursuing four management programs stipulated in their Long Range Management Plan with an emphasis on reducing nonnative species that immediately threaten the management area (Maui Pineapple Company 1999—pages 2–21). There is a reasonable expectation, based on ML&P's management efforts to date, that the management programs currently implemented in Puu Kukui WMA and described below will continue into the foreseeable future.

The primary management goals within Puu Kukui WMA are to (1) eliminate ungulate activity in all Puu Kukui management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) reduce the negative impacts of nonnative invertebrates and small animals; (4) monitor and track biological and physical resources in the watershed in order to improve management understanding of the watershed's resources; and (5) prevent the extinction of rare species within the watershed. Implementation of the specific management actions (described below) addresses the threats to *Drosophila neoclavisetae* and the features essential for its conservation from feral ungulates

and nonnative plants and, thus, removes the need for special management and protection.

Specific management actions to address feral ungulates include the construction of fences surrounding 10 management units and removal of ungulates within the Puu Kukui WMA. The nonnative plant control program within Puu Kukui WMA focuses on habitat-modifying weeds, prioritizing them according to the degree of threat to native ecosystems, and preventing the introduction of new weeds. The weed control program includes mapping and monitoring along established transects and manual/mechanical control. Biological control of *Clidemia hirta* was attempted by releasing *Antiblemma acclinalis* moth larvae. Natural resource monitoring and research address the need to track biological and physical resources of the Puu Kukui WMA and evaluate changes to these resources in order to guide management programs. Vegetation is monitored through permanent photo points, nonnative species are monitored along permanent transects, and rare, endemic, and indigenous species are monitored. Additionally, logistical and other support for approved research projects, interagency cooperative agreements, and remote survey trips within the watershed is provided.

For these reasons, Puu Kukui WMA meets the three criteria for determining that an area is not in need of special management or protections as discussed above. Therefore, we have determined that the private land within Puu Kukui WMA does not meet the definition of critical habitat pursuant to 3(5)(A) in the Act, and we are not proposing this land as critical habitat. Should the status of this reserve change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)).

In summary, we believe that the habitat within Puu Kukui WMA is being adequately protected and managed for the conservation of the listed *Drosophila neoclavisetae*, including all of its known sites and features that are essential to its conservation that occur within this area, and is not in need of special management considerations or protection. Therefore, we have determined that this specific area does not meet the definition of critical habitat pursuant to the Act, and we, therefore, do not propose this specific area as critical habitat for *D. neoclavisetae*.

**Hakalau Forest National Wildlife Refuge, Kona Forest Unit, Island of Hawaii**

Lands within the U.S. Fish and Wildlife Service's Kona Forest Unit of the Hakalau Forest National Wildlife Refuge are occupied habitat and have the necessary features that are essential for the conservation of *Drosophila heteroneura*. The Kona Forest Unit of Hakalau Forest National Wildlife Refuge was established in 1997 to protect endangered forest birds and their habitat. Management actions for this refuge unit are outlined in our Conceptual Management Plan (Service 1997a—pages ii-iii) and in our Wildland Fire Management Plan (Service 1997b—pages 2–3). The Conceptual Management Plan for the Kona unit describes planned management activities (Service 1997a—pages 10–13) for the area including listed species recovery; monitoring; habitat management; maintenance of biodiversity; alien plant control; feral ungulate control; and wildfire management, all of which will benefit *Drosophila heteroneura* and its host plants. The Hakalau Wildland Fire Management Plan, details the Services wildfire management objectives, strategy, responsibilities, and consultation protocol (Service 1997b—pages 11–20), all of which will benefit *D. heteroneura* and its host plants.

The Hakalau Refuge has received 1.1 million dollars in Fiscal Year 2006 to enclose a large portion of the Kona Refuge unit. This project will involve the construction of approximately 17 miles of fencing designed to exclude pigs, sheep, and cattle. Pigs and cattle are currently the most serious ungulate threats to this area and the construction of this large enclosure will remove the primary threats to *D. heteroneura's* host plant habitat and associated ecosystem. An environmental assessment is currently being prepared for this project and we expect that construction will commence sometime in late 2006 or early 2007 (Richard Wass, Service—Refuges Division, pers. comm. 2006). Additionally, the Kona Refuge unit has been identified as a high priority area for recovery of the Hawaiian crow. Accordingly, we are committed to protecting and managing this area to the best of our ability as future funding allows. Many of the planned management activities for the Hawaiian crow such as rat control will also benefit the host plant habitat of *D. heteroneura* (Gina Shultz, Service—Ecological Services, pers. comm. 2006). We have, therefore, determined that this refuge land does not meet the definition of critical habitat under section 3(5)(A) of the Act, and, therefore, are not proposing critical habitat on the Kona Forest Unit of the Hakalau Forest National Wildlife Refuge.

**Hawaii Volcanoes National Park, Island of Hawaii**

Lands within Hawaii Volcanoes National Park (HAVO) are occupied habitat and have the necessary features that are essential for the conservation of *Drosophila heteroneura*. Hawaii Volcanoes National Park was established in 1916 to preserve the significant resources that reflect Hawaii's geological, biological, and cultural heritage. In recognition of its outstanding values, the park has been designated an International Biosphere Reserve and a World Heritage Site. Management actions for the biological resources of this park are outlined in natural resources management plans and fire management plans (HAVO 1974—page i, 2002—pages 11–14, 2004—pages 2–6). The natural resources plan broadly describes ongoing management activities within the park including the reestablishment of key plant ecosystem components of the area; the exclusion and removal of pigs and goats; research on rat control; localized rat control and prevention; and the control of numerous nonnative weed species, all of which benefit *D. heteroneura* and its host plants (HAVO 1974—pages 2–6, 8–14, and 16–17). The fire management plan details wildfire management objectives and planned wildfire control within the park including the use of fire to rehabilitate areas infested with non-native grass species infested areas, all of which will benefit *D. heteroneura* once implemented (HAVO 2004—pages 11–14). Within the area containing the Thurston Lava Tube population of *D. heteroneura*, the Park Service currently excludes pigs and targets for removal certain invasive weed species including *Hedychium gardnerianum* (Kahili ginger), *Psidium cattleianum* (strawberry guava), *Morella faya* (faya tree), and *Rubus ellipticus* (Himalayan raspberry) (Rhonda Loh, HAVO, pers. comm. 2006). Because the Park Service is addressing these primary threats to *D. heteroneura's* host plant habitat in this area, we have therefore, determined that this national park land does not meet the definition of critical habitat under section 3(5)(A) of the Act, and, therefore, are not proposing critical habitat in Hawaii Volcanoes National Park.

**General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process**

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it applies only where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it limits only destruction or adverse modification of critical habitat. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded to the point that the unit does not perform its intended function. Critical habitat designation alone, however, does not require specific steps to improve habitat conditions.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans can be greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan which considers enhancement as the management standard will provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

**Educational Benefits of Critical Habitat**

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia*. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule because these areas have been identified and managed by the landowners as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation of informing State agencies and local governments about areas which would benefit from protection and enhancement of habitat for the 11 picture-wing flies is already well established among State and local governments and Federal agencies. State and local governments and Federal agencies have existing knowledge in those areas that we are proposing to exclude from the final designation of critical habitat on the basis of other existing habitat management protections.

The Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, additional areas beyond those identified in this assessment may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 424.19.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

We are considering excluding The Nature Conservancy of Hawaii's Kamakou Preserve on Molokai and lands owned by Kamehameha Schools on the island of Hawaii from the final designation of critical habitat because we believe that they are appropriate for exclusion pursuant to the "other relevant factor" provisions of section 4(b)(2). We specifically solicit comment, however, on the inclusion or exclusion of such areas.

**The Nature Conservancy of Hawaii (TNCH)**

The Nature Conservancy of Hawaii's Kamakou Preserve is occupied by *Drosophila differens* and contains the necessary features essential to the conservation of the species. Special management considerations and protections for this area include active management such as nonnative species removal and ungulate fencings. Failure to implement these active management measures, all of which require voluntary landowner support and participation, virtually assures the extinction of this species. Many of these types of

conservation actions in the areas of Molokai are carried out as part of TNCH's participation with landowner incentive based programs and by the landowner's own initiative. These conservation activities, which are described in more detail below, require substantial voluntary cooperation by TNCH and other cooperating landowners and local residents.

The following evaluation describes our reasoning in considering that the benefits of excluding the lands outweigh the benefits of including them, and that the exclusion will not result in the extinction of the species. The Service paid particular attention to the following issues: (1) To what extent a critical habitat designation would confer regulatory conservation benefits on this species; (2) to what extent the designation would educate members of the public such that conservation efforts would be noticeably enhanced; and (3) whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately owned TNCH land, as well as other non-Federal lands on Molokai that could contribute to the recovery of the species. If a critical habitat designation reduces the likelihood that voluntary conservation activities will be carried out on Molokai, and at the same time fails to confer a counter-balancing positive regulatory or educational benefit to the species, then the benefits of excluding such areas from critical habitat outweigh the benefits of including them. Although the results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved, we believe the TNCH lands on Molokai merit this evaluation.

*(1) Benefits of Inclusion*

The primary direct benefit of inclusion of TNCH's Kamakou Preserve as critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat. The benefit of a critical habitat designation would ensure that any actions authorized, funded, or carried out by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present; in contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act. However, these lands are already occupied habitat for *Drosophila differens*. Therefore, any Federal activities that may affect these areas will in all likelihood require section 7 consultation.

In the last 10 years, we have conducted 45 informal and 12 formal consultations under section 7 on the entire island of Molokai. None of these consultations involved this TNCH land. As a result of the low level of previous Federal activity on these TNCH lands, and after considering the future Federal activities that might occur on these lands, it is the Service's opinion that there is likely to be a low number of future Federal activities that would negatively affect the species' PCEs on TNCH lands. The land is in permanent conservation status and is not expected to be developed. Section 7 consultations are expected to be limited to projects involving Federal funding for conservation activities to improve the PCEs for this species, rather than negatively impact these features. The possibility of such activity cannot be ruled out entirely, but it can best be described as having a low likelihood of occurrence. Therefore, we anticipate little additional regulatory benefits from including this preserve in critical habitat beyond what is already provided by the existing section 7 nexus for habitat areas occupied by the listed species.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas that are occupied by the species and contain the necessary features essential to the conservation of the species. Information provided to a wide audience of the public, including other parties engaged in conservation activities, about *Drosophila differens* and the features that are essential to its conservation identified on TNCH lands on Molokai could have a positive conservation benefit. While we believe this educational outcome is important for the conservation of this species, we believe it has already been achieved through the existing management, education, and public outreach efforts carried out by TNCH and their conservation partners. TNCH has a well-developed public outreach infrastructure that includes magazines, newsletters, and well-publicized public events on Molokai and other areas throughout Hawaii. These and other media provide the education benefits provided in this proposed rule and the conservation importance of this Molokai reserve and its conservation value for *D. differens*. A designation of critical habitat would add little to this effort and would simply affirm what is already known and widely accepted by Hawaii's conservationists, public agencies, and much of the general public concerning the conservation value of these lands.

The following discussion about this preserve demonstrates that the public is already aware of the importance of this area for the conservation of this picture-wing fly. *Drosophila differens* is reported from TNCH's Kamakou Preserve, which is located in the East Molokai Mountains. Kamakou Preserve was established by a grant of a perpetual conservation easement from the private landowner to TNCH. This preserve is included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH1998a—pages 1–10, 1998b—pages 1–12).

Under the NAP program, the State of Hawaii provides matching funds on a two-to-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always six years remaining in the term, although the management plan is updated and funding amounts are reauthorized by the board at least every six years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case, the partnership agreement remains in effect for the balance of the existing 6-year term, and the conservation easement remains in full effect in perpetuity.

The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes, which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the Hawaii Department of Land and Natural

Resources (DLNR), and DLNR makes annual inspections of the work in the reserve areas (See Haw. Rev. Stat. Secs. 195–1–195–11 and Hawaii Administrative Rules Secs. 13–210). Management programs within Kamakou preserve are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the native species and their habitats within the preserve and in adjacent areas (TNCH 1998a—pages 1–10, 1998b—pages 1–12). These management measures address the factors that led to the listing of this species, including control of nonnative species of ungulates, rodents, weeds, and fire control. In addition, habitat restoration and monitoring are also included in these plans.

Kamakou Preserve

The primary management goals within Kamakou Preserve are to prevent degradation of native forest by reducing feral ungulate damage, suppressing wildfires, and improving or maintaining the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants. Kamakou Preserve provides occupied habitat for one population of *D. differens*. Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs); staff hunting; and implementation of organized hunting through the Molokai Hunters Working Group. By monitoring ungulate activity within the preserve, the staff are able to direct hunters to problem areas (areas of high feral ungulate densities), thereby increasing hunting success. If increased hunting pressure does not reduce feral ungulate activity in the preserve, the preserve staff will work with the hunting group to identify and implement alternative methods for their control (TNCH 1998a—pages 1–2).

The nonnative plant control program within Kamakou Preserve focuses on habitat-modifying nonnative plants (weeds) and prioritizes their control according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both techniques. Preventive measures (prevention protocol to keep weeds out) are required by all who enter the preserve. This protocol includes such things as brushing footgear before entering the preserve to remove seeds of nonnative plants. In addition, the preserve staff are actively promoting awareness of detrimental nonnative plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport.

Wildfire pre-suppression and response plans are coordinated with the Maui County Fire Department and the DOFAW Maui District Forester. The Kamakou Wildfire Management Plan is reviewed annually with the fire department and updated as necessary (TNCH 1998b—pages 4–5). In the event of fires in areas bordering the preserve, staff from Kamakou assists with fire suppression in concert with Hawaii Department of Forestry and Wildlife (DOFAW) staff. Natural resource monitoring and research address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserve to document long-term ecological changes; rare plant species are monitored to assess population status; and, following fires on the boundaries or within the preserve, burned areas are assessed for ingress of weeds and recovery of native plants. In addition, the preserve staff provides logistical support to scientists and others who are conducting research within the preserve.

In addition, TNCH, DOFAW, the Service, and other Federal agencies including the National Park Service, and neighboring landowners of East Molokai's watershed areas have formed a partnership (East Molokai Watershed Partnership) through a memorandum of understanding to ensure the protection of over 22,000 ac (8,903 ha) of land on the island. While the partnership is still in its infancy, the members have agreed, in principle, to participate in cooperative management activities within the East Molokai watershed because they believe that effective management is best achieved through the coordinated actions of all major landowners in the watershed.

In sum, the Service believes that a critical habitat designation for *Drosophila differens* on TNCH lands on Molokai would provide a relatively low level of additional regulatory conservation benefit to the fly species and its PCEs beyond what is already provided by existing section 7 consultation requirements due to the physical presence of this species. Any minimal regulatory conservation benefits would accrue through the benefit associated with additional section 7 consultation associated with critical habitat. Based on a review of past consultations and consideration of the likely future activities in this specific area, there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation. The Service also believes that a critical habitat designation provides little additional educational benefits since the conservation value is already well known by the landowner, the State, Federal agencies, private organizations, and the general public.

*(2) Benefits of Exclusion*

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of this listed species of picture-wing fly on Molokai (Shogren et al. 1999—page 1,260, Wilcove and Chen 1998—page 1,407, Wilcove et al. 1998—page 614). Consideration of this concern is especially important in areas where species have been extirpated and their recovery requires access and permission for reintroduction efforts (Bean 2002—page 414; Wilcove et al. 1998—page 614). As described earlier, TNCH has a history of entering into conservation agreements with various Federal and State agencies and other private organizations on their lands. The Nature Conservancy's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Service believes that *D. differens* will benefit substantially from TNCH's voluntary management actions due to a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, and a reduction in risk of fire. The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. But on Molokai, simply preventing "harmful activities" will not slow the extinction of listed plant species (Bean 2002—pages 409, 412, 414–415, and 419–420).

Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove et al. 1998—page 614). Thus, we believe it is essential for the recovery of this species to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners on Molokai who might be considering implementing voluntary conservation activities but

have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of the habitat of one-half of all imperiled species in the United States occurs partly or solely on private lands where the Service has little management authority (Wilcove et al. 1996—page 2). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Bean 2002—pages 409, 412, 414–415, and 419–420; James 2002—page 270; Knight 1999—page 224; Main et al. 1999—page 1,264; Norton 2000—pages 1,221–1,222; Shogren et al. 1999—page 1,260; Wilcove et al. 1998—page 614). Therefore, "a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species" (Crouse et al. 2002—page 720). Because the Federal Government owns relatively little land on Molokai, and because large tracts of land suitable for conservation of threatened and endangered species are mostly owned by private landowners, successful recovery of listed species on Molokai is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners.

Another benefit of excluding this area from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 consultation documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can generate real costs to some project proponents. However, because critical habitat in this case is only proposed for occupied areas already subject to section 7 consultation and jeopardy analysis, we anticipate this reduction would be minimal.

*(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion*

Based on the above considerations, we have determined that the benefits of excluding TNCH's Kamakou Preserve from the final designation of critical habitat outweigh the benefits of including it as critical habitat for *Drosophila differens*. This conclusion is based on the following factors:

(a) In the past, TNCH has cooperated with Federal and State agencies, and private organizations to implement on their lands voluntary conservation activities that have resulted in tangible conservation benefits.

(b) Simple regulation of "harmful activities" is not sufficient to conserve this species. Landowner cooperation and support is required to prevent the extinction and promote the recovery of *Drosophila differens* on Molokai due to the need to implement proactive conservation actions such as ungulate management, weed control, and fire suppression. Future conservation efforts, such as control of nonnative species, will require the cooperation of TNCH and other non-Federal landowners on Molokai. Exclusion of TNCH land from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of TNCH to recovery of *D. differens*, and by streamlining or reducing unnecessary regulatory oversight.

(c) Given the current partnership agreements between TNCH and many organizations, the Service believes the additional regulatory and educational benefits of including this land as critical habitat are relatively small. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management plans described above. Likewise, there will be little additional Federal regulatory benefit to the species because (i) there is a low likelihood that this area will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (ii) this area is already occupied by the listed species and a section 7 nexus already exists. The Service is unable to identify any other potential benefits associated with critical habitat for this TNCH preserve.

(d) It is well documented that publicly owned lands and lands owned by conservation organizations such as TNCH, alone, are too small and poorly distributed to provide for the conservation of most listed species (Bean 2002—pages 409, 412, 414–415, and 419–420; Crouse et al. 2002—page 720). Excluding this TNCH land from critical habitat may, by way of example, provide positive incentives to other non-Federal landowners on Molokai who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented (Norton 2000—pages 1,221–1,222; Main et al. 1999—page 1,263; Shogren et al. 1999—page 1,260; Wilcove and Chen 1998—page 1,407). As resources and nondiscretionary workload allow, the Service will consider future revisions or amendments to this proposed critical habitat rule if landowners affected by this rule develop conservation programs or partnerships such that the Service can find the benefits of exclusion outweigh the benefits of inclusion.

In conclusion, we find that the exclusion of critical habitat on TNCH's Kamakou Preserve from the final designation of critical habitat of *Drosophila differens*, would most likely have a net positive conservation effect on the recovery and conservation of the species and the features essential to its conservation when compared to the positive conservation effects of a critical habitat designation. As described above, the overall benefits to this species of a critical habitat designation for this TNCH area is relatively small. In contrast, we believe that this exclusion will enhance our existing partnership with TNCH, and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. We conclude there is a higher likelihood of beneficial conservation activities occurring in this and other areas of Molokai without designated critical habitat than there would be with designated critical habitat in this TNCH preserve and, therefore, we are proposing to exclude these lands from the final designation of critical habitat for *D. differens*.

*(4) Exclusion of This Unit Will Not Cause Extinction of the Species*

If this proposed exclusion is made final in our final critical habitat designation, no specific areas will be designated as critical habitat for *Drosophila differens*. In considering whether or not exclusion of this preserve might result in the extinction of *Drosophila differens* the Service first considered the impacts to this species. It is the Service's conclusion that the TNCH's mission and management plans will provide as much or more net conservation benefits as would be provided if this preserve was designated as critical habitat. These management plans, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for *D. differens* in this area of Molokai and increase the likelihood of its recovery. Extinction for this species as a consequence of this exclusion is unlikely because there are no known threats in these preserves due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, this

area is already occupied by *D. differens* and thereby receives benefits from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize. The exclusion of this preserve from the final designation of critical habitat will not increase the risk of extinction to this species, and it may increase the likelihood this species will recover by encouraging other landowners to implement voluntary conservation activities as TNCH has done.

In sum, the Service finds that the benefits of excluding TNCH's Kamakou Preserve from critical habitat outweighs the benefits of including the area, and the proposed exclusion will not result in the extinction of the species because there are no known threats in these preserves due to any current or anticipated Federal actions.

Kamehameha Schools

Lands owned by Kamehameha Schools are within three proposed units (*Drosophila heteroneura*—Unit 5—Gaspar's Dairy, *D. heteroneura*—Unit 6—Kipuka at 4,900′, and *D. heteroneura*—Unit 7—Pit Crater) and are occupied habitat with the features essential to the conservation of *Drosophila heteroneura*. Active management such as fire control, nonnative species removal, and ungulate fencing within these three units will benefit *D. heteroneura*. Failure to implement these active management measures, all of which require voluntary landowner support and participation, virtually assures the extirpation of *D. heteroneura* from these areas. Many of these types of conservation actions on the island of Hawaii are carried out as part of Kamehameha School's participation with landowner incentive based programs and by actions taken on the landowner's initiative. These activities, which are described in more detail below, require substantial voluntary cooperation by Kamehameha Schools and other cooperating landowners and local residents.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. We paid particular attention to the following issues: To what extent a critical habitat designation would confer regulatory conservation benefits on this species; to what extent the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately owned land as well as other non-Federal lands on the island of Hawaii that could contribute to recovery. If a critical habitat designation reduces the likelihood that voluntary conservation activities will be carried out on the island of Hawaii, and at the same time, fails to confer a counterbalancing positive regulatory or educational benefit to the species, then the benefits of excluding such areas from critical habitat outweigh the benefits of including them. Although the results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and the species involved, we believe the Kamehameha Schools lands on the island of Hawaii merit this evaluation.

*(1) Benefits of Inclusion*

Critical habitat is proposed for *Drosophila heteroneura* in three units (see above) on lands owned by Kamehameha Schools. The primary direct benefit of inclusion of Kamehameha Schools' lands as critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat. The benefit of a critical habitat designation would ensure that any actions funded by or permits issued by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where the species is not currently present; in contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act. However, these lands are already occupied habitat for *D. heteroneura*. Therefore, any Federal activities that may affect these areas will in all likelihood require section 7 consultation.

Historically, we have conducted no formal or informal consultations under section 7 on the island of Hawaii on these three areas owned by Kamehameha Schools. Each of these three areas are part of a larger parcel owned by Kamehameha Schools and on which are reported other listed species (both plants and animals). As a result of the low level of previous Federal activity on these Kamehameha Schools lands, and after considering that the likely future Federal activities that might occur on these lands would be minimal and associated with Federal funding for conservation activities, it is our opinion that there is likely to be a low number of future Federal activities that would negatively affect *D. heteroneura* habitat on Kamehameha Schools lands. Therefore, we anticipate little additional regulatory benefit from including the Kamehameha Schools lands in critical habitat beyond what is already provided for by the existing section 7 nexus for habitat areas occupied by the listed species.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas that are occupied by the species and contain the necessary features essential to the conservation of the species. Information provided to a wide audience of the public, including other parties engaged in conservation activities, about *Drosophila heteroneura* and the features that are essential to its conservation and identified on Kamehameha Schools lands on the island of Hawaii could have a positive conservation benefit. While we believe this educational outcome is important for the conservation of this species, we believe it has already been achieved through existing management, education, and public outreach efforts carried out by Kamehameha Schools.

*(2) Benefits of Exclusion*

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of *Drosophila heteroneura* on the island of Hawaii (Shogren et al. 1991—page 1,260; Wilcove and Chen 1998—page 1,407; Wilcove et al. 1998—page 614). Consideration of this concern is especially important in areas where the species has been extirpated and its recovery may require access and permission for reintroduction efforts (Bean 2002—page 414; Wilcove et al. 1998—page 614). For example, *D. heteroneura* has been extirpated from many of its historical locations, including on other Kamehameha Schools lands, and reestablishment is likely not possible without human assistance and landowner cooperation.

Kamehameha Schools are involved in several important voluntary conservation agreements and are currently carrying out some management activities which contribute to the conservation of this species. They have developed two programs that demonstrate their conservation commitments, Aina Ulu and Malama Aina. The Aina Ulu program implements land-based education programs, whereas Malama Aina

delivers focused stewardship of natural resources. Malama Aina has been focused in two distinct areas, Keauhou in Kau District and North-South Kona, with a budget commitment in 2002 of $1,000,000, not including staff expenses.

Kamehameha Schools North-South Kona natural resource conservation efforts focus on three distinct areas: Honaunau Forest and Honaunau Uka, Kaupulehu Kauila Lama Forest and Kaupulehu Uka, and Pulehua. One proposed unit (*Drosophila heteroneura*—Unit 5—Gaspar's Dairy) is located in the Honaunau Forest and Honaunau Uka area while a second proposed unit (*D. heteroneura*—Unit 7—Pit Crater) is located in the Kaupulehu Kauila Lama Forest and Kaupulehu Uka area. Kamehameha Schools started a weed control program in 2002 in Honaunau Forest and Honaunau Uka. In both the Forest and Uka areas, they will continue the weed control program, along with a timber certification program to write certifiable plans and complete inventories. In the Honaunau Uka area, they will construct an ungulate exclosure fence and issue a contract for a botanical survey. Funds allocated for the implementation of these projects total $52,500 to Honaunau Forest and $29,500 to Honaunau Uka.

Conservation activities in the Aina Ulu program at Kaupulehu Kauila Lama Forest include an intern program, an outreach coordinator, multimedia curriculum development, small mammal and weed control. Funds allocated for these projects total $70,700.

Malama Aina projects at Kaupulehu Uka include timber certification, large mammal and weed control, ungulate exclosure fencing, inventory, monitoring and data analysis of conservation actions and road maintenance. Funds allocated for those projects total $101,000. Partners include Hawaii Forest Industry Association, the Service, DOFAW, local residents, PIA Sports Properties (lessee), U.S. Forest Service, National Tropical Botanical Garden (lessee), and Honokaa High School.

A third proposed unit (*Drosophila heteroneura*—Unit 6—Kipuka at 4,900 ft) is located near Puu Lehua, an area that is under development for protection and restoration of 6,000 ac (2,428 ha) of native forest habitat through fencing and feral ungulate control. Future additional management actions that are planned in this area include additional fencing, control and removal of nonnative species, fire prevention, and reintroduction of rare and listed species (Hawaiian Silversword Foundation 2006—page 1).

As described earlier, Kamehameha Schools has a history of entering into conservation agreements with various Federal and State agencies and private organizations on biologically important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments such as the Dryland Forest Working Group which provides assistance in managing the Kaupulehu Kauila Lama Forest and Kaupulehu Uka area. *Drosophila heteroneura* will benefit substantially from their voluntary management actions because of a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, and a reduction in risk of fire.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. But on the island of Hawaii, simply preventing "harmful activities" will not slow the extinction of listed species including *Drosophila heteroneura*. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources, and that remove or reduce disincentives to conservation (Michael 2001—pages 34 and 36–37). Thus, we believe it is essential for the recovery of *D. heteroneura* to build on continued conservation activities, such as these with a proven partner, and to provide incentives for other private landowners on the island of Hawaii who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority (Wilcove et al. 1996 page 2). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Bean 2002—page 414; James 2002—page 270; Knight 1999—page 224; Main et al. 1999—page 1,263; Norton 2000—pages 1,221–1,222; Shogren et al. 1999—page 1,260; Wilcove et al. 1998—page 614). Therefore, "a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species" (Crouse et al. 2002—page 720).

Because large tracts of land suitable for conservation of threatened and endangered species are mostly owned by private landowners, successful recovery of listed species on the island of Hawaii is especially dependent upon working partnerships and the voluntary cooperation of private landowners.

Another benefit of excluding these areas from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 consultation documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can generate real costs to some project proponents. However, because critical habitat in this case is only proposed for occupied areas already subject to section 7 consultation and jeopardy analysis, we anticipate that this reduction would be minimal.

*(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion*

Based on the above considerations, we have determined that the benefits of excluding lands owned by Kamehameha Schools from the final designation of critical habitat for *Drosophila heteroneura* outweigh the benefits of including them as critical habitat. This conclusion is based on the following factors:

(a) In the past, Kamehameha Schools has cooperated with Federal and State agencies, and private organizations to implement on their lands voluntary conservation activities that have resulted in tangible conservation benefits.

(b) Simple regulation of "harmful activities" is not sufficient to conserve these species. Landowner cooperation and support is required to prevent the extinction and promote the recovery of all of the listed species on this island, because of the need to implement proactive conservation actions such as ungulate management, weed control, and fire suppression. This need for landowner cooperation is especially acute because the three proposed units (Gaspar's Dairy, Pit Crater, and Kipuka at 4,900 ft) are occupied by *Drosophila heteroneura*. In addition, many previously occupied *D. heteroneura* habitat sites on other Kamehameha Schools lands remain unoccupied by this species. Future conservation efforts, such as translocation of this species back into unoccupied habitat on these lands, will require the cooperation of Kamehameha Schools. Exclusion of Kamehameha Schools lands from the final designation of critical habitat will

help the Service maintain and improve this partnership by formally recognizing the positive contributions of Kamehameha Schools to rare species recovery, and by streamlining or reducing unnecessary oversight.

(c) Given the current partnership agreements between Kamehameha Schools and many other organizations, we believe the benefits of including Kamehameha Schools lands as critical habitat are relatively small. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management agreements described above. Likewise, there will be little Federal regulatory benefit to the species because: (i) There is a low likelihood that these three proposed critical habitat units will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (ii) these areas are already occupied by the species and a section 7 nexus already exists. We are unable to identify any other potential benefits associated with critical habitat for these proposed units.

(d) We believe it is necessary to establish positive working relationships with representatives of the Native Hawaiian community. This approach of excluding critical habitat and entering into a mutually agreeable conservation partnership strengthens this relationship and should lead to conservation benefits beyond the boundaries of Kamehameha Schools land. It is an important long-term conservation goal of the Service to work cooperatively with the Native Hawaiian community to help recover Hawaii's endangered species. This partnership with Kamehameha Schools is an important step toward this goal.

(e) It is well documented that publicly owned lands and lands owned by private organizations alone are too small and poorly distributed to provide for the conservation of most listed species (Bean 2002—pages 409, 412, 414–415, and 419–420; Crouse et al. 2002—page 720). Excluding these Kamehameha Schools lands from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners on the island of Hawaii who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented (Norton 2000—pages 1,221–1,222; Main et al. 1999—page 1,263; Shogren et al. 1999—page 1,260; Wilcove and Chen 1998—page 1,407).

In conclusion, we find that the exclusion of lands owned by Kamehameha Schools from the final designation of critical habitat would most likely have a net positive conservation effect on the recovery and conservation of *Drosophila heteroneura* when compared to the positive conservation effects of a critical habitat designation. As described above, the overall benefits to this species of a critical habitat designation on Kamehameha Schools lands are relatively small. In contrast, we believe this exclusion will enhance our existing partnership with Kamehameha Schools, and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. We conclude there is a greater likelihood of beneficial conservation activities occurring in these and other areas of the island of Hawaii without designated critical habitat than there would be with designated critical habitat on these Kamehameha Schools lands.

*(4) Exclusion of This Unit Will Not Cause Extinction of the Species*

In considering whether or not exclusion of Kamehameha Schools lands from the final designation of critical habitat for *Drosophila heteroneura,* we first considered the impacts to the species. The agreements described above will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the species in these areas of the island of Hawaii and increase the likelihood of its recovery. Extinction of this species as a consequence of this proposed exclusion is unlikely because there are no known threats in the proposed units due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, these areas are already occupied by the species and thereby benefit from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize.

The exclusion of these Kamehameha Schools lands will not increase the risk of extinction to the species, and it may increase the likelihood the species will recover by encouraging other landowners to implement voluntary conservation activities as Kamehameha Schools has done. In addition, critical habitat is being proposed on other areas of the island of Hawaii for this species (Kau Forest, Pauahi, Waiea, and Waihaka Gulch units) within its historical range. In sum, the above analysis concludes that the proposed exclusion of Kamehameha Schools lands from the final designation of critical habitat on the island of Hawaii will have a net beneficial impact with little risk of negative impacts. Therefore, the exclusion of the Kamehameha Schools lands will not cause extinction and should in fact improve the chances of recovery for *Drosophila heteroneura.*

**Economic Analysis**

An analysis of the economic impacts of proposing critical habitat for 11 species of Hawaiian picture-wing flies is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/pacificislands,* or by contacting the Pacific Islands Fish and Wildlife Office directly (see **ADDRESSES** section).

**Peer Review**

In accordance with the December 16, 2004, Office of Management and Budget's "Final Information Quality Bulletin for Peer Review," we will obtain comments from at least three independent scientific reviewers regarding the scientific data and interpretations contained in this proposed rule. The purpose of such review is to ensure that our critical habitat decision is based on scientifically sound data, assumptions, and analyses. We have posted our proposed peer review plan on our Web site at *http://www.fws.gov/midwest/Science/.* Public comments on our peer review were obtained through May 26, 2006, after which we finalized our peer review plan and selected peer reviewers. We will provide those reviewers with copies of this proposal as well as the data used in the proposal. Peer reviewer comments that are received during the public comment period will be considered as we make our final decision on this proposal, and substantive peer reviewer comments will be specifically discussed in the final rule.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

**Public Hearings**

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**.

Such requests must be made in writing and be addressed to the Field Supervisor at the address in the **ADDRESSES** section above.

**Clarity of the Rule**

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) 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 this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail your comments to this address: *Exsec@ios.doi.gov.*

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from the Internet Web site at *http://www.fws.gov/pacificislands* or by contacting the Pacific Islands Fish and Wildlife Office directly (see **ADDRESSES** section).

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

*Executive Order 13211*

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for 11 species of Hawaiian picture-wing flies is a significant regulatory action under Executive Order 12866 in that it may raise novel legal and policy issues, however, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation,

statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. The lands being proposed for critical habitat designation are owned by the State of Hawaii or private citizens. None of these entities fit the definition of "small governmental jurisdiction." As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and as appropriate, review and revise this assessment as warranted.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Hawaii. The designation of critical habitat in areas currently occupied by the 11 species of picture-wing flies may affect Federal actions and would have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. Thus it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the proposed areas to assist the public in understanding the habitat needs of the 11 species of Hawaiian picture-wing flies.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the 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).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's requirement at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. We are not proposing to designate critical habitat for these species on Tribal lands as defined in the above documents. Additionally, the proposed designation does not contain any lands that we have identified as impacting Tribal trust resources.

*References Cited*

A complete list of all references cited in this rule is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

**Author(s)**

The author of this document is the staff of the Fish and Wildlife Service.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for "*Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia*" under "INSECTS" in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| INSECTS | | | | | | | |
| * | * | * | * | * | * | | * |
| Fly, Hawaiian picture-wing. | *Drosophila aglaia* .... | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila differens* | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila hemipeza.* | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila heteroneura.* | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila montgomeryi.* | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila mulli* ..... | U.S.A. (HI) ..... | NA ..... | T | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila musaphilia.* | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| * | * | * | * | * | * | | * |
| Fly, Hawaiian picture-wing. | *Drosophila obatai* ... | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila ochrobasis.* | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila substenoptera.* | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| Fly, Hawaiian picture-wing. | *Drosophila tarphytrichia.* | U.S.A. (HI) ..... | NA ..... | E | 756 | 17.95(h) | NA |
| * | * | * | * | * | * | | * |

3. Amend § 17.95(i), by adding critical habitat for "*Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia*" in the same alphabetical order in which these species appear in the table in § 17.11(h) under "INSECTS" to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(i) *Insects.*

* * * * *

*Drosophila aglaia*

(1) Critical habitat units are depicted for County of Honolulu, Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Dry to mesic, lowland, *Diospyros* sp., ohia and koa forest; and

(ii) The larval host plant *Urera glabra.*

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat units are described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** Map 1 (index map of critical habitat units for *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia*) follows:

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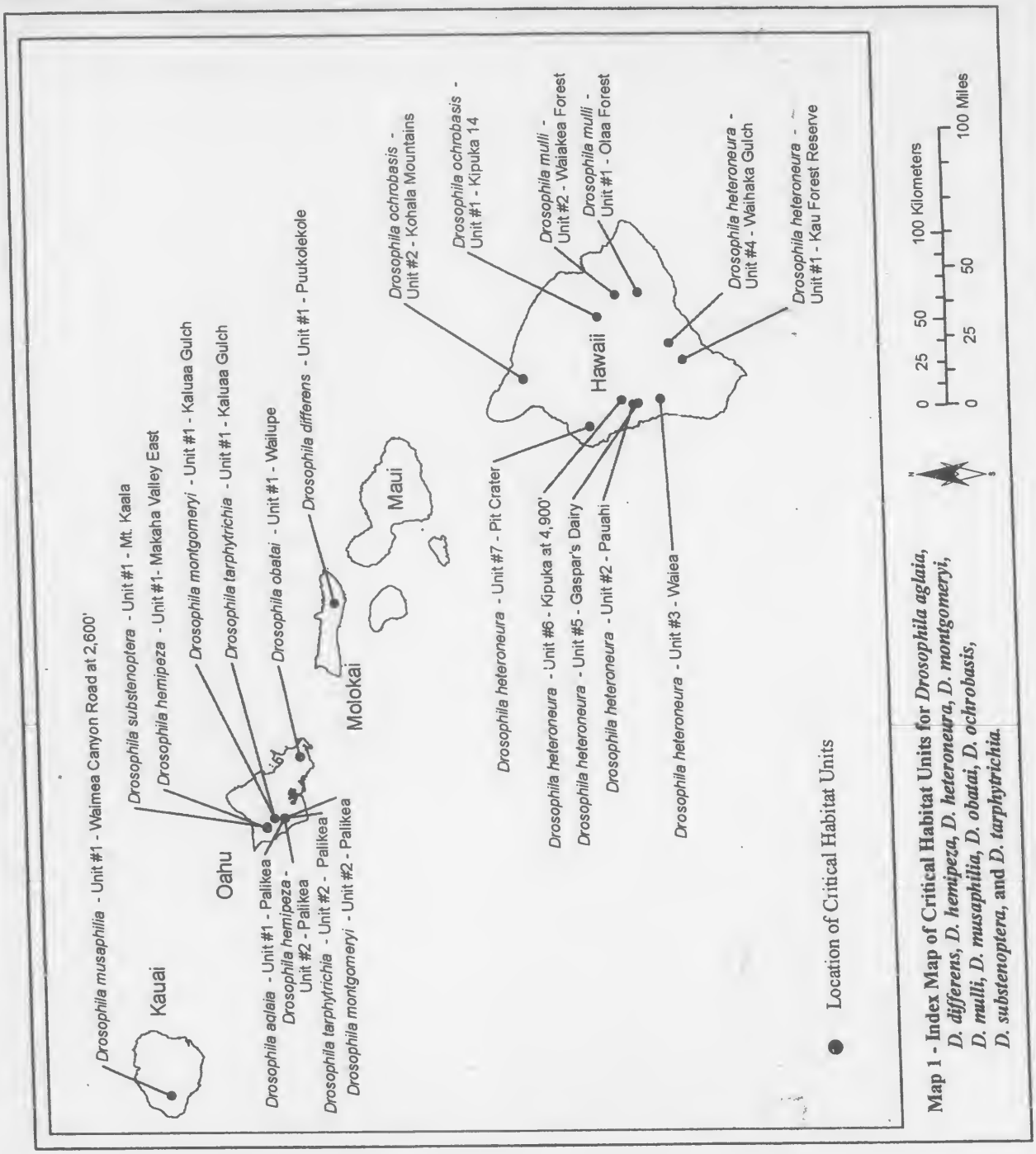
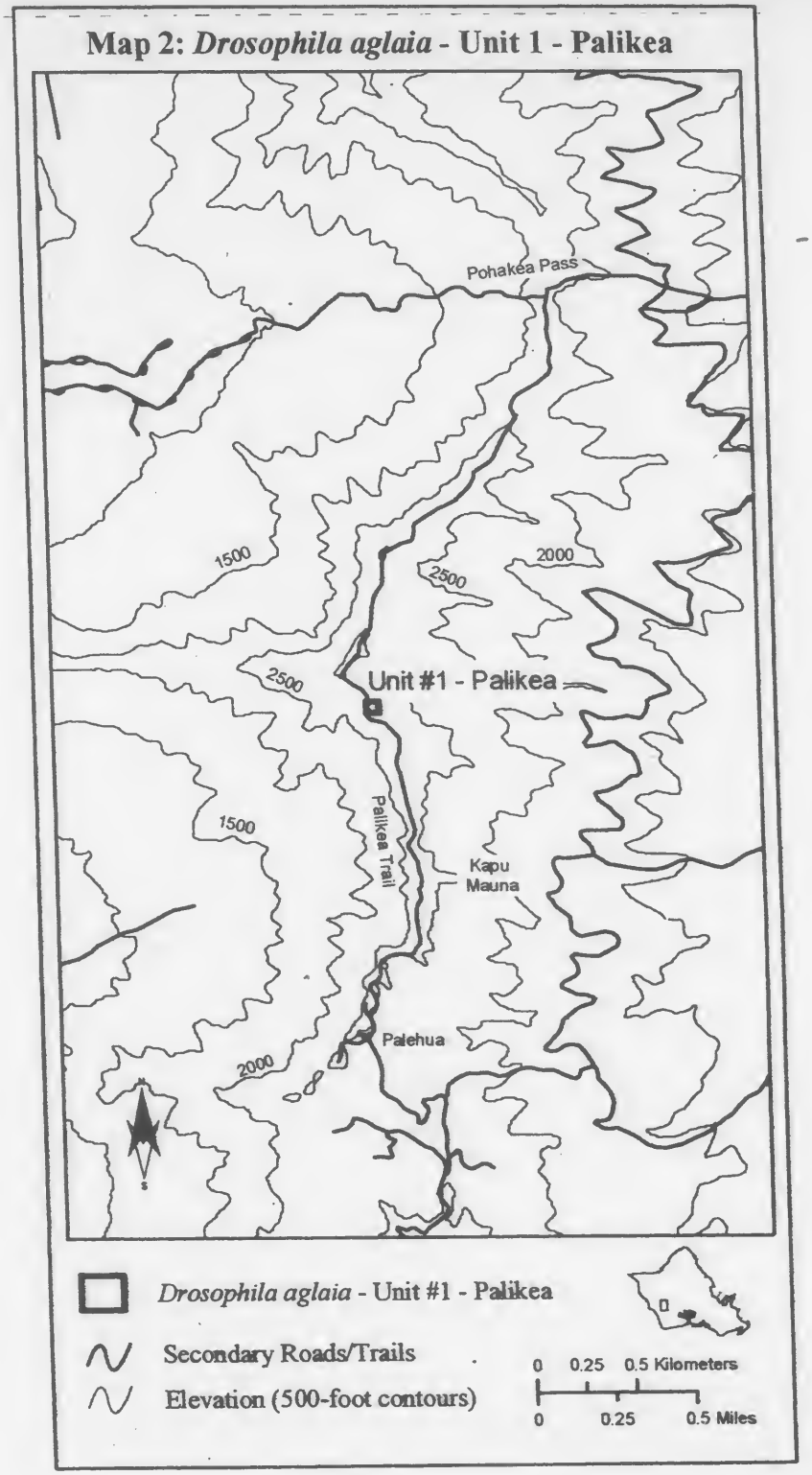



**Map 1 - Index Map of Critical Habitat Units for *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*.**

(6) *Drosophila aglaia*—Unit 1—Palikea, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila aglaia*—Unit 1—Palikea: 593273, 2367958; 593273, 2368022; 593337, 2368022; 593337, 2367958.

(ii) **Note:** Map 2 of *Drosophila aglaia*—Unit 1—Palikea follows:


Map 2: *Drosophila aglaia* - Unit 1 - Palikea
Pohakea Pass
1500
2000
2500
2500
Unit #1 - Palikea
1500
Palikea Trail
Kapu Mauna
Palehua
2000
*Drosophila aglaia* - Unit #1 - Palikea
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.25 0.5 Kilometers
0 0.25 0.5 Miles

*Drosophila differens*

(1) Critical habitat is depicted for County of Maui, island of Molokai, Hawaii, on the map below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Wet, montane, ohia forest; and

(ii) The larval host plants *Clermontia arborescens* ssp. *waihiae, C. granidiflora* ssp. *munroi, C. oblongifolia* ssp. *brevipes,* and *C. pallida*.

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

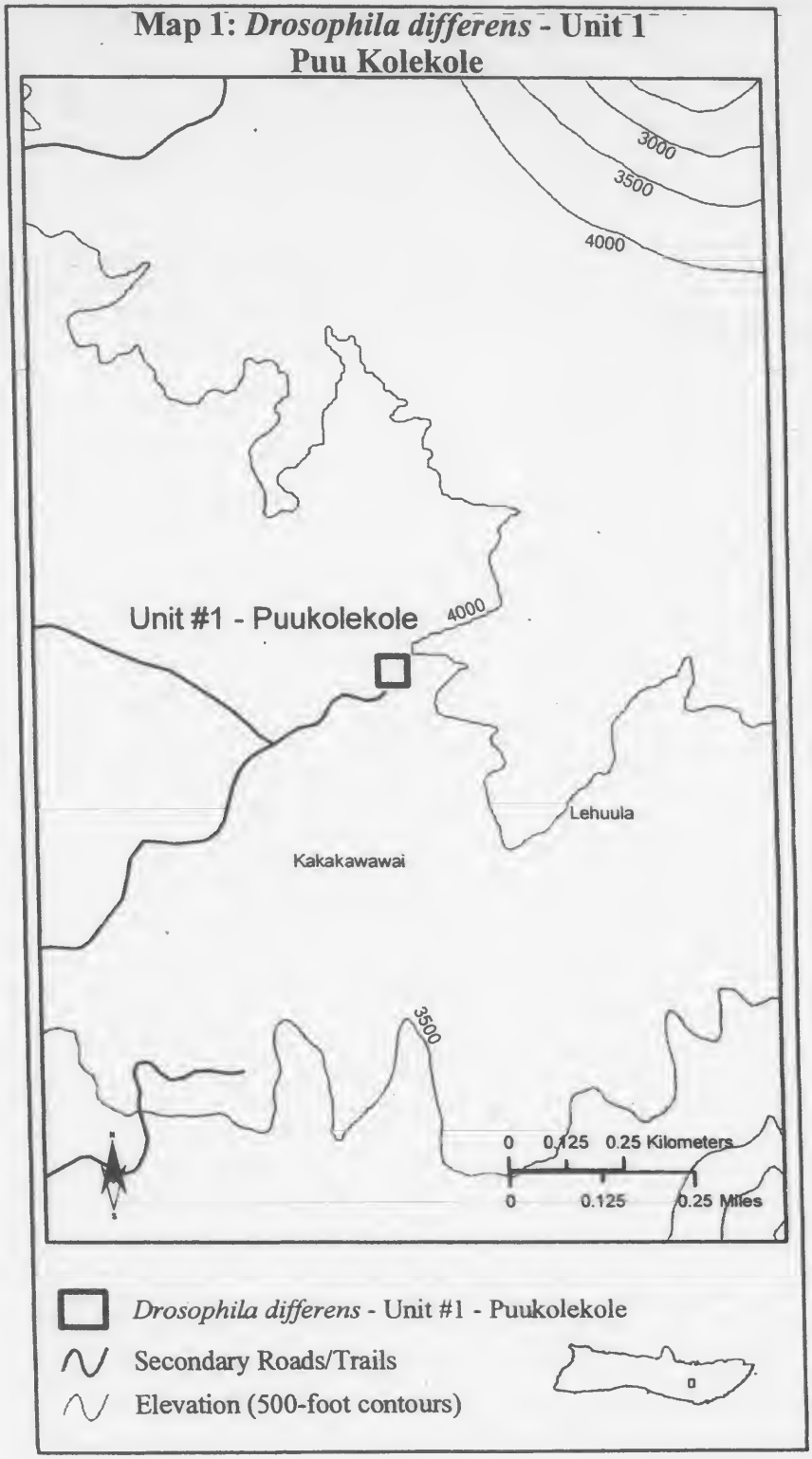
(4) The critical habitat unit is described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** For an index map of the critical habitat unit for *Drosophila differens* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia*.

(6) *Drosophila differens*—Unit 1—Puu Kolekole, Maui County, Island of Molokai, Hawaii.

(i) *Drosophila differens*—Unit 1—Puu Kolekole: 718406, 2335494; 718406, 2335558; 718470, 2335558; 718470, 2335494.

(ii) **Note:** Map 1 of *Drosophila differens*—Unit 1—Puu Kolekole follows:


Map 1: *Drosophila differens* - Unit 1
Puu Kolekole
3000
3500
4000
Unit #1 - Puukolekole
4000
Lehuula
Kakakawawai
3500
0 0.125 0.25 Kilometers
0 0.125 0.25 Miles
*Drosophila differens* - Unit #1 - Puukolekole
Secondary Roads/Trails
Elevation (500-foot contours)

*Drosophila hemipeza*

(1) Critical habitat units are depicted for County of Honolulu, Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Dry to mesic, lowland, ohia and koa forest; and

(ii) The larval host plants Cyanea angustifolia, *C. calycina*, *C. grimesiana* ssp. *grimesiana*, *C. grimesiana* ssp. *obatae*, *C. membranacea*, *C. pinnatifida*, *C. sessifolia*, *C. superba* ssp. *superba*, *Lobelia hypoleuca*, *L. hiihauensis*, *L. yuccoides*, and *Urera kaalae*.

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

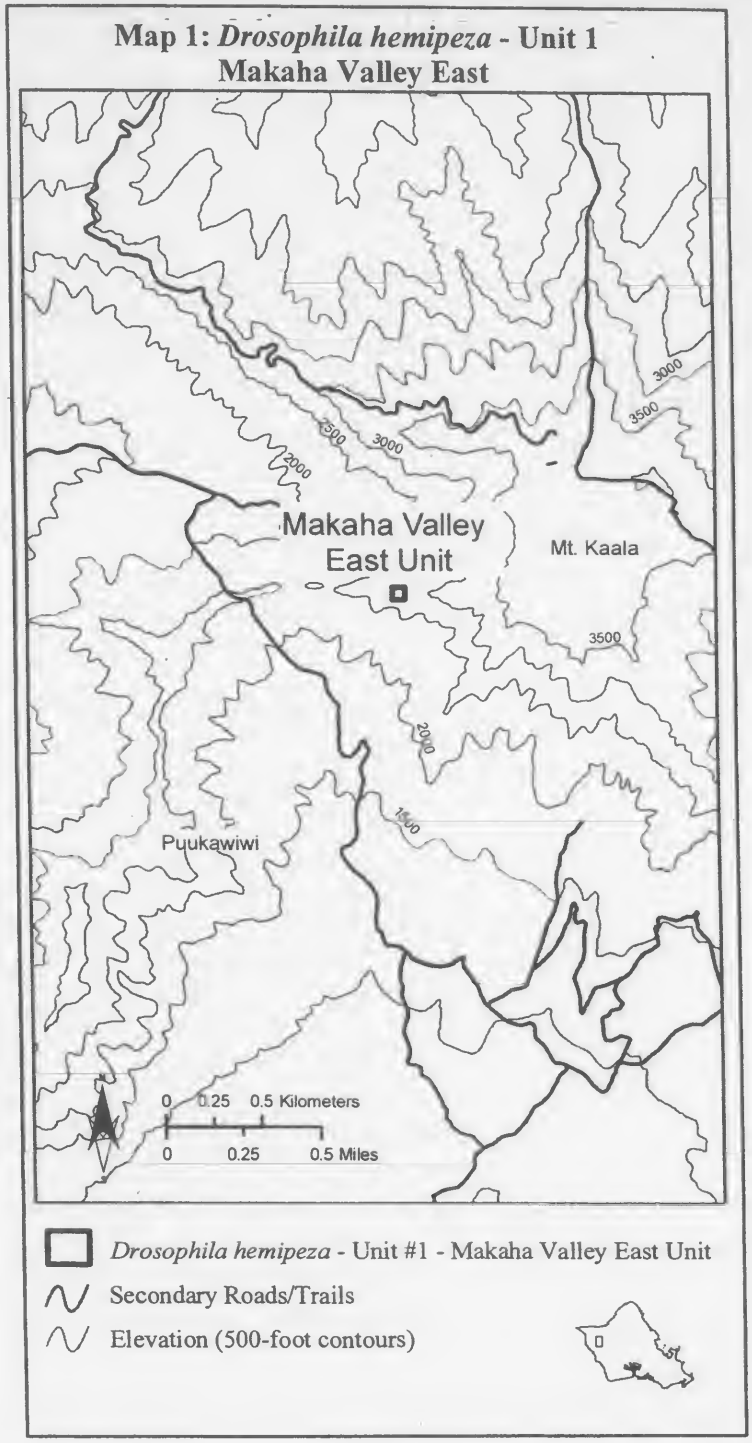
(4) Critical habitat units are described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** For an index map of critical habitat units for *Drosophila hemipeza* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia*.

(6) *Drosophila hemipeza*—Unit 1—Makaha Valley East, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila hemipeza*—Unit 1—Makaha Valley East: 587461, 2377992; 587461, 2378055; 587524, 2378055; 587524, 2377992.

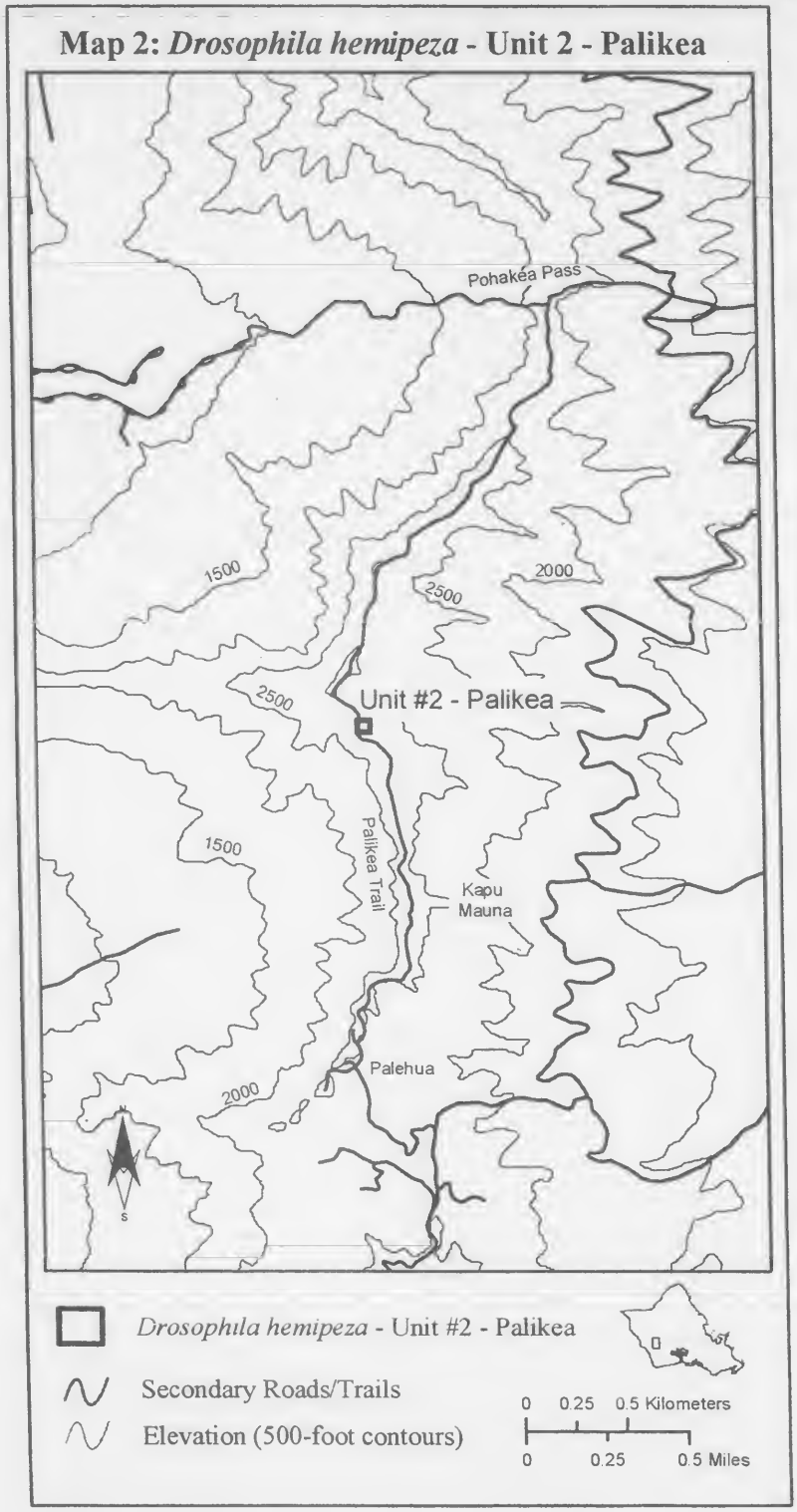
(ii) **Note:** Map 1 of *Drosophila hemipeza*—Unit 1–Makaha Valley East follows:




(7) *Drosophila hemipeza*—Unit 2—Palikea, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila hemipeza*—Unit 2—Palikea: 593273, 2367958; 593273, 2368022; 593337, 2368022; 593337, 2367958.

(ii) **Note:** Map 2 of *Drosophila hemipeza*—Unit 2—Palikea follows:


Map 2: *Drosophila hemipeza* - Unit 2 - Palikea
Pohakea Pass
1500
2500
2000
2500
Unit #2 - Palikea
1500
Palikea Trail
Kapu
Mauna
Palehua
2000
N
S
*Drosophila hemipeza* - Unit #2 - Palikea
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.25 0.5 Kilometers
0 0.25 0.5 Miles

*Drosophila heteroneura*

(1) Critical habitat units are depicted for County of Hawaii, island of Hawaii, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Mesic to wet, montane, ohia and koa forest; and

(ii) The larval host plants *Cheirodendron trigynum* ssp. *trigynum, C. clermontioides, C. hawaiiensis, C. kohalae, C. lindseyana, C. montis-loa, C. paviflora, C. peleana,* and *C. pyrularia.*

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

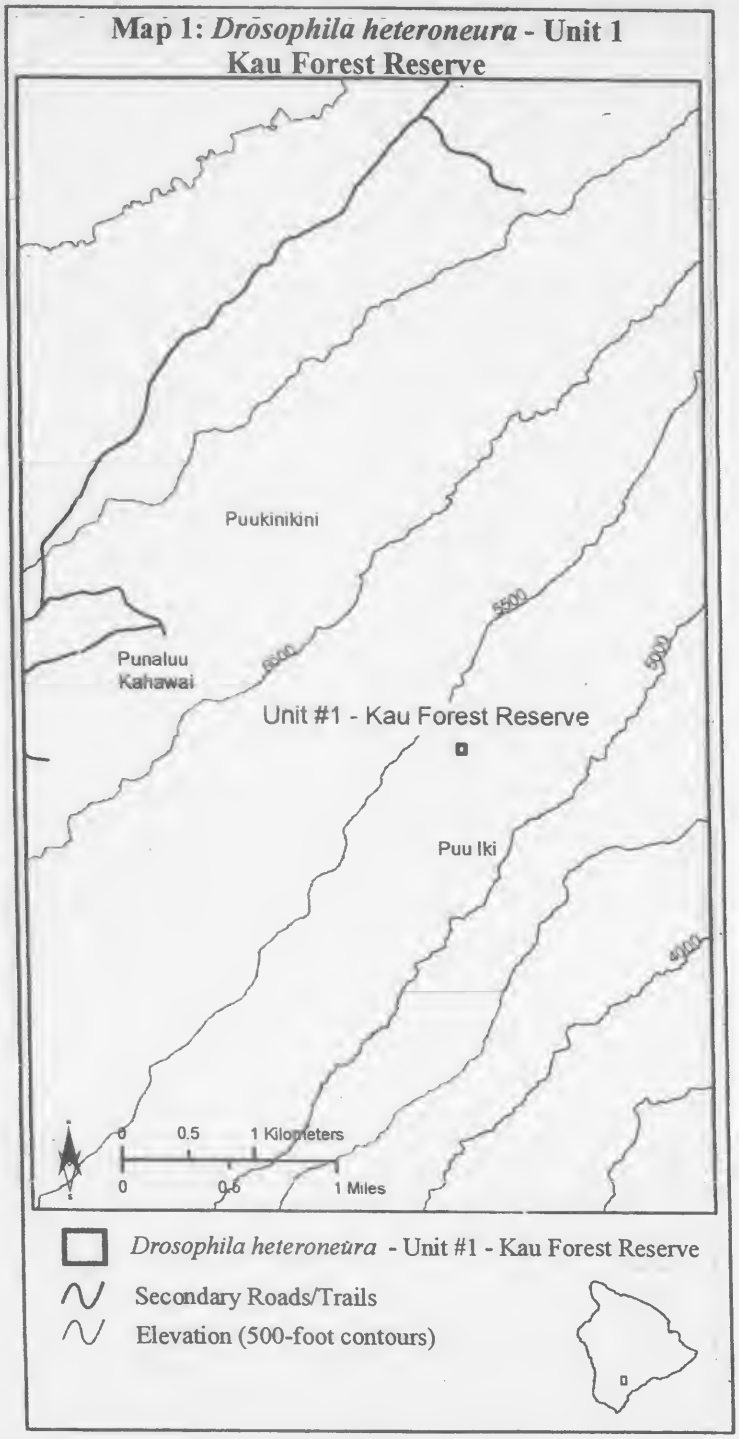
(4) Critical habitat units are depicted for County of Hawaii, island of Hawaii, Hawaii, on the maps below.

(5) *Note:* For an index map of critical habitat units for *Drosophila heteroneura* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia.*

(6) *Drosophila heteroneura*—Unit 1—Kau Forest Reserve, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila heteroneura*—Unit 1—Kau Forest Reserve: 858986, 2130883; 858986, 2130947; 859050, 2130947; 859050, 2130883.

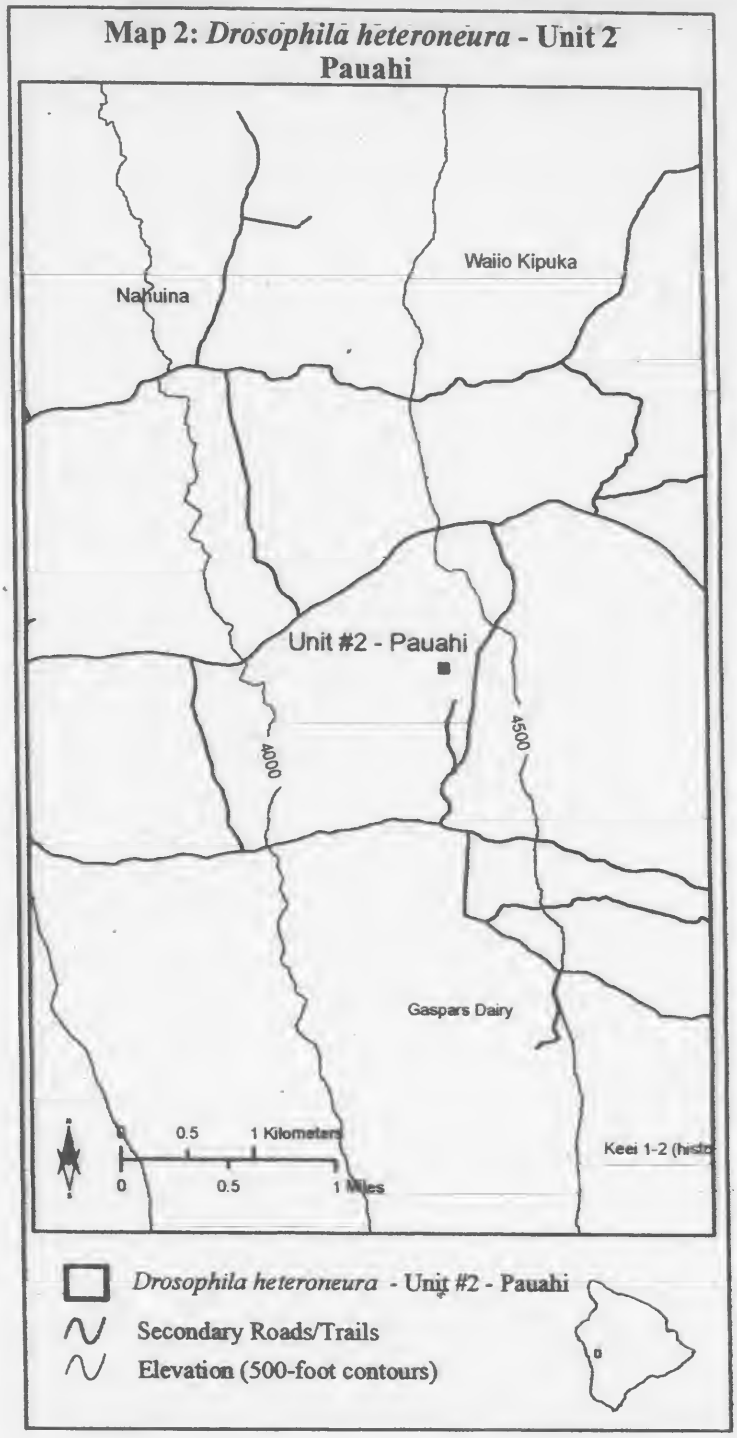
(ii) **Note:** Map 1 of *Drosophila heteroneura*—Unit 1—Kau Forest Reserve follows:




(7) *Drosophila heteroneura*—Unit 2—Pauahi, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila heteroneura*—Unit 2—Pauahi: 833211, 2159779; 833211, 2159843; 833275, 2159843; 833275, 2159779.

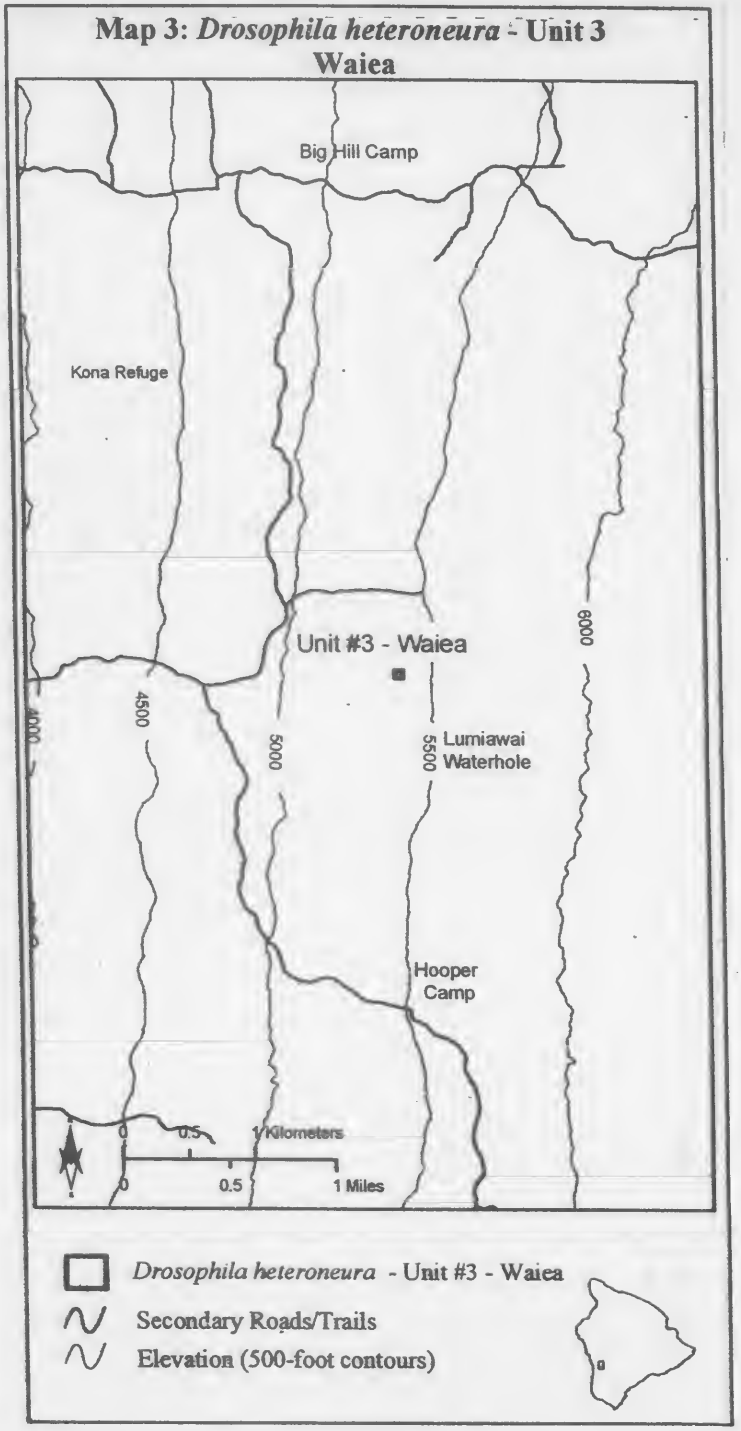
(ii) **Note:** Map 2 of *Drosophila heteroneura*—Unit 2—Pauahi follows:




(8) *Drosophila heteroneura*—Unit 3—Waiea, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila heteroneura*—Unit 3—Waiea: 836184, 2144180; 836184, 2144244; 836248, 2144244; 836248, 2144180.

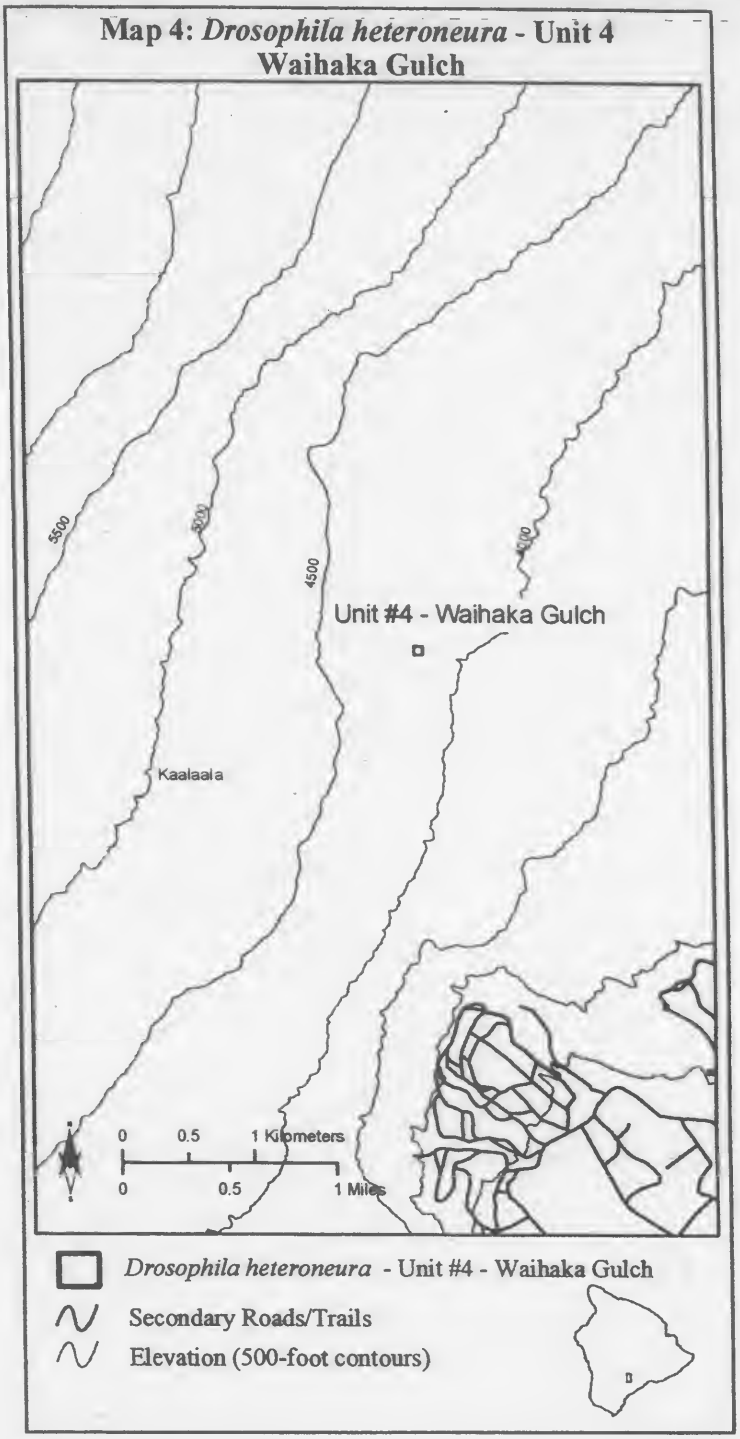
(ii) **Note:** Map 3 of *Drosophila heteroneura*—Unit 3—Waiea follows:




(9) *Drosophila heteroneura*—Unit 4—Waihaka Gulch, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila heteroneura*—Unit 4—Waihaka Gulch: 868655, 2138565; 868655, 2138629; 868718, 2138629; 868718, 2138565.

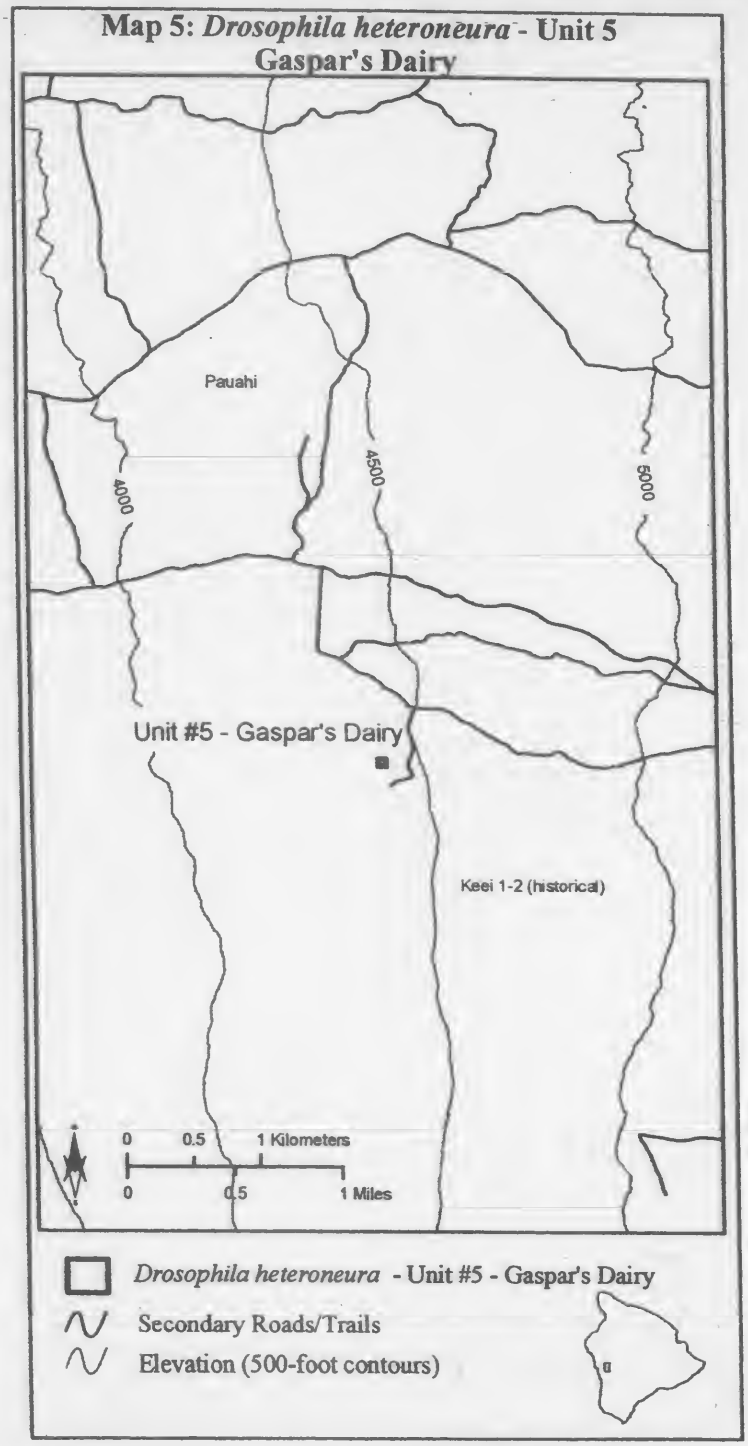
(ii) **Note:** Map 4 of *Drosophila heteroneura*—Unit 4—Waihaka Gulch follows:




(10) *Drosophila heteroneura*—Unit 5—Gaspar's Dairy, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila heteroneura*—Unit 5—Gaspar's Dairy: 833811, 2157064; 833811, 2157128; 833875, 2157128; 833875, 2157064.

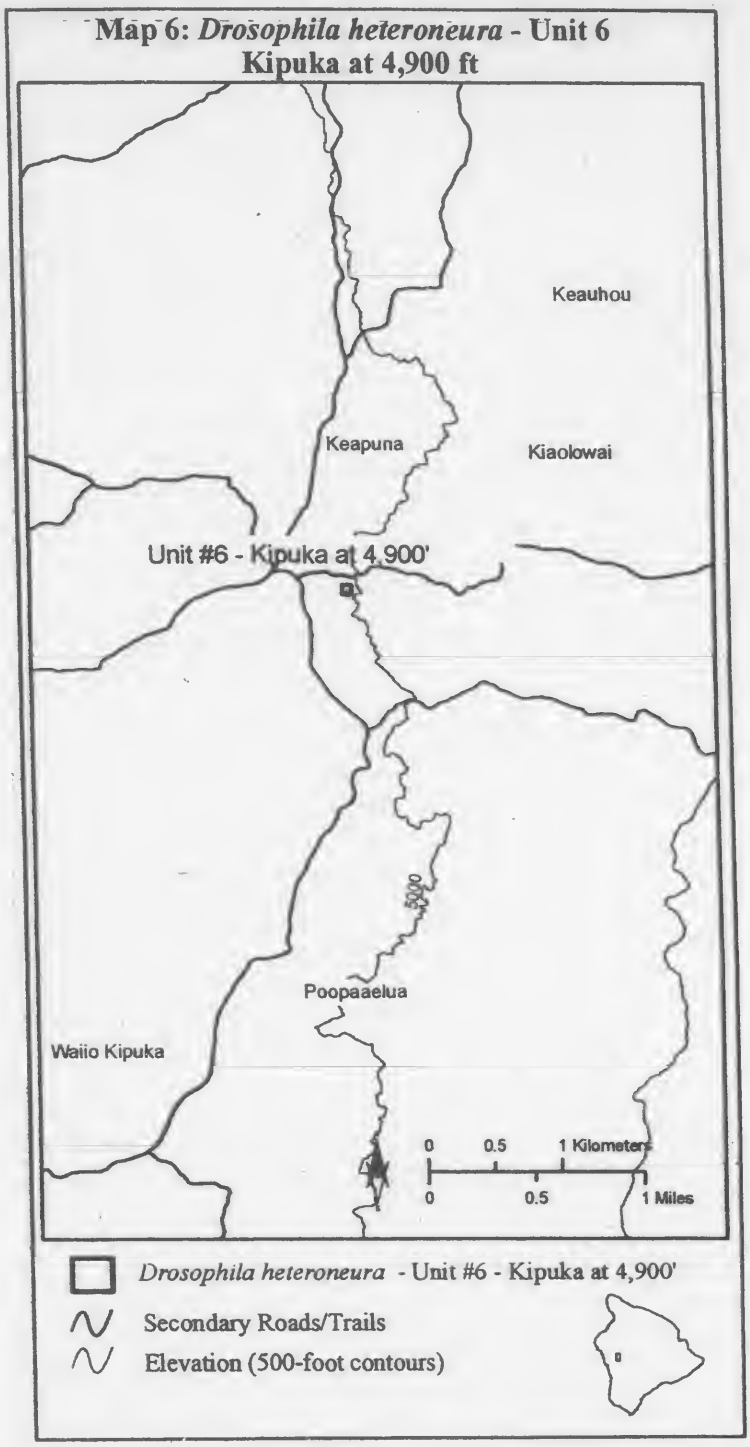
(ii) **Note:** Map 5 of *Drosophila heteroneura*—Unit 5—Gaspar's Dairy follows:




(11) *Drosophila heteroneura*—Unit 6—Kipuka at 4,900 ft, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila heteroneura*—Unit 6—Kipuka at 4,900 ft: 835692, 2166366; 835692, 2166430; 835756, 2166430; 835756, 2166366.

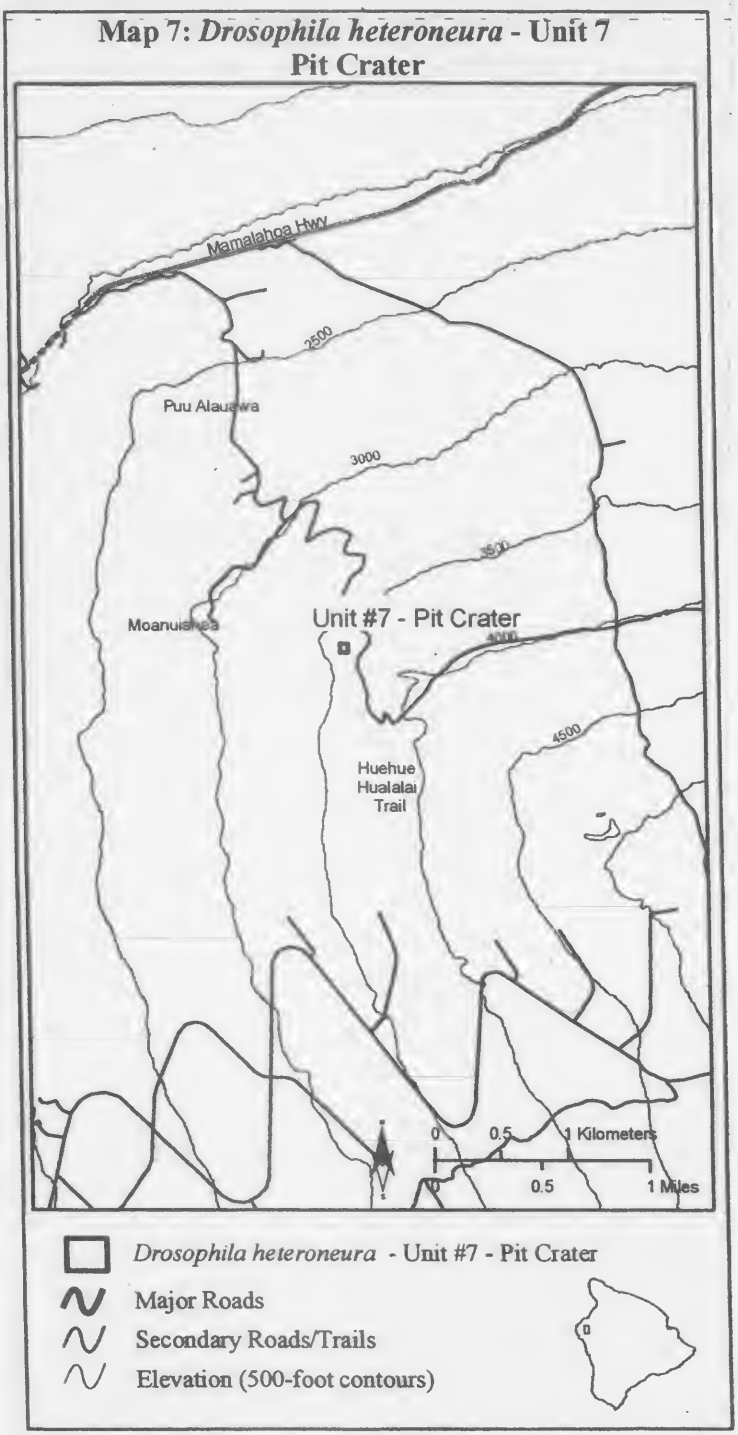
(ii) **Note:** Map 6 of *Drosophila heteroneura*—Unit 6—Kipuka at 4,900 ft follows:



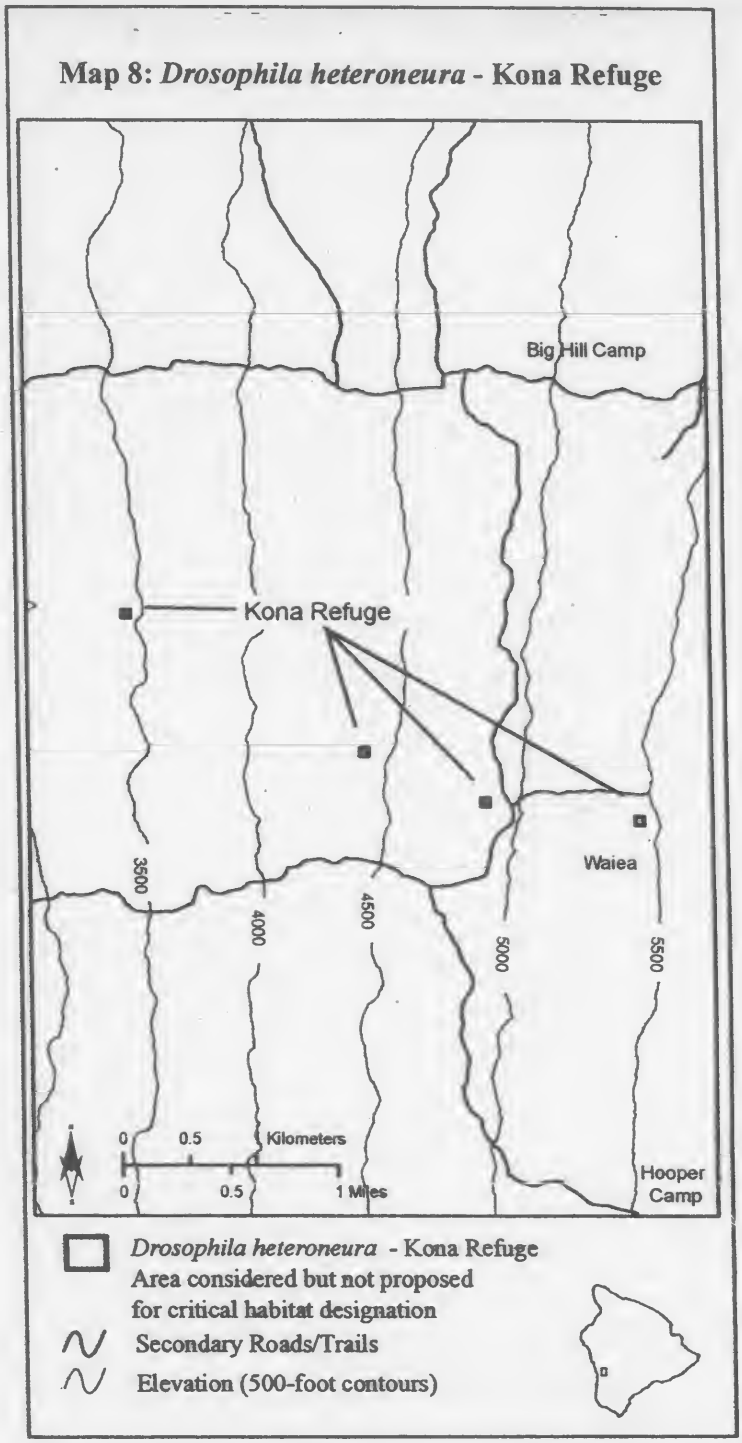

(12) *Drosophila heteroneura*—Unit 7—Pit Crater, Hawaii County, Island of Hawaii, Hawaii.

(i) — *heteroneura*—Unit 7—Pit Crater: 820293, 2185168; 820293, 2185232; 820357, 2185232; 820357, 2185168.

(ii) **Note:** Map 7 of *Drosophila heteroneura*—Unit 7—Pit Crater follows:

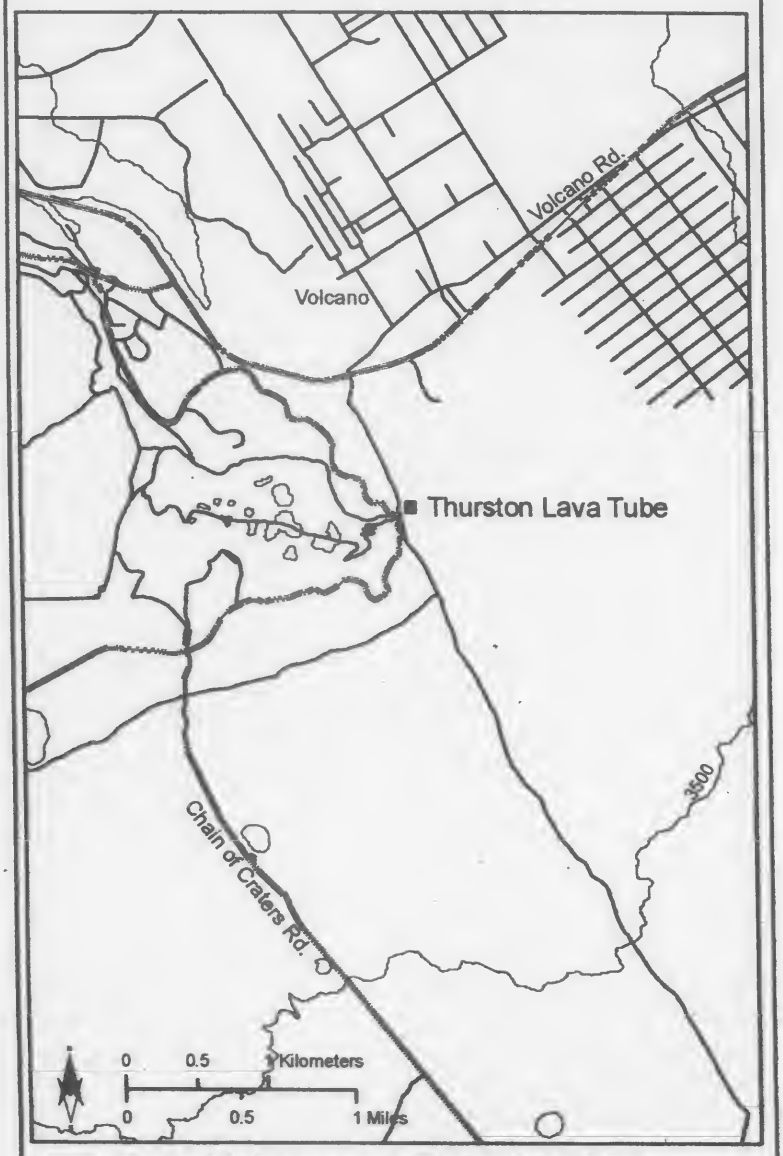



(13) *Drosophila heteroneura*—Kona Refuge, Hawaii County, Island of Hawaii, Hawaii, was considered but not proposed for critical habitat. Note: Map 8 of *Drosophila heteroneura*—Kona Refuge follows:




(14) *Drosophila heteroneura*—Thurston Lava Tube, Hawaii County, Island of Hawaii, Hawaii, was considered but not proposed for critical habitat. Note: Map 9 of *Drosophila heteroneura*—Thurston Lava Tube follows:

**Map 9: *Drosophila heteroneura***
**Thurston Lava Tube**




*Drosophila heteroneura* - Thurston Lava Tube
Area considered but not proposed for critical habitat designation
Major Roads
Secondary Roads/Trails
Elevation (500-foot contours)

*Drosophila montgomeryi*-

(1) Critical habitat units are depicted for County of Honolulu, Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Dry to mesic, lowland, diverse ohia and koa forest; and

(ii) The larval host plant *Urera kaalae*.

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

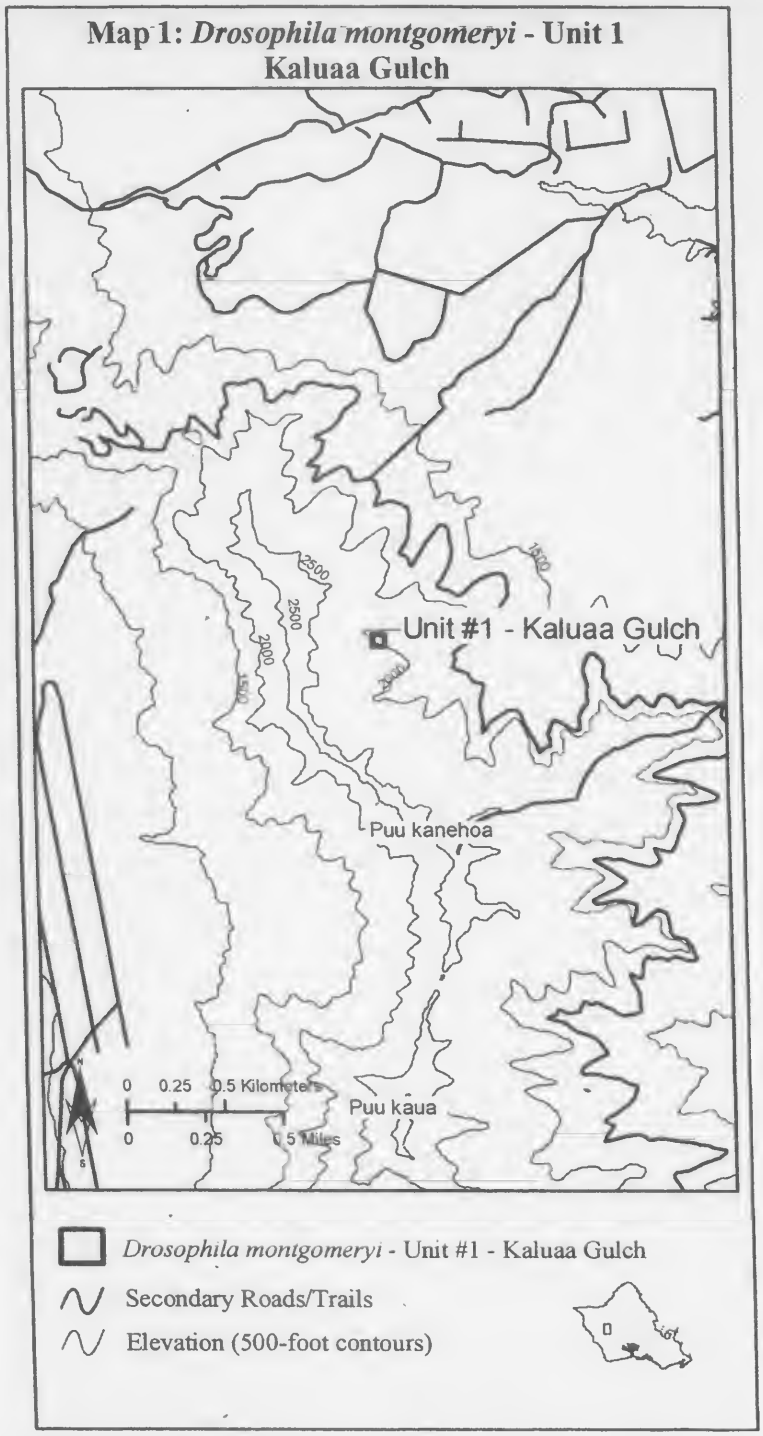
(4) Critical habitat units are described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** For an index map of critical habitat units for *Drosophila montgomeryi* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia*.

(6) *Drosophila montgomeryi*—Unit 1—Kaluaa Gulch, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila montgomeryi*—Unit 1—Kaluaa Gulch: 593285, 2373778; 593285, 2373842; 593348, 2373842; 593348, 2373778.

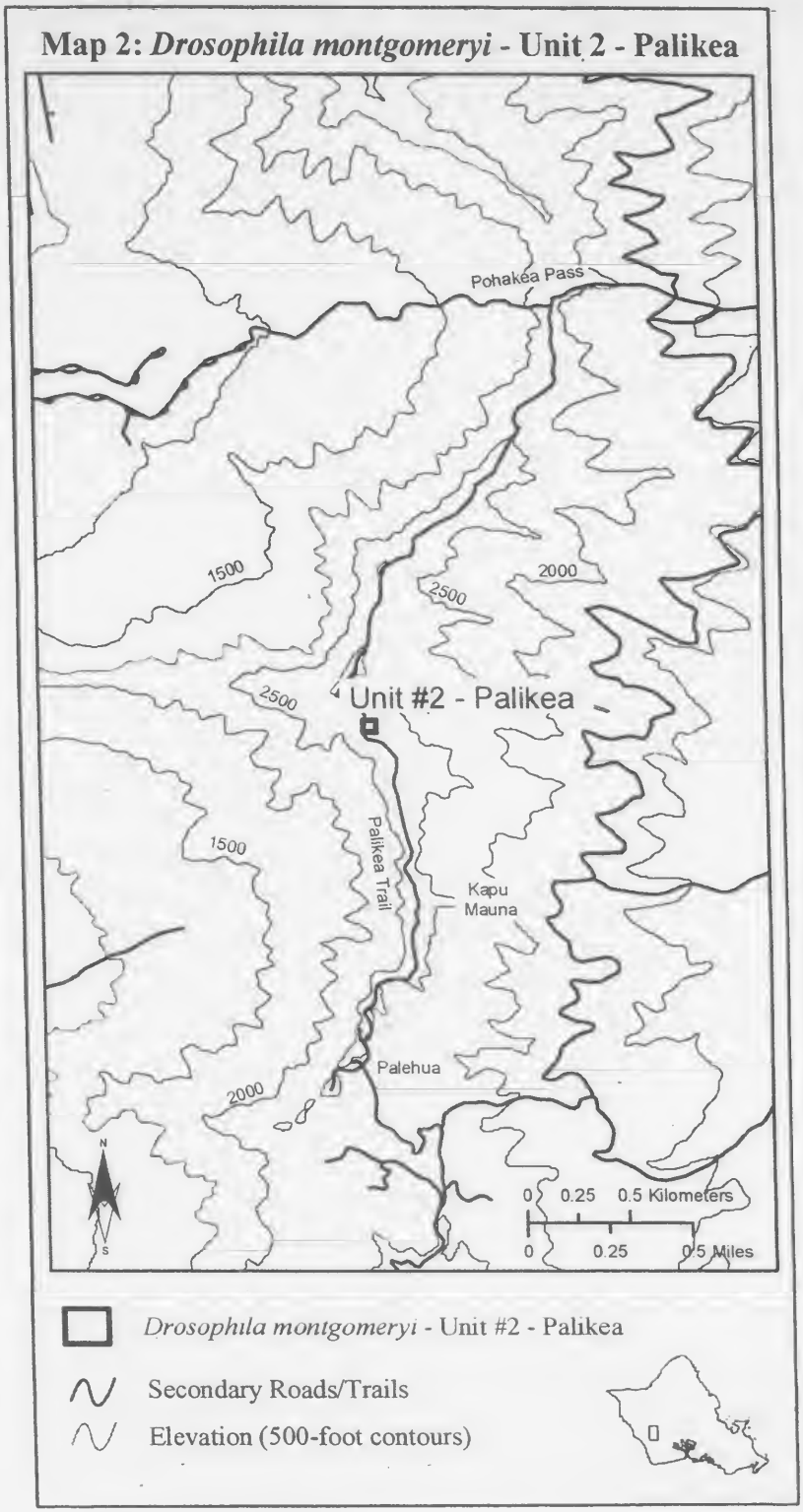
(ii) **Note:** Map 1 of *Drosophila montgomeryi*—Unit 1—Kaluaa Gulch follows:




(7) *Drosophila montgomeryi*—Unit 2—Palikea, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila montgomeryi*—Unit 2—Palikea: 593273, 2367958; 593273, 2368022; 593337, 2368022; 593337, 2367958.

(ii) **Note:** Map 2 of *Drosophila montgomeryi*—Unit 2—Palikea follows:


Map 2: *Drosophila montgomeryi* - Unit 2 - Palikea
Pohakea Pass
1500
2000
2500
2500
Unit #2 - Palikea
1500
Palikea Trail
Kapu
Mauna
Palehua
2000
N
S
0 0.25 0.5 Kilometers
0 0.25 0.5 Miles
*Drosophila montgomeryi* - Unit #2 - Palikea
Secondary Roads/Trails
Elevation (500-foot contours)

*Drosophila mulli*

(1) Critical habitat units are depicted for County of Hawaii, island of Hawaii, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Wet, montane, ohia forest; and

(ii) The larval host plant *Pritchardia beccariana*.

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

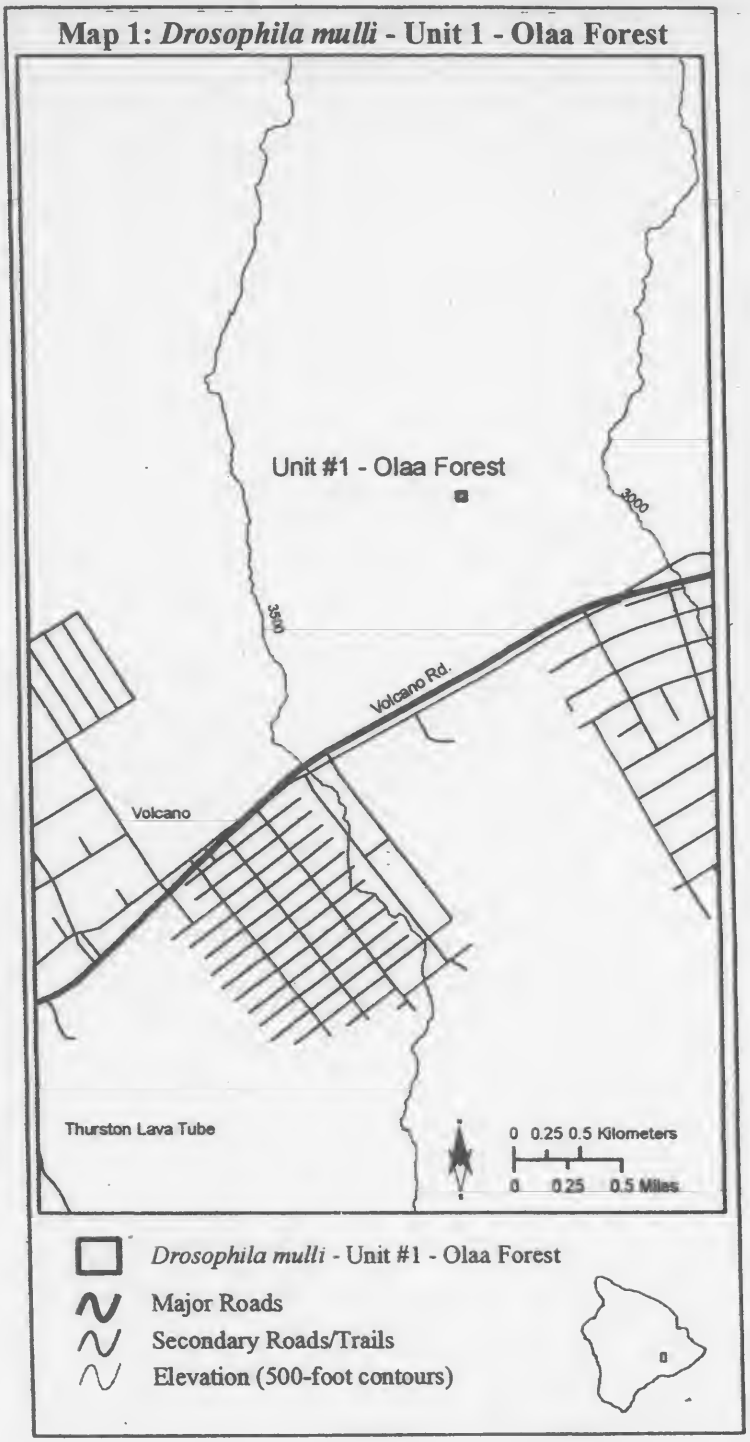
(4) Critical habitat units are described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** For an index map of critical habitat units for *Drosophila mulli* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia*.

(6) *Drosophila mulli*—Unit 1—Olaa Forest, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila mulli*—Unit 1—Olaa Forest: 898368, 2155813; 898368, 2155877; 898432, 2155877; 898432, 2155813.

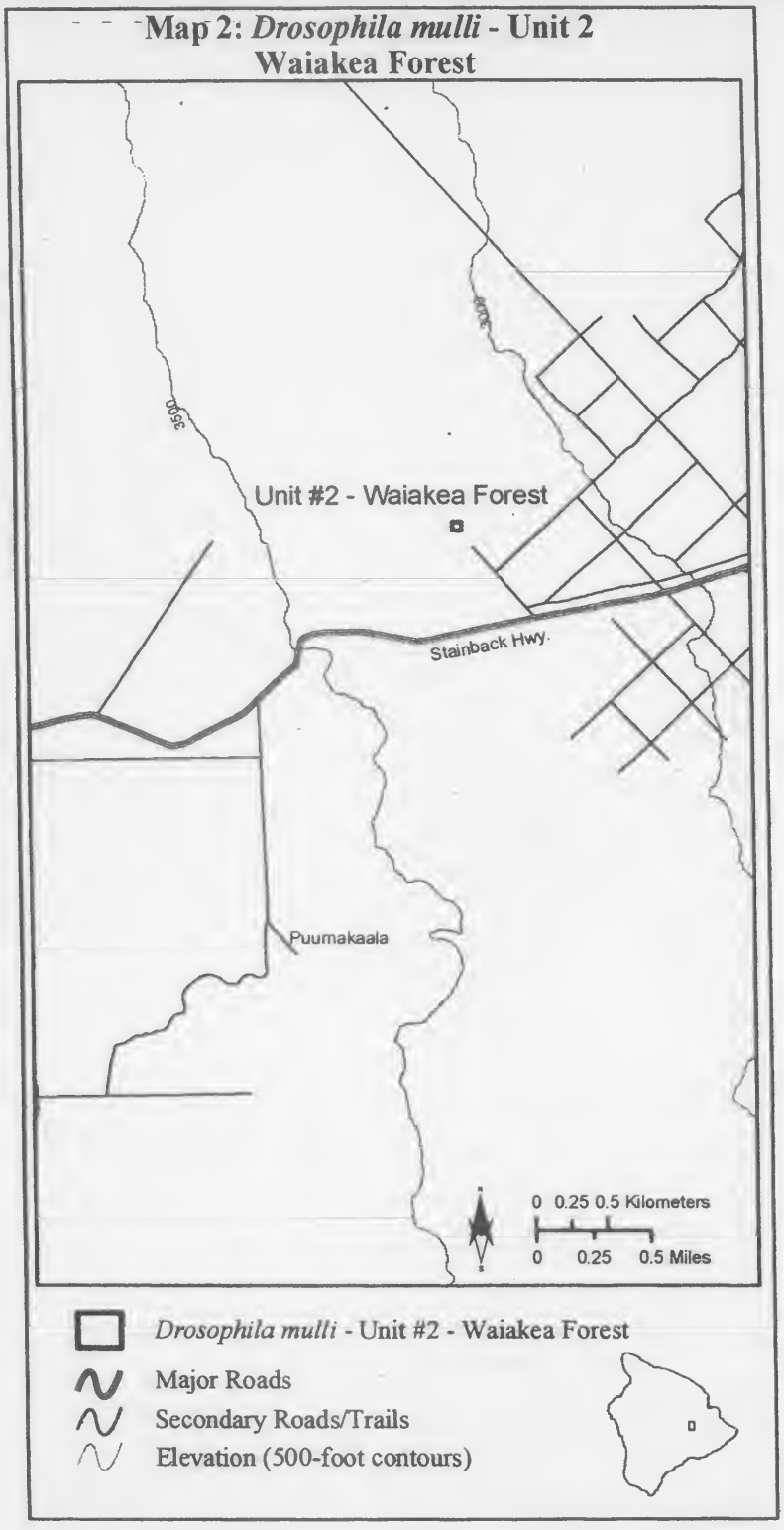
(ii) **Note:** Map 1 of *Drosophila mulli*—Unit 1—Olaa Forest follows:




(7) *Drosophila mulli*—Unit 2—Waiakea Forest, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila mulli*—Unit 2—Waiakea Forest: 896950, 218903; 896950, 2168967; 897014, 2168967; 897014, 2168903.

(ii) **Note:** Map 2 of *Drosophila mulli*—Unit 2—Waiakea Forest follows:


Map 2: *Drosophila mulli* - Unit 2
Waiakea Forest
3500
3500
Unit #2 - Waiakea Forest
Stainback Hwy.
Puumakaala
0 0.25 0.5 Kilometers
0 0.25 0.5 Miles
*Drosophila mulli* - Unit #2 - Waiakea Forest
Major Roads
Secondary Roads/Trails
Elevation (500-foot contours)

*Drosophila Musaphilia*

(1) Critical habitat is depicted for County of Kauai, Kauai, Hawaii, on the map below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Mesic, montane, ohia and koa forest; and

(ii) The larval host plant *Acacia koa*.

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

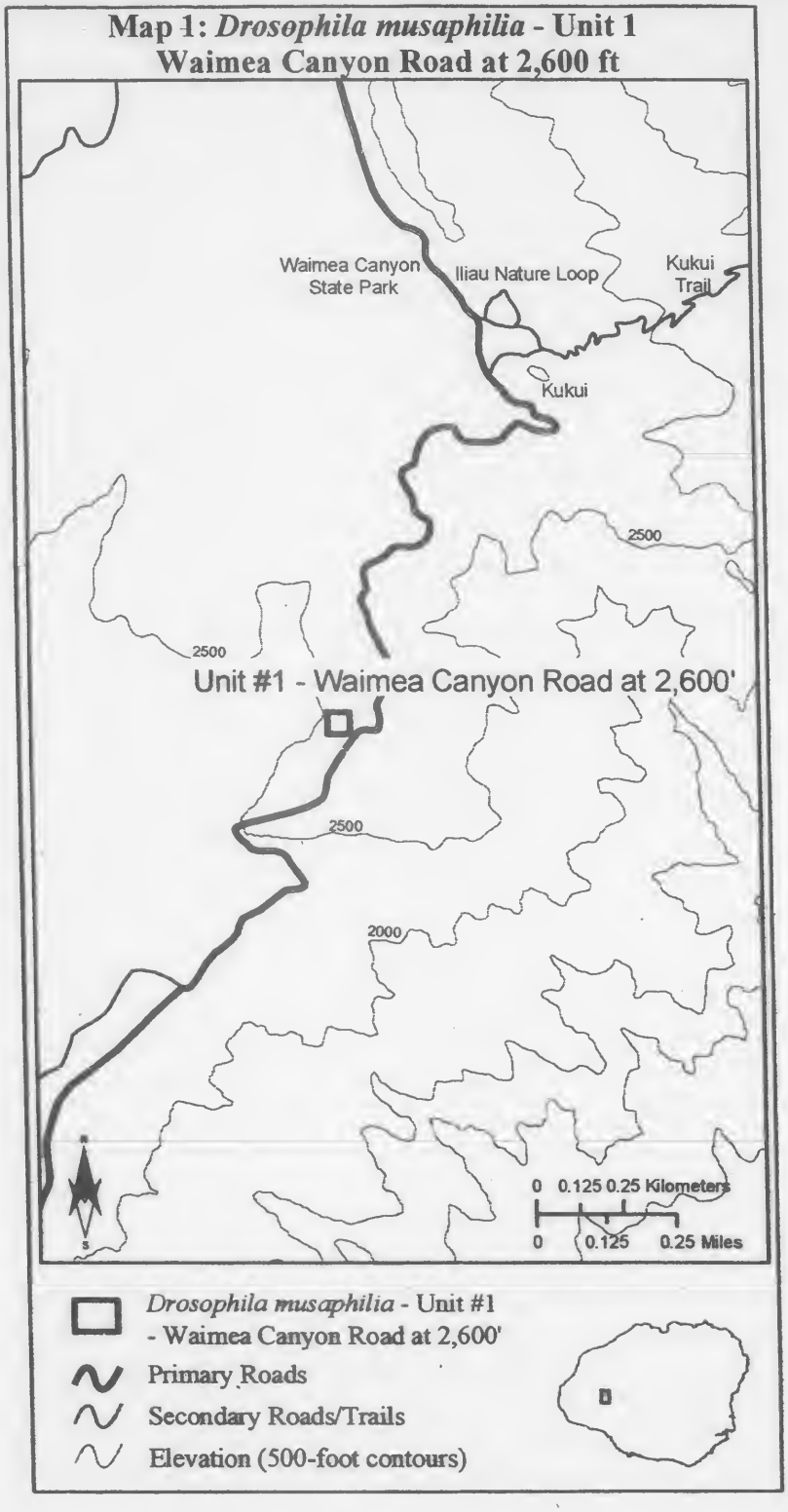
(4) The critical habitat unit is described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** For an index map of the critical habitat units for *Drosophila musaphilia* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia*.

(6) *Drosophila musaphilia*—Unit 1—Waimea Canyon Road at 2600 ft, Kauai County, Island of Kauai, Hawaii.

(i) *Drosophila musaphilia*—Unit 1—Waimea Canyon Road at 2600 ft: 431443, 2437498; 431443, 2437561; 431506, 2437561; 431506, 2437498.

(ii) **Note:** Map 1 of *Drosophila musaphilia*—Unit 1—Waimea Canyon Road at 2,600 ft follows:


Map 1: *Drosophila musaphilia* - Unit 1
Waimea Canyon Road at 2,600 ft
Waimea Canyon State Park
Iliau Nature Loop
Kukui Trail
Kukui
2500
2500
Unit #1 - Waimea Canyon Road at 2,600'
2500
2000
0 0.125 0.25 Kilometers
0 0.125 0.25 Miles
*Drosophila musaphilia* - Unit #1 - Waimea Canyon Road at 2,600'
Primary Roads
Secondary Roads/Trails
Elevation (500-foot contours)

*Drosophila obatai*

(1) Critical habitat is depicted for County of Honolulu, Oahu, Hawaii, on the map below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Dry to mesic, lowland, ohia and koa forest; and

(ii) The larval host plant *Pleomele forbesii*.

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

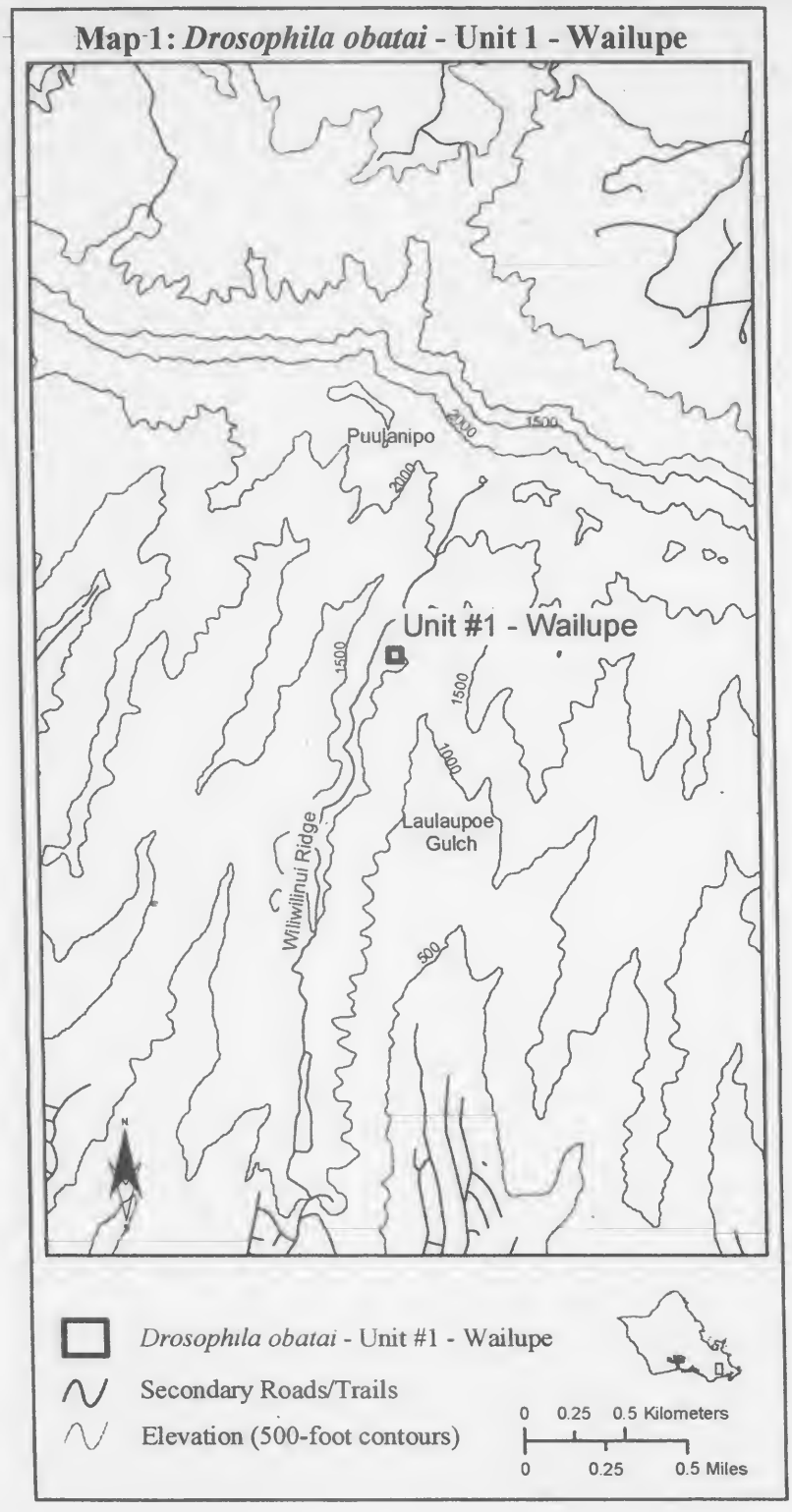
(4) The critical habitat unit is described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** For an index map of critical habitat units for *Drosophila obatai* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia*.

(6) *Drosophila obatai*—Unit 1—Wailupe, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila obatai*—Unit 1—Wailupe: 628839, 2358049; 628839, 2358112; 628903, 2358112; 628903, 2358049.

(ii) **Note:** Map 1 of *Drosophila obatai*—Unit 1—Wailupe follows:


Map 1: *Drosophila obatai* - Unit 1 - Wailupe
Puulanipo
2500
1500
2000
Unit #1 - Wailupe
1500
1500
1000
Laulaupoe Gulch
Wiliwiinui Ridge
500
N
*Drosophila obatai* - Unit #1 - Wailupe
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.25 0.5 Kilometers
0 0.25 0.5 Miles

*Drosophila ochrobasis*

(1) Critical habitat units are depicted for County of Hawaii, island of Hawaii, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Mesic to wet, montane, ohia, koa, and *Cheirodendron* sp. forest; and

(ii) The larval host plants *Clermontia calophylla, C. clermontioides, C. drepanomorpha, C. hawaiiensis, C. kohalae, C. lindseyana, C. montis-loa, C. parviflora, C. peleana, C. pyrularia, C. waimeae, Myrsine lessertiana,* and *M. sandwicensis.*

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

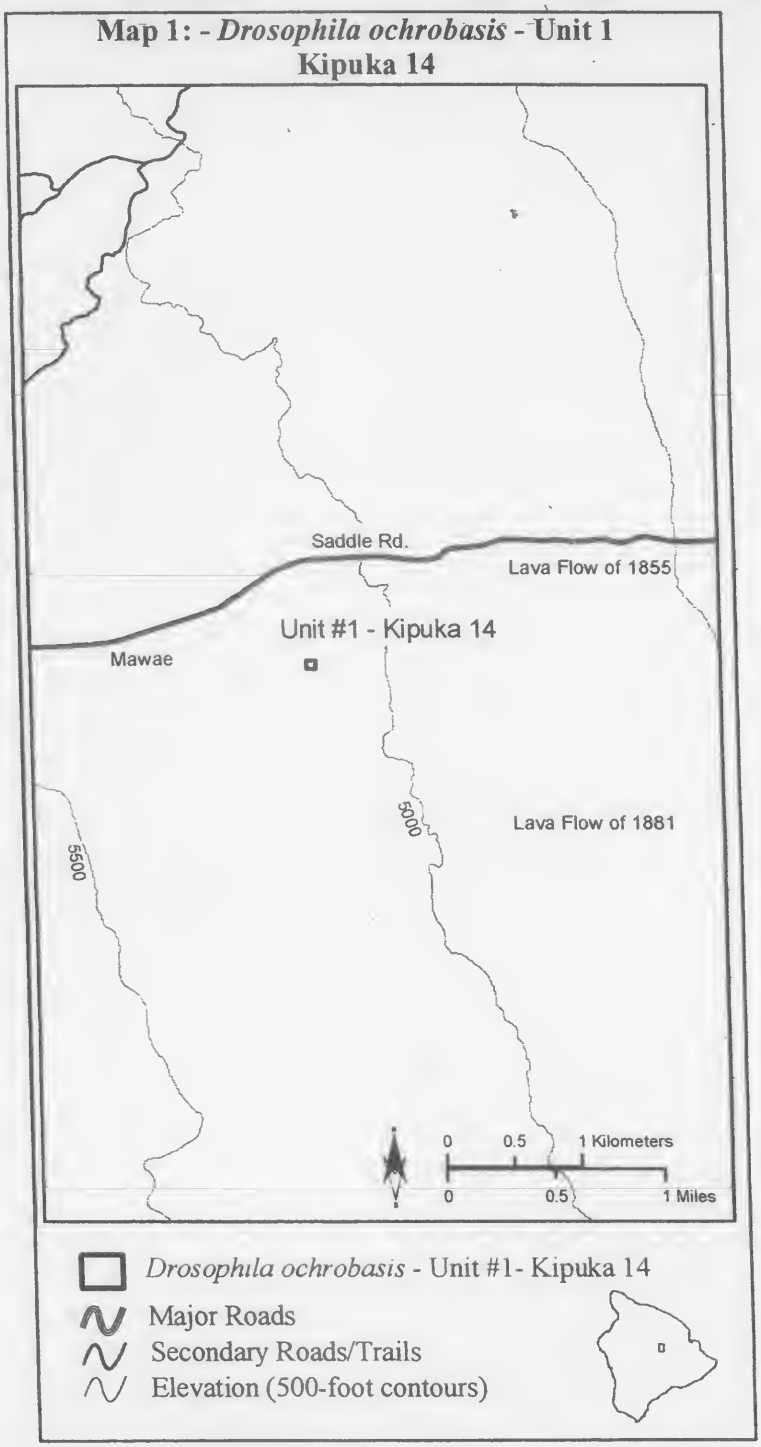
(4) Critical habitat units are described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** For an index map of critical habitat units for *Drosophila ochrobasis* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia.*

(6) *Drosophila ochrobasis*—Unit 1—Kipuka 14, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila ochrobasis*—Unit 1—Kipuka 14: 884116, 2178983; 884116, 2179047; 884180, 2179047; 884180, 2178983.

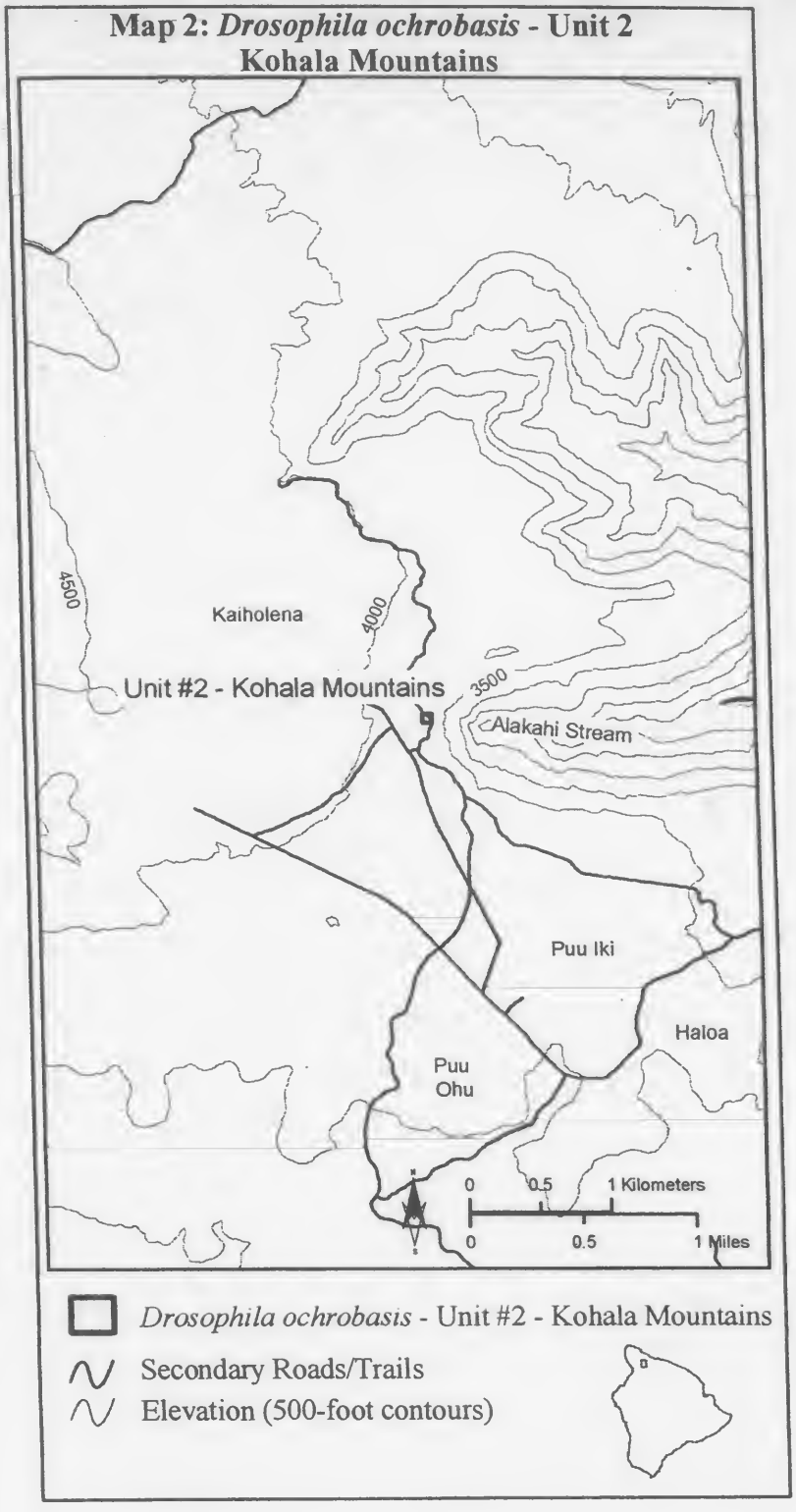
(ii) **Note:** Map 1 of *Drosophila ochrobasis*—Unit 1—Kipuka 14 follows:




(7) *Drosophila ochrobasis*—Unit 2—Kohala Mountains, Hawaii County, Island of Hawaii, Hawaii.

(i) *Drosophila ochrobasis*—Unit 2—Kohala Mountains: 848294, 2222646; 848294, 2222710; 848358, 2222710; 848358, 2222646.

(ii) **Note:** Map 2 of *Drosophila ochrobasis*—Unit 2—Kohala Mountains follows:


Map 2: *Drosophila ochrobasis* - Unit 2
Kohala Mountains
4500
Kaiholena
4000
Unit #2 - Kohala Mountains
3500
Alakahi Stream
Puu Iki
Haloa
Puu
Ohu
0
0.5
1 Kilometers
0
0.5
1 Miles
*Drosophila ochrobasis* - Unit #2 - Kohala Mountains
Secondary Roads/Trails
Elevation (500-foot contours)

*Drosophila substenoptera*

(1) Critical habitat is depicted for County of Honolulu, Oahu, Hawaii, on the map below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Mesic to wet, lowland to montane, ohia and koa forest; and

(ii) The larval host plants *Cheirodendron platyphyllum* ssp. platyphyllum, *C. trigynum* ssp. trigynum, *Tetraplasandra kavaiensis*, and *T. oahuensis*.

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat is described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

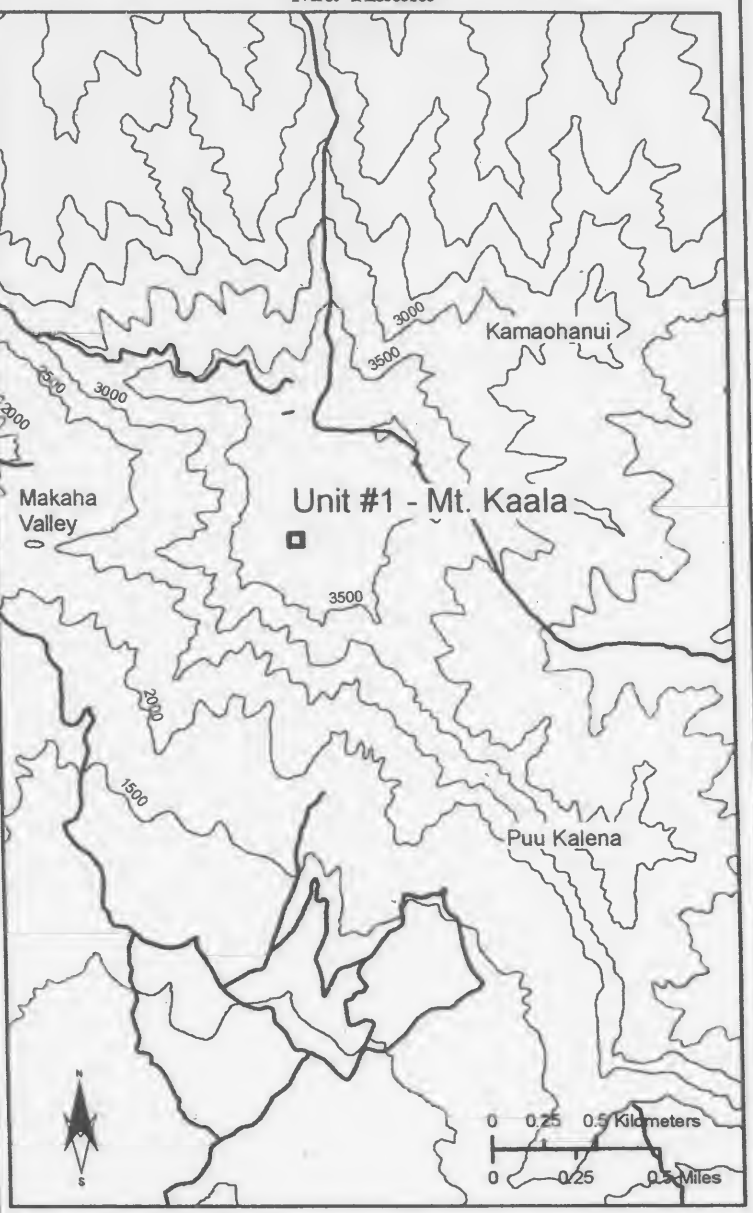
(5) **Note:** For an index map of critical habitat units for *Drosophila substenoptera* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia*.

(6) *Drosophila substenoptera*—Unit 1—Mt. Kaala, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila substenoptera*—Unit 1—Mt. Kaala: 588297, 2378026; 588297, 2378090; 588361, 2378090; 588361, 2378026.

(ii) **Note:** Map 1 of *Drosophila substenoptera*—Unit 1—Mt. Kaala follows:

**Map 1: *Drosophila substenoptera* - Unit 1**
**Mt. Kaala**




*Drosophila substenoptera* - Unit #1 - Mt. Kaala

Secondary Roads/Trails

Elevation (500-foot contours)

*Drosophila tarphytrichia*

(1) Critical habitat units are depicted for County of Honolulu, Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat are the habitat components that provide:

(i) Dry to mesic, lowland, ohia and koa forest; and

(ii) The larval host plant *Charpentiera obovata*.

(3) Critical habitat does not include man-made structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

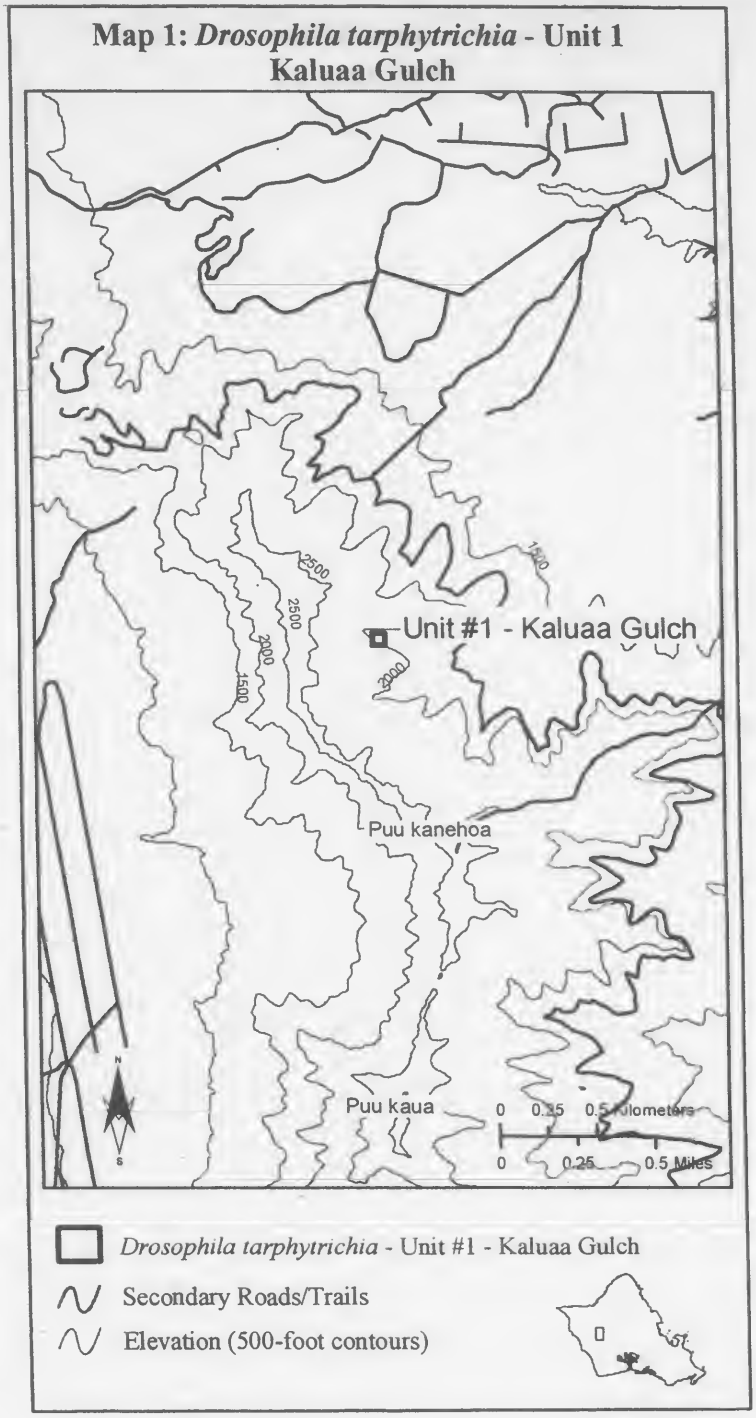
(4) Critical habitat units are described below. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) **Note:** For an index map of critical habitat units for *Drosophila tarphytrichia* and 10 other Hawaiian picture-wing fly species, see paragraph (5) of the critical habitat entry for *D. aglaia*.

(6) *Drosophila tarphytrichia*—Unit 1—Kaluaa Gulch, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila tarphytrichia*—Unit 1—Kaluaa Gulch: 593285, 2373778; 593285, 2373842; 593348, 2373842; 593348, 2373778.

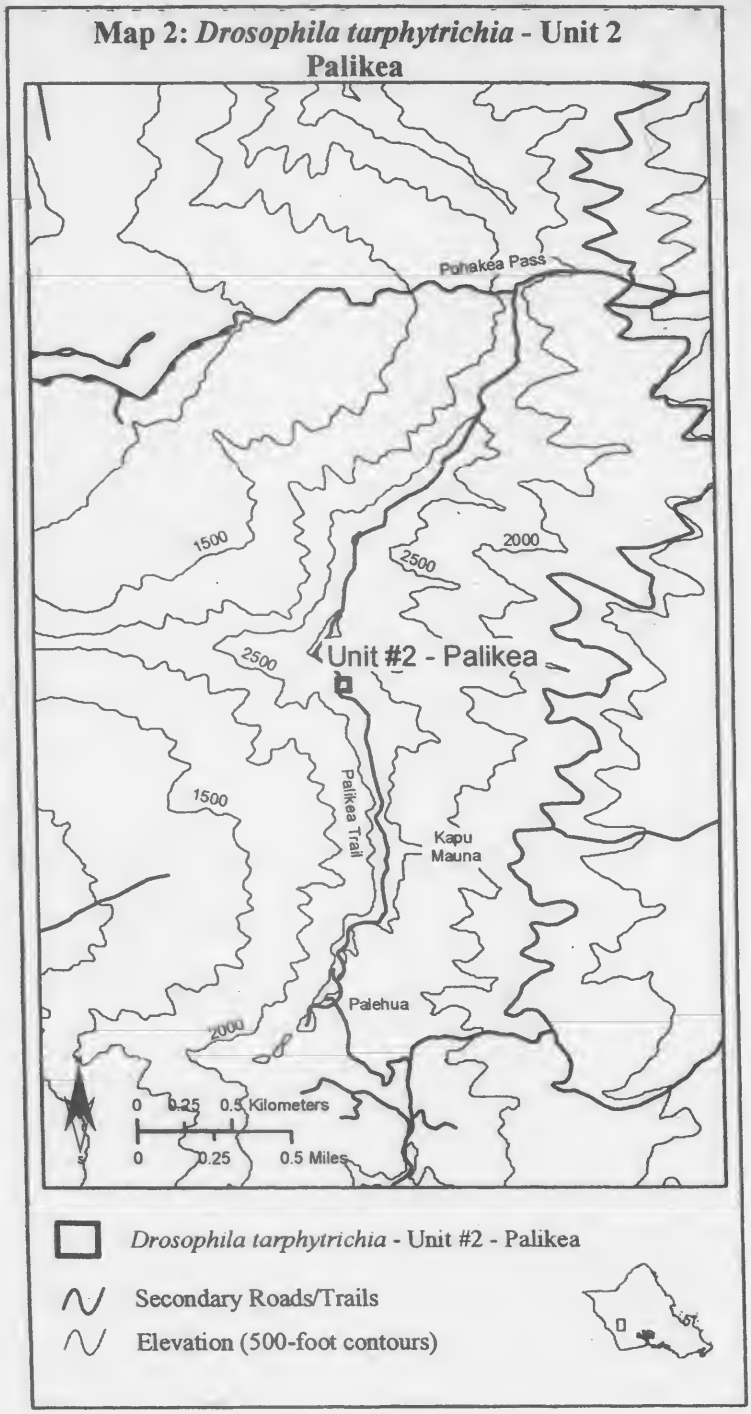
(ii) **Note:** Map 1 of *Drosophila tarphytrichia*—Unit 1—Kaluaa Gulch follows:




(7) *Drosophila tarphytrichia*—Unit 2—Palikea, City and County of Honolulu, Island of Oahu, Hawaii.

(i) *Drosophila tarphytrichia*—Unit 2—Palikea: 593273, 2367958; 593273, 2368022; 593337, 2368022; 593337, 2367958.

(ii) **Note:** Map 2 of *Drosophila tarphytrichia*—Unit 2—Palikea follows:




* * * * *

Dated: July 24, 2006.

**Matt Hogan,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06–6840 Filed 8–14–06; 8:45 am]

**BILLING CODE 4310–55–C**


Federal Register

Tuesday,
August 15, 2006

Part IV

# Securities and Exchange Commission

**17 CFR Parts 210, 228, 229, 240 and 249**
**Internal Control Over Financial Reporting in Exchange Act Reports; Final Rule and Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 210, 228, 229, 240 and 249

**[Release Nos. 33–8730; 34–54294; File No. S7–06–03]**

**RIN 3235–AI79**

## Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Foreign Private Issuers That Are Accelerated Filers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; extension of compliance dates.

**SUMMARY:** We are extending the compliance date that was published on March 8, 2005, in Release No. 33–8545 [70 FR 11528], for foreign private issuers that are accelerated filers, but not large accelerated filers, for amendments to Forms 20–F and 40–F that require a foreign private issuer to include in its annual reports an attestation report by the issuer's registered public accounting firm on management's assessment on internal control over financial reporting.

**DATES:** *Effective Date:* September 14, 2006; except Temporary § 210.2–02T, Temporary Item 15T of Form 20–F, and Temporary Instruction 2T of General Instruction B(6) of Form 40–F are effective from September 14, 2006 to December 31, 2007.

*Compliance Dates:* The compliance dates are extended as follows: A foreign private issuer that is an accelerated filer, but not a large accelerated filer, under the definition in Rule 12b–2 of the Securities Exchange Act of 1934, and that files its annual report on Form 20–F or Form 40–F, must begin to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting in the annual report filed for its first fiscal year ending on or after July 15, 2007. Furthermore, until this type of foreign private issuer becomes subject to the auditor attestation report requirement, the registered public accounting firm retained by the issuer need not comply with the obligation in Rule 2–02(f) of Regulation S–X. Rule 2–02(f) requires every registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by an Exchange Act reporting company (other than a registered investment company) containing an assessment by management of the effectiveness of the company's internal control over financial reporting to attest to, and report on, such assessment.

**FOR FURTHER INFORMATION CONTACT:** Michael Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3450, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

**SUPPLEMENTARY INFORMATION:** On June 5, 2003,[1] the Commission adopted several amendments to its rules and forms implementing section 404 of the Sarbanes-Oxley Act of 2002.[2] Among other things, these amendments require companies, other than registered investment companies, to include in their annual reports a report of management on the effectiveness of the company's internal control over financial reporting, and an accompanying auditor's attestation report, and to evaluate, as of the end of each fiscal period, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

In February 2004, we approved an extension of the original compliance dates for the amendments related to internal control over financial reporting.[3] Specifically, we extended the compliance dates for companies that are accelerated filers, as defined in Exchange Act Rule 12b–2,[4] to fiscal years ending on or after November 15, 2004, and for non-accelerated filers [5] and all foreign private issuers filing annual reports on Form 20–F or 40–F,[6] to fiscal years ending on or after July 15, 2005. In March 2005, we approved a further one-year extension of the compliance dates for non-accelerated filers and for all foreign private issuers filing annual reports on Form 20–F or 40–F [7] and acknowledged the significant efforts that were being expended by many foreign private issuers to comply with International Financial Reporting Standards.

Most recently, in September 2005, we again extended for another one year period the compliance dates for the internal control over financial reporting requirements applicable to non-accelerated filers, including foreign private issuers that are non-accelerated filers.[8] Based on the September 2005 extension, a foreign private issuer that is a non-accelerated filer currently is scheduled to become subject to compliance with the internal control over financial reporting requirements beginning with the annual report filed for its first fiscal year ending on or after July 15, 2007.

In a companion release also being issued today,[9] we propose both to further extend the management assessment compliance date for non-accelerated filers with a fiscal year ending on or after July 15, 2007, but before December 15, 2007, and to also extend the compliance date relating to the auditor's attestation report on internal control over financial reporting for all non-accelerated filers until fiscal years ending on or after December 15, 2008.

Pursuant to the compliance dates established in the March 2005 release, a foreign private issuer that is either an accelerated filer [10] or a large accelerated filer,[11] and that files its annual reports on Form 20–F or 40–F, currently is

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[1] *See* Release No. 33–8238 (June 5, 2003) [68 FR 36636].

[2] 15 U.S.C. 7262.

[3] *See* Release No. 33–8392 (February 24, 2004) [69 FR 9722].

[4] 17 CFR 240.12b–2.

[5] The term "non-accelerated filer" is not defined in our rules, but we use it throughout this release to refer to an Exchange Act reporting company that does not meet the Exchange Act Rule 12b–2 definition of either an "accelerated filer" or a "large accelerated filer."

[6] 17 CFR 249.20f and 249.40f.

[7] Release No. 33–8545 (March 2, 2005) [70 FR 11528].

[8] Release No. 33–8618 (September 22, 2005) [70 FR 56825]. Prior to December 1, 2005, "accelerated filer" status did not directly affect a foreign private issuer filing its annual reports on Form 20–F or 40–F because we had not accelerated the filing deadlines for those forms, even though the Rule 12b–2 definition of "accelerated filer" did not expressly exclude foreign private issuers by its terms. After December 1, 2005, however, as a result of a change made as part of the Commission's Securities Offering Reform final rules, a foreign private issuer meeting the accelerated filer definition, and filing its annual report on Form 20–F, became subject to a new requirement in Item 4A of Form 20–F to disclose unresolved staff comments.

[9] Release No. 34–54295 (Aug. 9, 2006). In the companion proposing release, we request comment on the potential implications of separating management's report on internal control over financial reporting from the auditor's attestation report on internal control over financial reporting on the efficiency and effectiveness of implementation of the Section 404 requirements. We also request comment on a variety of other questions, including whether there is any relief or guidance that we should consider providing specifically with respect to foreign private issuers apart from the actions described in the release affecting foreign private issuers that are non-accelerated filers.

[10] Exchange Act Rule 12b–2(1) [17 CFR 240.12b–2(1)] defines an accelerated filer as an issuer that, among other criteria, has an aggregate market value of voting and non-voting common equity held by non-affiliates of the issuer of $75 million or more as of the last day of the issuer's most recently completed second fiscal quarter.

[11] Exchange Act Rule 12b–2(2) [17 CFR 240.12b–2(2)] defines a large accelerated filer as an issuer that, among other criteria, has an aggregate market value of voting and non-voting common equity held by non-affiliates of the issuer of $700 million or more as of the last day of the issuer's most recently completed second fiscal quarter.

scheduled to comply with the internal control over financial reporting requirements beginning with the annual report filed for its first fiscal year ending on or after July 15, 2006.

In this release, we are extending for one year the date by which a foreign private issuer that is an accelerated filer (but not a large accelerated filer),[12] and that files its annual reports on Form 20–F or 40–F, must begin to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting.[13] Pursuant to this extension, this type of issuer must begin to comply with the requirement to provide the auditor's attestation report in the Form 20–F or 40–F annual report filed for its first fiscal year ending on or after July 15, 2007. The extension will become effective 30 days after this release is published in the **Federal Register**.

The extension that we are providing in this release does not alter any other requirements regarding internal control that already are in effect, including without limitation, section 13(b)(2) of the Exchange Act[14] and the related rules, nor does it affect any other previously established compliance date. Therefore, a foreign private issuer that is an accelerated filer must begin to comply with the requirement to include management's report on internal control over financial reporting in the Form 20–F or 40–F annual report filed for its first fiscal year ending on or after July 15, 2006.

In the companion release referenced above that we also are issuing today, we are proposing that all non-accelerated filers, like the foreign private issuers that are the subject of this release, would include only management's report on internal control over financial reporting during their first year of compliance with the section 404 requirements. In that release, we propose that during the first compliance year, the non-accelerated filer would "furnish" rather than file management's report. The release states that if we adopt that proposal, we intend to afford similar relief to the accelerated foreign private issuer filers that likewise will file only management's report during their first year of compliance with the section 404 requirements.[15] We invite foreign private issuers and all interested parties to comment on the questions raised in the companion release as to whether this type of proposed relief is appropriate.

The chief executive officer and chief financial officer of a foreign private issuer that is an accelerated filer must begin to provide the complete certification required by Exchange Act Rule 13a–14(a) or 15d–14(a),[16] including the references to the officers' responsibility for establishing and maintaining internal control over financial reporting in paragraph 4 of the certification, in the Form 20–F or 40–F annual report filed for the foreign private issuer's first fiscal year ending on or after July 15, 2006.

This extension also does not affect the date by which a foreign private issuer that is a large accelerated filer must comply with all of the internal control over financial reporting requirements.[17] These filers must include both a report by management and an attestation report by the issuer's registered public accounting firm on internal control over financial reporting, as well as complete certifications, in their Form 20–F or 40–F reports filed for a fiscal year ending on or after July 15, 2006. Our data indicates that out of the approximately 1,240 foreign private issuers that are subject to the Exchange Act reporting requirements, about 39% of these are large accelerated filers, 23% are accelerated filers, and the remaining 38% are non-accelerated filers.[18]

The Commission, for good cause, finds that notice and solicitation of comment regarding extension of the audit attestation report compliance date for foreign private issuers that are accelerated filers (but not large accelerated filers) is impractical, unnecessary and contrary to the public interest for a variety of reasons.[19] One reason is that a number of events related to internal control assessments by companies and their auditors have occurred since we granted the last extension of compliance dates.

First, the extension will provide these foreign private issuers and their registered accounting firms an additional year to consider, and adapt to, any actions that the Commission and the Public Company Accounting Oversight Board decide to take as part of their plans announced on May 17, 2006 to improve the implementation of the section 404 requirements.[20]

These actions include:

- Revisions to Auditing Standard No. 2;
- Issuance of a Concept Release soliciting comment on a variety of issues that might be included in future Commission guidance for management to assist in its performance of a top-down, risk-based assessment of internal control over financial reporting;
- Reinforcement of auditor efficiency through PCAOB inspections;
- Development, or facilitation of development, of implementation guidance for auditors of smaller public companies; and
- Continuation of PCAOB forums on auditing in the small business environment.

Although the first three initiatives will affect all Exchange Act reporting companies subject to the section 404 internal control requirements, including accelerated and large accelerated domestic filers and their registered public accounting firms that already have been complying with these requirements for two years, as well as large accelerated foreign private issuers and their auditors, we expect that smaller foreign private issuers likely will face greater challenges than these larger filers as they prepare to comply with the internal control reporting requirements.

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[12] As defined in Rule 12b–2, the term "accelerated filer" does not include a filer that is a "large accelerated filer." The two categories of filers therefore are mutually exclusive.

[13] *See* Item 15(c) of 20–F and General Instruction B(6)(d) of Form 40–F.

[14] 15 U.S.C. 78m(b)(2).

[15] *See* Section II of Release No. 34–54295 (August 9, 2006).

[16] 17 CFR 240.13a–14(a) or 15d–14(a).

[17] We are not extending the compliance dates for large accelerated foreign private issuers given their more extensive reporting resources and the greater market interest they generate than smaller issuers. Industry sources indicate that these issuers are further along in their compliance efforts than the accelerated foreign private issuers and generally appear to be better prepared to comply with the current filing deadline. Furthermore, the distinction between large accelerated and accelerated foreign private issuers that we are making for purposes of the extension is consistent with a similar size-based distinction that we made in 2004 when we provided certain accelerated filers up to an additional 45 days to file their Section 404 reports. Although the order pre-dated our creation of the "large accelerated filer" category of issuers, companies with public equity float thresholds exceeding $700 million, representing approximately 96% of the U.S. equity market capitalization, were not eligible for the 45-day extension. See Release No. 34–50754 (November 30, 2004).

[18] The estimated percentages of foreign private issuers within each accelerated filer category are based on market capitalization data from Datastream as of December 31, 2005.

[19] *See* section 553(b)(3)(B) of the Administrative Procedure Act [5 U.S.C. 553(b)(3)(B)] (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest."). Also, because the Regulatory Flexibility Act [5 U.S.C. 601–612] only requires agencies to prepare analyses when the Administrative Procedures Act requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release.

[20] *See* SEC Press Release 2006–75 (May 17, 2006), "SEC Announces Next Steps for Sarbanes-Oxley Implementation" at *http://www.sec.gov/news/press/2006/2006–75.htm* and PCAOB News Release entitled "Board Announces Four-Point Plan to Improve Implementation of Internal Control Reporting Requirements" at *http://www.pcaobus.org/News_and_Events/News/2006/05–17aspx.*

Second, on April 23, 2006, the SEC's Advisory Committee on Smaller Public Companies submitted its final report to the Commission.[21] The final report includes recommendations designed to address the potential impact of the internal control reporting requirements on smaller public companies. Specifically, the Advisory Committee recommends that certain smaller public companies be exempted from the management report requirement and from external auditor involvement in the section 404 process under certain circumstances unless and until a framework for assessing internal control over financial reporting is developed that recognizes the characteristics and needs of these companies.

Third, on May 10, 2006, the Commission and PCAOB sponsored a roundtable to elicit feedback from companies, their auditors, board members, investors, and others regarding their experiences during the accelerated filers' second year of compliance with the internal control over financial reporting requirements. Several of the comments provided at, and in connection with, the roundtable expressed support for revisions to the PCAOB's Auditing Standard No. 2.[22]

Apart from these developments, solicitation of public comment regarding extension of the compliance date is impractical given that the current compliance date requires management of foreign private issuers that are accelerated filers to assess internal control over financial reporting at the end of the first fiscal year ending on or after July 15, 2006. We anticipate that these issuers and their investors would be unlikely to derive any meaningful benefit from an extension that is granted several months from now as the issuers' registered public accounting firms likely would have completed substantial work on their internal control audits by then, and the issuers would have incurred fees for the work already completed by the auditor. We recognize that some of the foreign private issuers qualifying for this extension may already be at such an advanced stage of preparation for compliance with the internal control reporting requirements, including the audit report requirement, that they may choose to include both the management and audit report in the annual report they file for their first fiscal year ending on or after July 15, 2006.

Another reason for the extension is that it will enable management of these foreign private issuers to begin the process of reviewing and evaluating the effectiveness of internal control over financial reporting a year before the initial audit of such effectiveness but will still permit investors to begin to see and evaluate the results of these initial efforts. Management will not have to devote time and resources to assisting the auditor with its audit of internal control over financial reporting and can use the first year of compliance as an opportunity to more gradually prepare for compliance with the audit portion of the requirements in the second year. We believe that this will reduce the first year cost of compliance. The extension also should enable foreign private issuers that are accelerated filers to benefit from the learning and efficiencies gained by the auditing firms as a result of their previous experience auditing the large accelerated foreign private issuers' compliance with the section 404 requirements.

While acknowledging the potential risks that could stem from a lack of required auditor involvement in the first year of the internal control assessment process, a more gradual transition to full compliance ultimately should make implementation of the internal control over financial reporting requirements more effective. Consequently, this will benefit investors and improve confidence in the reliability of the disclosure made by these companies about their internal control over financial reporting.

As a result of the extension, these foreign private issuers will not have to incur the cost of the internal control audit during the first compliance year. Furthermore, we have learned from public comments, including our roundtables on implementation of the internal control reporting provisions,[23] that while many companies incur increased internal costs in the first year of compliance due to "deferred maintenance" items (*e.g.*, documentation, remediation, etc.), these costs may decrease in the second year. Therefore, postponing the audit costs until the second year would help smooth the significant cost spike that has been experienced by many accelerated filers in their first year of compliance. A competitive or cost impact could result from the differing treatment of accelerated foreign private issuers that are the subject of the actions that we are taking today and large accelerated foreign private issuers that are not affected by these actions.

Finally, four commenters on the Commission's pending proposals regarding termination of a foreign private issuer's registration of a class of securities under Exchange Act section 12(g) and duty to file periodic reports[24] requested that the Commission extend the compliance dates for the section 404 requirements. The extension of compliance dates announced in this release will provide foreign private issuers (other than large accelerated filers) with the opportunity to determine whether they meet any revised deregistration criteria that the Commission determines to adopt before having to implement steps toward providing an auditor attestation report on internal control over financial reporting.[25] We have been considering all of the public comments on the deregistration proposals and expect to take further action on them by early fall of this year.

## Statutory Authority and Text of the Rule Amendments

We are adopting the amendments described in this release pursuant to sections 12, 13, 15 and 23 of the Exchange Act.

## List of Subjects

*17 CFR Part 210*

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 249*

Reporting and recordkeeping requirements, Securities.

## Text of Amendments

■ For the reasons set forth above, we are amending title 17, chapter II, of the Code of Federal Regulations as follows:

[21] See *Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission* (April 23, 2006), available at *http://www.sec.gov/info/smallbus/acspc.shtml.*

[22] See, for example, letters from the Biotech Industry Association, American Electronics Association, Emerson Electric Institute, U.S. Chamber of Commerce and Joseph A. Grundfest. These letters are available in File No. 4–511, at *http://www.sec.gov/news/press/4–511.shtml.*

[23] Materials related to the Commission's 2005 Roundtable Discussion on Implementation of Internal Control Reporting Provisions and 2006 Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions, including the archived roundtable broadcasts, are available at *http://www.sec.gov/spotlight/soxcomp.htm.*

[24] Rel. No. 34–53020 (December 23, 2005) [70 FR 77688].

[25] See Letters from the American Bar Association, Section of Business Law, Committee on Federal Regulation of Securities at pp. 6–7, Cleary Gottlieb Steen & Hamilton LLP at p. 19, the European Association for Listed Companies and 16 other European industry association signatories at p. 6 and the European Commission at p. 10, at *http://www.sec.gov/rules/proposal/s71205.shtml.*

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 79e(b), 79k(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 2. Section 210.2–02T is added after § 210.2–02 to read as follows:

**§ 210.2–02T Accountants' reports and attestation reports on management's assessment of internal control over financial reporting.**

(a) The requirements of section 210.2–02(f) shall not apply to a registered public accounting firm that issues or prepares an accountant's report that is included in an annual report on Form 20–F or 40–F (§ 249.220f or 249.240f of this chapter) filed by a foreign private issuer that is an accelerated filer, as that term is defined in § 240.12b–2 of this chapter, for a fiscal year ending on or after July 15, 2006 but before July 15, 2007.

(b) This temporary section will expire on December 31, 2007.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Form 20–F (referenced in § 249.220f), Part II, is amended by adding Item 15T after Item 15 to read as follows.

**Note:** The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM 20–F**

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**PART II**

* * * * *

*Item 15T. Controls and Procedures*

*Note to Item 15T:* This is a special temporary section that applies instead of Item 15 only to an issuer that is an "accelerated filer," but not a "large accelerated filer," as those terms are defined in § 240.12b–2 of this chapter, and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after July 15, 2006 but before July 15, 2007.

(a) *Disclosure Controls and Procedures.* Where the Form is being used as an annual report filed under section 13(a) or 15(d) of the Exchange Act, disclose the conclusions of the issuer's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the issuer's disclosure controls and procedures (as defined in 17 CFR 240.13a–15(e) or 240.15d–15(e)) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of 17 CFR 240.13a–15 or 240.15d–15.

(b) *Management's annual report on internal control over financial reporting.* Where the Form is being used as an annual report filed under section 13(a) or 15(d) of the Exchange Act, provide a report of management on the issuer's internal control over financial reporting (as defined in § 240.13a–15(f) or 240.15d–15(f) of this chapter). The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the issuer's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or 240.15d–15 of this chapter; and

(3) Management's assessment of the effectiveness of the issuer's internal control over financial reporting as of the end of the issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the issuer's internal control over financial reporting.

(c) *Changes in internal control over financial reporting.* Disclose any change in the issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or 240.15d–15 of this chapter that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

Instruction to Item 15T

The registrant must maintain evidential matter, including documentation to provide reasonable support for management's assessment of the effectiveness of the issuer's internal control over financial reporting.

(d) This temporary Item 15T, and accompanying note and instructions, will expire on December 31, 2007.

* * * * *

■ 5. Form 40–F (referenced in § 249.240f) is amended by revising "Instruction to paragraphs (b), (c), (d) and (e) of General Instruction B.(6)" as follows:

■ a. adding an "s" to the word "Instruction" in the descriptive heading of the Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B(6).

■ b. adding Instruction 2T.

The addition reads as follows:

**Note:** The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM 40–F**

* * * * *

**GENERAL INSTRUCTIONS**

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*B. Information To Be Filed on This Form*

* * * * *

(6) * * *

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2T. Paragraph (d) of this General Instruction B.6 does not apply to an issuer that is an "accelerated filer," but not a "large accelerated filer," as those terms are defined in Rule 12b–2 of this chapter, with respect to an annual report that the issuer is required to file for a fiscal year ending on or after July 15, 2006 but before July 15, 2007.

This temporary Instruction 2T will expire on December 31, 2007.

* * * * *

Dated: August 9, 2006.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–13289 Filed 8–14–06; 8:45 am]

BILLING CODE 8010–01–P

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 210, 228, 229, 240 and 249**

**[Release Nos. 33–8731; 34–54295; File No. S7–06–03]**

**RIN 3235–AJ64**

## Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed extension of compliance dates.

**SUMMARY:** We are proposing to further extend for smaller public companies the dates that were published in the **Federal Register** on September 29, 2005, in Release No. 33–8618 [70 FR 56825] for their compliance with the internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002. Pursuant to the proposal, a non-accelerated filer would not be required to provide management's report on internal control over financial reporting until it files an annual report for a fiscal year ending on or after December 15, 2007. If we have not issued additional guidance for management on how to complete its assessment of internal control over financial reporting in time to be of assistance in connection with annual reports filed for fiscal years ending on or after December 15, 2007, this deadline could be further postponed. Under the proposal, the auditor's attestation report on internal control over financial reporting would not be required until a non-accelerated filer files an annual report for a fiscal year ending on or after December 15, 2008. If revisions to Auditing Standard No. 2 have not been finalized in time to be of assistance in connection with annual reports filed for fiscal years ending on or after December 15, 2008, this deadline could also be further postponed.

We also are proposing to provide a transition period for newly public companies before they become subject to compliance with the internal control over financial reporting requirements. Under the proposal, a company would not become subject to these requirements until it previously has been required to file one annual report with the Commission.

**DATES:** Comments should be received on or before September 14, 2006.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–06–03 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–03. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

**SUPPLEMENTARY INFORMATION:** We are proposing to amend certain internal control over financial reporting requirements in Rules 13a–14,[1] 15d–14,[2] 13a–15[3] and 15d–15[4] under the Securities Exchange Act of 1934,[5] Items 308(a) and (b) of Regulations S–K[6] and S–B,[7] Item 15 of Form 20–F,[8] General Instruction B(6) of Form 40–F,[9] and Rule 2–02(f) of Regulation S–X.[10] We also propose to add the following temporary provisions: Item 308T of Regulations S–K and S–B, Item 8A(T) of Form 10–KSB, Item 9A(T) of Form 10–K, and Item 15T of Form 20–F.

### I. Background

On June 5, 2003,[11] the Commission adopted several amendments to its rules and forms implementing Section 404 of the Sarbanes-Oxley Act of 2002.[12] Among other things, these amendments require companies, other than registered investment companies, to include in their annual reports a report of management, and an accompanying auditor's attestation report, on the effectiveness of the company's internal control over financial reporting, and to evaluate, as of the end of each fiscal quarter, or year in the case of a foreign private issuer filing its annual report on Form 20–F or Form 40–F, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

Under the compliance dates that we originally established, companies meeting the definition of an "accelerated filer" in Exchange Act Rule 12b–2[13] would have become subject to the internal control reporting requirements with respect to the first annual report that they filed for a fiscal year ending on or after June 15, 2004. Non-accelerated filers[14] would not have become subject to the requirements until they filed an annual report for a fiscal year ending on or after April 15, 2005. The Commission provided a lengthy compliance period for these amendments in light of both the substantial time and resources needed by companies to properly implement the rules.[15] In addition, we believed that a corresponding benefit to investors would result from an extended transition period that allowed companies to carefully implement the new requirements, and noted that an extended period would provide additional time for the Public Company Accounting Oversight Board (the "PCAOB") to consider relevant factors in determining and implementing new

[1] 17 CFR 240.13a–14.
[2] 17 CFR 240.15d–14.
[3] 17 CFR 240.13a–15.
[4] 17 CFR 240.15d–15.
[5] 15 U.S.C. 78a *et seq.*
[6] 17 CFR 229.10 *et seq.*
[7] 17 CFR 228.10 *et seq.*
[8] 17 CFR 249.20f.
[9] 17 CFR 249.40f.
[10] 17 CFR 210.2–02(f).

[11] *See* Release No. 33–8238 (June 5, 2003) [68 FR 36636].
[12] 15 U.S.C. 7262.
[13] 17 CFR 240.12b–2.
[14] Although the term "non-accelerated filer" is not defined in our rules, we use it throughout this release to refer to an Exchange Act reporting company that does not meet the Rule 12b–2 definition of either an "accelerated filer" or a "large accelerated filer."
[15] *See* Release No. 33–8238.

attestation standards for registered public accounting firms.[16]

In February 2004, we extended the compliance dates for accelerated filers to fiscal years ending on or after November 15, 2004, and for non-accelerated filers and for foreign private issuers to fiscal years ending on or after July 15, 2005.[17] The primary purpose of this extension was to provide additional time for companies' auditors to implement Auditing Standard No. 2, which the PCAOB had issued in final form in June 2004.[18]

In March 2005, we approved a further one-year extension of the compliance dates for non-accelerated filers and for all foreign private issuers filing annual reports on Form 20–F or 40–F in view of the efforts by the Committee of Sponsoring Organizations ("COSO") to provide more guidance on how the COSO framework can be applied to smaller public companies. [19] We also acknowledged the significant efforts being expended by many foreign private issuers to comply with International Financial Reporting Standards.

Most recently, in September 2005, we again extended the compliance dates for the internal control over financial reporting requirements applicable to companies that are non-accelerated filers. Based on the September 2005 extension, domestic and foreign non-accelerated filers currently are scheduled to comply with the internal control over financial reporting requirements beginning with annual reports filed for their first fiscal year ending on or after July 15, 2007. This extension was based primarily on our desire to have the additional guidance in place that COSO had begun to develop to assist smaller companies in applying the COSO framework. In addition, the extension was consistent with a recommendation made by the SEC Advisory Committee on Smaller Public Companies.

Since we granted that extension last year, a number of events related to internal control assessments have occurred. Most recently, on July 11, 2006, COSO and its Advisory Task Force issued *Guidance for Smaller Public Companies Reporting on Internal Control over Financial Reporting.*[20] The guidance is intended to assist the management of smaller companies in understanding and applying the COSO framework. It outlines 20 fundamental principles associated with the five key components of internal control described in the COSO framework, defines each principle, describes a variety of approaches that smaller companies can use to apply the principles, and includes examples of how smaller companies have applied the principles.

In addition, on April 23, 2006, the SEC Advisory Committee on Smaller Public Companies submitted its final report to the Commission.[21] The final report includes recommendations designed to address the potential impact of the internal control reporting requirements on smaller public companies. Specifically, the Advisory Committee recommends that certain smaller public companies be exempted from the management report requirement and from external auditor involvement in the Section 404 process under certain circumstances unless and until a framework for assessing internal control over financial reporting is developed that recognizes the characteristics and needs of these companies.

In April 2006, the U.S. Government Accountability Office issued a report entitled *Sarbanes-Oxley Act, Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies.*[22] This report recommended that the Commission consider whether the currently available guidance, particularly the guidance on management's assessment, is sufficient or whether additional action is needed to help companies comply with the internal control over financial reporting requirements. The report indicates that management's implementation and assessment efforts were largely driven by Auditing Standard No. 2 because guidance at a similar level of detail was not available for management's implementation and assessment process. Furthermore, the report recommended that the Commission coordinate its efforts with the PCAOB so that the Section 404-related audit standards and guidance are consistent with any additional guidance applicable to management's assessment of internal control.[23]

Finally, on May 10, 2006, the Commission and PCAOB sponsored a roundtable to elicit feedback from companies, their auditors, board members, investors, and others regarding their experiences during the accelerated filers' second year of compliance with the internal control over financial reporting requirements. Several of the comments provided at, and in connection with, the roundtable suggested that additional management guidance would be useful, particularly for smaller public companies, and also expressed support for revisions to the PCAOB's Auditing Standard No. 2.[24]

## II. Proposed Extension of Internal Control Reporting Compliance Dates for Non-Accelerated Filers

On May 17, 2006, the Commission and the PCAOB each announced a series of actions that they intend to take to improve the implementation of the Section 404 internal control over financial reporting requirements of the Sarbanes-Oxley Act of 2002.[25] These actions include:

- Issuance of a Concept Release soliciting comment on a variety of issues that might be included in future Commission guidance for management to assist in its performance of a top-down, risk-based assessment of internal control over financial reporting;
- Consideration of additional guidance from COSO;
- Revisions to Auditing Standard No. 2;
- Reinforcement of auditor efficiency through PCAOB inspections and Commission oversight of the PCAOB's audit firm inspection program;
- Development, or facilitation of development, of implementation guidance for auditors of smaller public companies;

[16] Under the Sarbanes-Oxley Act, the PCAOB was granted authority to set auditing and attestation standards for registered public accounting firms.

[17] *See* Release No. 33–8392 (February 24, 2004) [69 FR 9722].

[18] *See* Release No. 34–49884 File No. PCAOB 2004–03 (June 17, 2004) [69 FR 35083]. Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Connection with an Audit of Financial Statements,* provides the professional standards and related performance guidance for independent auditors to attest to, and report on, the effectiveness of companies' internal control over financial reporting.

[19] Release No. 33–8545 (March 2, 2005) [70 FR 11528].

[20] *See* SEC Press Release No. 2006–114 (July 11, 2006) at *http://www.sec.gov/news/press/2006/2006–114.htm.*

[21] *See Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission* (April 23, 2006), available at *http://www.sec.gov/info/smallbus/acspc.shtml.*

[22] United States Government Accountability Office Report to the Committee on Small Business and Entrepreneurship, U.S. Senate: *Sarbanes-Oxley Act: Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies (April 2006).*

[23] *See* GAO Report at 52–53 and 58.

[24] *See,* for example, letters from the Biotech Industry Association, American Electronics Association, Emerson Electric Institute, U.S. Chamber of Commerce and Joseph A. Grundfest. These letters are available in File No. 4–511, at *http://www.sec.gov/news/press/4–511.shtml.*

[25] *See* SEC Press Release 2006–75 (May 17, 2006), "SEC Announces Next Steps for Sarbanes-Oxley Implementation" and PCAOB Press Release (May 17, 2006), "Board Announces Four-Point Plan to Improve Implementation of Internal Control Reporting Requirements."

- Continuation of PCAOB forums on auditing in the small business environment; and
- Provision of an additional extension of the compliance dates of the internal control reporting requirements for non-accelerated filers.

On July 11, 2006, we issued a Concept Release to seek public comment on issues that we should address in our guidance for management on how to assess internal control over financial reporting.[26] In accordance with the last point in the above list, we are issuing this release to propose an additional extension of the dates for complying with our internal control over financial reporting requirements for domestic and foreign non-accelerated filers. As a companion to this release, we are separately issuing a release that extends for a one-year period the date by which foreign private issuers that are accelerated filers (but not large accelerated filers), and that file their annual reports on Form 20–F or 40–F, must begin to comply with the auditor attestation report portion of the internal control over financial reporting requirements.[27]

As we proceed in our efforts to make the internal control reporting process more efficient and effective, we believe that a further postponement of the compliance dates for non-accelerated filers is appropriate. The postponement is intended to provide these filers, none of which is yet required to comply with the Section 404 requirements, with the benefit of the management guidance that the Commission plans to issue and the recently issued COSO guidance on understanding and applying the COSO framework, before planning and conducting their internal control assessments. Specifically, we propose to postpone for five months (from fiscal years ending on or after July 15, 2007 until fiscal years ending on or after December 15, 2007) the date by which non-accelerated filers must begin to include a report by management assessing the effectiveness of the companies' internal control over financial reporting. Approximately 44% of the domestic companies filing periodic reports are non-accelerated filers, and an estimated 38% of the foreign private issuers subject to Exchange Act reporting are non-accelerated filers.[28]

Pursuant to this proposed extension, a non-accelerated filer would begin to provide the management report required by Item 308(a) of Regulations S–K and S–B in the first annual report it files for a fiscal year ending on or after December 15, 2007.[29] We estimate that fewer than 15% of all non-accelerated filers will have a fiscal year ending between July 15, 2007 and December 15, 2007.[30] Therefore, the majority of non-accelerated filers, including those with a calendar year-end, would begin to include management's report in their annual reports for 2007.

We also propose to extend the compliance date for all non-accelerated filers regarding the auditor attestation report requirement in Item 308(b) of Regulations S–K and S–B for a longer period of time.[31] Under the proposed extension, a non-accelerated filer would not have to file the auditor's attestation report on management's assessment of internal control over financial reporting until it files an annual report for a fiscal year ending on or after December 15, 2008. Under current requirements, a non-accelerated filer would have to begin including the auditor's attestation report in the annual report filed for its first fiscal year ending on or after July 15, 2007, so we would be extending this deadline for 17 months. This proposed extension would result in all non-accelerated filers having to complete only management's portion of the internal control requirements in their first year of compliance with the requirements. The main purposes of the proposed extension of the auditor attestation report requirement are:

- To afford non-accelerated filers and their auditors the benefit of anticipated changes that the PCAOB makes to Auditing Standard No. 2, as approved by the Commission, as well as any implementation guidance that the PCAOB issues for auditors of smaller public companies;
- To save non-accelerated filers potential costs associated with the initial auditor's attestation to, and report on, management's assessment of internal control over financial reporting during the period that changes to Auditing Standard No. 2 are being considered and implemented, and the PCAOB is formulating guidance that will be specifically directed to auditors of smaller companies;
- To enable management of non-accelerated filers to more gradually prepare for full compliance with the Section 404 requirements and to gain some efficiencies in the process of reviewing and evaluating the effectiveness of internal control over financial reporting before becoming subject to the requirement that the auditor attest to, and report on, management's assessment of internal control over financial reporting (and to permit investors to see and evaluate the results of management's first compliance efforts); and
- To provide the Commission with the flexibility to consider any comments it receives on the Concept Release and its subsequent proposed guidance for management in response to the questions related to the appropriate role of the auditor in evaluating management's internal control assessment process.

We expect that the proposed extension of the management assessment requirement will provide sufficient time for the Commission to issue final guidance to assist in management's performance of a top-down, risk-based and scalable assessment of controls over financial reporting. If such guidance is not finalized in time to be of assistance to management of non-accelerated filers in connection with their annual reports filed for fiscal years ending on or after December 15, 2007, we will consider further postponing non-accelerated filers' deadline for the management assessment requirement. In addition, we expect that the proposed extension of the auditor attestation report requirement will provide sufficient time for revisions to Auditing Standard No. 2 to be proposed and finalized (including clarification of the auditor's role in evaluating a company's process for assessing the effectiveness of its internal control over financial reporting). If Auditing Standard No. 2 has not been revised in time to be of assistance in connection with the auditor attestation reports on management assessments for years ending on or after December 15, 2008,

[26] Release No. 34–54122 (July 11, 2006).

[27] Release No. 34–54294 (Aug. 9, 2006).

[28] The percentage of domestic companies, excluding 1940 Act filers, that is categorized as non-accelerated filers is based on public float where available (or market capitalization, otherwise) from Datastream as of December 31, 2005. The estimated percentage of foreign private issuers that are non-accelerated filers is based on market capitalization data from Datastream as of December 31, 2005.

[29] Similarly, a foreign private issuer that is a non-accelerated filer would have to begin to provide the management report required by Item 15(b) of Form 20–F or General Instruction B of Form 40–F in the annual report filed for its first fiscal year ending on or after December 15, 2007. See proposed Item 308T of Regulations S–K and S–B, Item 15T of Form 20–F and proposed Instruction 3T to paragraphs (b), (c), (d) and (e) of General Instruction B.6 in Form 40–F.

[30] The percent of all non-accelerated filers is categorized using float where available (or market capitalization, otherwise) using Datastream as of December 31, 2005 and excludes 1940 Act filers. Fiscal year ends are also from Datastream.

[31] We also propose to extend the compliance dates regarding the auditor attestation report requirement appearing in Item 15(c) of Form 20–F and General Instruction B of Form 40–F with respect to foreign private issuers that are non-accelerated filers.

we will consider further postponing the auditor attestation report compliance dates.

Many public commenters have asserted that the internal control reporting compliance costs are likely to be disproportionately higher for smaller public companies than larger ones, and that the auditor's fee represents a large percentage of those costs. Furthermore, we have learned from public comments, including our roundtables on implementation of the internal control reporting provisions,[32] that while companies incur increased internal costs in the first year of compliance as well due to "deferred maintenance" items (*e.g.*, documentation, remediation, etc.), these costs may decrease in the second year. Therefore, postponing the costs that result from the auditor's attestation report until the second year would help non-accelerated filers smooth the significant cost spike that has been experienced by many accelerated filers in their first year of compliance with the Section 404 requirements.

Although the proposed extensions would permit non-accelerated filers to omit the auditor's attestation report from their annual reports in their initial year of compliance with the Section 404 requirements, we encourage frequent and frank dialogue among management, auditors and audit committees to improve internal controls and the financial reports upon which investors rely. In this regard, we repeat our assurance that management should not fear that a discussion of internal controls with, or a request for assistance or clarification from, the auditor will itself be deemed a deficiency in internal control or constitute a violation of our independence rules as long as management determines the accounting to be used and does not rely on the auditor to design or implement its controls.[33]

We are concerned that a company that files only a management report during its first year of compliance with the Section 404 requirements may become subject to more second-guessing as a result of the proposed separation of the reports than under the current requirements (*e.g.*, management concludes that the company's internal control over financial reporting is effective when only management's report is filed in the first year of compliance, but the auditor comes to a contrary conclusion in its report filed in the subsequent year, and as a result, the company's previous assessment is called into question). In an effort to address these concerns, we propose to deem the management report included in the non-accelerated filer's annual report during the first year of compliance to be "furnished" rather than "filed."[34] If we adopt this proposal, we intend to afford similar relief to the foreign private issuers that are accelerated filers (but not large accelerated filers), and that file their annual reports on Form 20–F or 40–F that similarly will file only management's report during their first year of compliance with the Section 404 requirements.[35]

We also propose that, until it files an annual report that includes a report by management on the effectiveness of the company's internal control over financial reporting, a non-accelerated filer could continue to omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a)[36] that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the company. This language, however, would have to be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter. The extended compliance dates also would apply to the provisions in Exchange Act Rules 13a–15(a) and (d) and 15d–15(a) and (d)[37] relating to the maintenance of internal control over financial reporting.

Finally, we propose to clarify that, until a non-accelerated filer becomes subject to the auditor attestation report requirement, the registered public accounting firm retained by the non-accelerated filer need not comply with the obligation in Rule 2–02(f) of Regulation S–X. Rule 2–02(f) requires every registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by an Exchange Act reporting company (other than a registered investment company) containing an assessment by management of the effectiveness of the company's internal control over financial reporting to attest to, and report on, such assessment.

The extended compliance periods that are proposed in this release would not in any way alter requirements regarding internal control that already are in effect with respect to non-accelerated filers, including without limitation, Section 13(b)(2) of the Exchange Act[38] and the rules thereunder.

*Request for Comment*

We request and encourage any interested person to submit comments regarding the proposed extension of the compliance dates described above. In particular, we solicit comment on the following questions:

- Is it appropriate to provide a further extension of the compliance dates of the internal control over financial reporting requirements for non-accelerated filers? If so, are the proposed extensions for compliance with management and auditor attestation report requirements appropriate in length or should they be shorter or longer than proposed? Should the Commission consider a further extension if the revisions to Auditing Standard No. 2 and the release of guidance for management are not completed in sufficient time to permit issuers and auditors to rely on them?
- Is it appropriate to implement sequentially the requirements of Section 404(a) and (b) of the Sarbanes-Oxley Act, as proposed, so that a non-accelerated filer would only have to include management's internal control assessment in the annual report that it files for its first fiscal year ending on or after December 15, 2007 and would not have to begin providing an accompanying auditor's attestation report until it files an annual report for a fiscal year ending on or after December 15, 2008?
- Would the phasing-in of the management assessment requirement and auditor attestation report requirement make the ultimate application of Auditing Standard No. 2 more or less efficient and effective?
- Is it appropriate to deem the management report on internal control over financial reporting to be "furnished" rather than "filed" during the first year of a non-accelerated filer's compliance with the Section 404

[32] Materials related to the Commission's 2005 Roundtable Discussion on Implementation of Internal Control Reporting Provisions and 2006 Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions, including the archived roundtable broadcasts, are available at *http://www.sec.gov/spotlight/soxcomp.htm*.

[33] *See Commission Statement on Implementation of Internal Control Requirements*, Press Release No. 2005–74 (May 16, 2005) at *http://www.sec.gov/news/press/2005-74.htm*.

[34] As proposed, management's report would not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

[35] *See* Release No. 34–54294 (Aug. 9, 2006).

[36] 17 CFR 13a–14(a) and 15d–14(a).

[37] 17 CFR 13a–15(a) and (d) and 15d–15(a) and (d).

[38] 15 U.S.C. 78m(b)(2).

requirements? If so, is it also appropriate to take the same action during the first year of compliance with the Section 404 requirements by a foreign private issuer that is an accelerated filer, but not a large accelerated filer, and that files its annual reports on Form 20–F or 40–F?

- Would management's assessment of internal control over financial reporting provide meaningful disclosure to investors, independent of the auditor attestation report? Is there an increased risk that management will fail to identify a material weakness in the company's internal control over financial reporting, and if so, do the potential benefits of the proposal outweigh this risk?
- Are the proposed extensions in the best interests of investors?
- Should we require a non-accelerated filer to disclose in its annual report that management's assessment has not been attested to by the auditor during the year that the audit attestation report is not required?
- Simultaneously with the publication of this release, we are issuing a separate release to extend the date by which a foreign private issuer that is an accelerated filer (but not a large accelerated filer), and that files its annual reports on Form 20–F or 40–F, must begin to comply with the auditor attestation report portion of the Section 404 requirements. Is there any additional relief or guidance that we should consider specifically with respect to foreign private issuers?.

**III. Proposed Transition Period for Compliance with the Internal Control Over Financial Reporting Requirements by Newly Public Companies**

In the future, after all types of Exchange Act reporting companies (*i.e.* large accelerated filers, accelerated filers and non-accelerated filers) are required to comply fully with the internal control reporting provisions, any company undertaking an initial public offering or registering a class of securities under the Exchange Act for the first time will be required to comply fully with our internal control reporting requirements as of the end of the fiscal year in which it becomes a public company. If the initial public offering or Exchange Act registration occurs in close proximity to the company's fiscal year end, the need to prepare for compliance with the internal control over financial reporting requirements therefore will arise very rapidly after the company becomes public. For a foreign private issuer, this requirement also might quickly follow its having had to prepare, for the first time, a reconciliation to U.S. GAAP.[39]

For many companies, preparation of the first annual report on Form 10–K, 10–KSB, 20–F or 40–F is a comprehensive process involving the audit of financial statements, compilation of information that is responsive to many new public disclosure requirements and review of the report by the company's executive officers, board of directors and legal counsel. Requiring a newly public company and its auditor to also complete the management report and auditor attestation report on the effectiveness of the company's internal control over financial reporting within the same timeframe might impose undue burdens on this process. In addition, we are concerned that this requirement could affect a company's decision to undertake an initial public offering or to list a class of its securities on a U.S. exchange or a company's timing decisions with regard to such an offering or listing. During our roundtable on May 10, 2006, we received comments indicating that some private companies are more likely to consider alternative capital markets in view of the regulatory hurdles that newly public companies face in the U.S.[40] We believe that the current due date for filing the first Section 404 reports may exacerbate that disincentive.

A transition period also would alleviate reporting burdens imposed on some foreign companies that become subject to the Exchange Act reporting requirements solely by virtue of their registration of securities under the Securities Act in connection with an exchange offer for the securities of, or business combination with, another foreign company that does not have securities registered with the Commission.[41] Under Section 15(d) of the Exchange Act and related rules, the foreign private issuer that files a Securities Act registration statement in connection with the acquisition must file at least one annual report after the effective date of the registration statement before becoming eligible to terminate its periodic filing obligations. Under existing rules, the foreign private issuer would have to include the management and auditor reports on internal control over financial reporting in the only annual report that the foreign private issuer ever files with the Commission.[42] The proposed transition period similarly would alleviate reporting burdens imposed on domestic companies that become subject to Section 15(d) after filing a Securities Act registration statement but are eligible to terminate their periodic filing obligations after filing just one annual report.

In light of these concerns, we think that it may be appropriate to provide a transition period for newly public companies. Under the proposed amendments, a newly public company would not need to comply with our internal control over financial reporting requirements in the first annual report that it is required to file with the Commission.[43] Rather, the company would begin to comply with these requirements in the second annual report that it files with the Commission.

We believe that providing additional time for newly public companies to conduct their first assessment of internal control should benefit investors by making implementation of the internal control reporting requirements more effective and efficient and reducing some of the costs that these companies face in their first year as a public company. We also believe that the proposed transition period would remove a possibility that our rules may unnecessarily interfere with companies' business decisions regarding the timing and use of resources relating to their initial U.S. listings or public offerings. Like the proposed extension for non-accelerated filers, the proposed transition period for newly public companies would not in any way alter requirements regarding internal control that already are in effect with respect to all Exchange Act reporting companies, including without limitation, Section 13(b)(2) of the Exchange Act[44] and the rules thereunder.

[39] *See* Item 17 or 18 of Form 20–F.

[40] Noreen Culhane, Peter Lyons, Robert Pozen and David Warren were among those making this observation at the roundtable. The roundtable webcast is archived at *http://www.connectlive.com/events/secicr2006*. See also the letter from Stephan Stephanov available in File No. 4–511 at *http://www.sec.gov/news/press/4-511.shtml*.

[41] Although Rule 802 [17 CFR 230.802] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] provides an exemption from Securities Act registration for certain securities offerings by foreign private issuers in connection with an exchange offer or business combination, a transaction that does not meet all of the conditions for reliance on the exemption must be registered under the Securities Act, typically on Form F–4 [17 CFR 239.34].

[42] As a result, the current rules may serve as a disincentive to extend offers of securities in connection with a business acquisition transaction on a registered basis.

[43] Proposed Instruction 1 to Item 308 of Regulation S–B and S–K, Item 15 of Form 20–F, and General Instruction B(6) of Form 40–F, and Rules 13a–15(c) and (d) and 15d–15(c) and (d), as we proposed to revise them.

[44] 15 U.S.C. 78m(b)(2).

*Request for Comment*

We request and encourage any interested person to submit comments regarding the proposed transition period for compliance with the internal control over financial reporting requirements.

- Do the timing requirements for initial compliance with the internal control reporting requirements make it overly burdensome or costly to undertake an initial public offering or public listing in the U.S.? Do they otherwise discourage companies from undertaking initial public offerings or seeking public listings in the U.S.? Is the proposed relief appropriate and in the interest of investors? Is some other type of relief appropriate?
- Should newly public companies, or a subgroup of newly public companies, be given additional time after going public before they are required to include management and auditor attestation reports on internal control over financial reporting in their annual reports filed with the Commission? If so, how much time? Should we propose a transition period only for companies that become public in the third or fourth quarter of their fiscal year?
- As an alternative to the proposed transition period, should we require a newly public company to include management's assessment, but not the auditor's attestation report on management's assessment in the first annual report that the company is required to file?
- Would the proposed transition period allow newly public companies to complete their internal control reporting processes more efficiently and effectively? Would it improve the quality of internal control reporting by newly public companies?

## IV. Paperwork Reduction Act

In connection with our original proposal and adoption of the rule and from amendments implementing the Section 404 requirements, we submitted a request for approval of the "collection of information" requirements contained in the amendments to the Office of Management and Budget ("OMB") in accordance with the Paperwork Reduction Act of 1995 ("PRA").[45] OMB approved these requirements.

## V. Cost-Benefit Analysis

### A. Benefits

The proposed extension of the compliance dates is intended to make implementation of the internal control reporting requirements more efficient and cost-effective for non-accelerated filers. The proposed extension would postpone for five months (from fiscal years ending on or after July 15, 2007 until fiscal years ending on or after December 15, 2007) the date by which non-accelerated filers must begin to include a report by management assessing the effectiveness of the companies' internal control over financial reporting. Based on our estimates, we believe that fewer than 15% of all non-accelerated filers have a fiscal year ending between July 15, 2007, and December 15, 2007. In addition, under the proposed extension, a non-accelerated filer would not have to include an auditor attestation report on management's assessment of internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2008. This would result in all non-accelerated filers having to complete only management's assessment in their first year of compliance with the Section 404 requirements. We believe that the following benefits would flow from an additional postponement of the dates by which non-accelerated filers must comply with the internal control reporting requirements:

- auditors of non-accelerated filers would have more time to conform their initial attestation reports on management's assessment of internal control over financial reporting to the changes that the PCAOB anticipates making to Auditing Standard No. 2 (as approved by the Commission) and other actions that the PCAOB intends to take as described above;
- non-accelerated filers would save costs associated with their initial audit of internal control over financial reporting while changes to the auditing standard are being considered and implemented and the PCAOB is developing, or facilitating the development of, additional guidance that will be specifically directed to auditors of smaller public companies;
- management of non-accelerated filers could begin the process of assessing the effectiveness of internal control over financial reporting before their auditors attest to such assessment (and investors could begin to see and evaluate the results of these initial efforts); and
- non-accelerated filers with a fiscal year ending between July 15, 2007 and December 15, 2007 would have additional time to consider the management guidance to be issued by the Commission and recently issued COSO guidance on understanding and applying the COSO framework, before planning and conducting their first internal control assessment.

Many public commenters have asserted that the internal control reporting compliance costs are likely to be disproportionately higher for smaller public companies than larger ones, and that the audit fee represents a large percentage of those costs. We believe that the potential cost savings that would result from the fact that the non-accelerated filers would not have to include an auditor's attestation report on management's assessment of the effectiveness of their internal control over financial reporting during the filers' first year of compliance with the Section 404 requirements would be substantial. Estimates of the average fee for an auditor's attestation report on management's assessment of internal control over financial reporting from various surveys suggest that, on average, a non-accelerated filer could save between $475,000 and $300,000 in auditor costs for one year.[46]

Additionally, we have learned from public comments, including our roundtables on implementation of the internal control reporting provisions,[47] that while companies incur increased internal costs in the first year of compliance as well due to "deferred maintenance" items (*e.g.*, documentation, remediation, etc.), these costs may decrease in the second year. Therefore, postponing the auditor costs until the second year would help non-accelerated filers smooth the significant cost spike that many accelerated filers have experienced in the first year of compliance.

We think that benefits of the proposed transition for newly public companies include the following:

- Companies that are going public would be able to concentrate on their

[45] 44 U.S.C. 3501 *et seq.* and 5 CFR 1320.11.

[46] Estimates of costs savings are from highest: (1) Foley and Lardner Survey (*http://www.foley.com/files/tbl_s31Publications/FileUpload137/2777/2005%20Cost%20of%20Being%20Public%20Final.pdf*) which estimates that the increase in audit fees from 2003 to 2004 for the S&P Small cap was $475,000; (2) FEI Survey (*http://www2.fei.org//404_survey_3_21_05.cfm*) which estimates 2005 auditor attestation fees for non-accelerated filers of $393,333 (a decline of −12.8% from 2004); and (3) CRA Survey (*http://www.s-oxinternalcontrolinfo.com/pdfs/CRA_III.pdf*) total audit costs are estimated for companies with market capitalization below $125 million to be between $312,800 in year 1 and $206,700 in year two (based on the percent of total audit costs as a percent of total Section 404 fees from Table 1 in the study and multiplied by the total Section 404 fees estimated for this category of companies.) The Commission has not independently verified the reliability or accuracy of these survey data.

[47] Materials related to the Commission's 2005 Roundtable Discussion on Implementation of Internal Control Reporting Provisions and 2006 Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions, including the archived roundtable broadcasts, are available at *http://www.sec.gov/spotlight/soxcomp.htm*.

initial securities offering without the additional burden of becoming subject to the Section 404 requirements soon after the offering;

- Newly public companies would be able to prepare their first annual report without the additional burden of having to comply with the Section 404 requirements at the same time;
- The quality of newly public companies' first compliance efforts may improve due to the additional time that the companies would have to prepare to satisfy the Section 404 requirements; and
- The proposed transition period would eliminate any incentive that the current rules may create for a company that plans to go public to time its initial public offering to defer compliance with the Section 404 requirements for as long as possible after the offering.

*B. Costs*

Under the proposals, investors in companies that are non-accelerated filers will have to wait longer to review an attestation report by the companies' auditor on management's assessment of internal control over financial reporting. The proposals may create a risk that, without the auditor's attestation to management's assessment process, some issuers may conclude that the company's internal control over financial reporting is effective without conducting an assessment that is as thorough, careful and as appropriate to the issuers' circumstances as they would conduct if the auditor were involved.

Another potential cost in the form of increased litigation risk may be created by the proposed phasing-in of the auditor's attestation report on management's assessment if, in year one, management concludes that the company's internal control over financial reporting is effective, but the auditor comes to a contrary conclusion the following year, thereby calling into question management's earlier conclusion. We have tried to mitigate that risk by proposing that the management report be furnished to, rather than filed with, the Commission in the first year of compliance.

A potential cost of the proposed transition for newly public companies is that investors may be subject to uncertainty as to the effectiveness of a newly public company's internal control over financial reporting for a longer period of time than under current requirements.

We request comment on the costs and benefits of the proposed extension and amendments to the internal control over financial reporting requirements, including any costs and benefits that we have not identified but that we should consider.

## VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or SBREFA,"[48] we solicit data to determine whether the proposals constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible. Section 23(a)(2) of the Exchange Act[49] also requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We expect the proposed extension of compliance dates, if adopted, to increase efficiency and enhance capital formation, and thereby benefit investors, by providing more time for non-accelerated filers to prepare for compliance with the Section 404 requirements and affording these filers the opportunity to consider implementation guidance that is specifically tailored to smaller public companies. We further expect a more gradual phase-in of the management assessment and auditor attestation report requirements over a two-year period, rather than requiring non-accelerated filers to fully comply with both requirements in their first compliance year, to make the implementation process more efficient and less costly for non-accelerated filers. It is possible that a competitive impact could result from the differing treatment of non-accelerated filers and larger companies that already have been complying with the Section 404 requirements, but we do not expect that the proposals will have any measurable effect on competition.

The proposed transition period for newly public companies should increase efficiency and enhance capital formation by enabling these companies to concentrate on the initial securities offering process, if they are becoming subject to the Exchange Act reporting requirements by virtue of a public securities offering, and to prepare their first annual reports without the additional burden of complying with the Section 404 requirements. The provision of additional time for newly public companies to prepare for compliance with the internal control over financial reporting requirements may lead to increased quality of the companies' initial compliance efforts.

In addition, the current requirements might provide an incentive for private companies to time their public offerings so as to maximize the length of time that they will have after going public before having to comply with the Section 404 requirements. The proposal to allow newly public companies to defer compliance with these requirements until they file their second annual report with the Commission would eliminate this incentive. This would enhance capital formation by allowing companies to time their offerings to raise the most capital rather than to avoid a compliance requirement. In reducing regulatory burdens for newly public companies, we may also increase the attractiveness of the U.S. markets to foreign companies.

We solicit public comment that will assist us in assessing the impact that the proposals could have on competition, efficiency and capital formation.

## VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with the Regulatory Flexibility Act.[50] This IRFA relates to proposed amendments to extend the compliance dates applicable to non-accelerated filers for certain internal control over financial reporting requirements in Rules 13a–14, 15d–14, 13a–15 and 15d–15 under the Securities Exchange Act of 1934, Items 308(a) and (b) of Regulations S–K and S–B, Rule 2–02(f) of Regulation S–X, Item 15 of Form 20–F and General Instruction B of Form 40–F. These amendments require Exchange Act reporting companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over

[48] 5 U.S.C. 801 *et seq.*

[49] 15 U.S.C. 78w(a).

[50] 5 U.S.C. 603.

financial reporting. These amendments also require the registered public accounting firm that issues an audit report on the company's financial statements to attest to, and report on, management's assessment.

Non-accelerated filers currently are scheduled to begin to comply with the management's assessment and auditor attestation report requirements for their first fiscal year ending on or after July 15, 2007. We propose to extend this compliance date with respect to the management's assessment portion of these requirements for five months, so that a non-accelerated filer would begin including a report by management on the company's internal control over financial reporting in the annual report that it files for its first fiscal year ending on or after December 15, 2007. Furthermore, we propose to extend the compliance date with respect to the auditor attestation report portion of these requirements so that a non-accelerated filer would need to begin including an auditor's attestation report on management's assessment of the company's internal control over financial reporting in the annual report that it files for its first fiscal year ending on or after December 15, 2008.

This IRFA also relates to a proposed transition period for compliance with the internal control over financial reporting requirements by newly public companies. Under the proposed amendments, a newly public company would not need to comply with our internal control over financial reporting requirements until after it has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for at least 12 months, and has filed at least one annual report with the Commission.

*A. Reasons for the Proposed Action*

The Commission and the PCAOB plan a series of actions that will result in the issuance of new guidance to aid companies and auditors in performing their evaluations of internal control over financial reporting. The proposed extension is designed to afford non-accelerated filers additional time to consider this planned guidance and the new guidance for smaller companies regarding application of the COSO Framework. The proposed transition period for newly public companies would eliminate the need for a public company with the Section 404 requirements in the first annual report that it files with the Commission.

*B. Objectives*

The proposed amendments aim to further the goals of the Sarbanes-Oxley Act to enhance the quality of public company disclosure concerning the company's internal control over financial reporting and increase investor confidence in the financial markets.

*C. Legal Basis*

We are issuing the proposals under the authority set forth in Sections 12, 13, 15 and 23 of the Exchange Act.

*D. Small Entities Subject to the Proposed Revisions*

The proposed changes would affect some issuers that are small entities. Exchange Act Rule 0–10(a)[51] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 issuers, other than registered investment companies, that may be considered small entities. The proposed extensions would apply to any small entity that is subject to Exchange Act reporting requirements.

*E. Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed compliance date extensions would alleviate reporting and compliance burdens by postponing the date by which non-accelerated filers with a fiscal year end between July 15, 2007 and December 15, 2007 must begin to comply with the internal control over financial reporting requirements, and by eliminating the requirement for all non-accelerated filers that they must include an auditor's report on internal control over financial reporting in their annual report during their initial year of compliance with the internal control over financial reporting requirements.

The proposed transition for newly public companies also would alleviate reporting and compliance burdens. We are concerned that requiring a newly public company and its auditor to complete the management report and auditor attestation report on the effectiveness of the company's internal control over financial reporting within the same timeframe that it is preparing its first annual report might impose undue burdens on this process. In addition, we are concerned that the requirement that a newly public company must begin to comply with the Section 404 requirements in the first annual report that it files could affect a company's decision to undertake an initial public offering or to list a class of its securities on a U.S. exchange or a company's timing decisions with regard to such an offering or listing.

*F. Duplicative, Overlapping, or Conflicting Federal Rules*

The internal control over financial reporting requirements, as they apply to any small entities, do not duplicate, overlap, or conflict with other federal rules.

*G. Significant Alternatives*

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed extension, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

We are not proposing a complete and permanent exemption for small entities from coverage of the Section 404 requirements. However, the proposed amendments would establish a different compliance and reporting timetable for small entities and provide additional time for newly public companies to prepare to comply with the internal control over financial reporting requirements. We believe that the proposed amendments would promote the primary goal of enhancing the quality of reporting and increasing investor confidence in the fairness and integrity of the securities markets. The proposed extensions are designed to provide companies that are non-accelerated filers with sufficient time to consider any guidance issued by us and other entities, such as COSO, before planning and conducting their internal control assessments, and to consider the revisions to Auditing Standard No. 2 that we expect to be issued by the PCAOB and approved by the Commission. The proposed amendments, our forthcoming management guidance, and the revisions to Auditing Standard No. 2 should make implementation of the internal control reporting requirements more effective and efficient for non-accelerated filers and newly public companies.

[51] 17 CFR 240.0–10(a).

*H. Solicitation of Comments*

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- the number of small entity issuers that may be affected by the proposed extension;
- the existence or nature of the potential impact of the proposed extension on small entity issuers discussed in the analysis; and
- how to quantify the impact of the proposed extension.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

**VIII. Statutory Authority and Text of the Amendments**

The amendments described in this release are being proposed under the authority set forth in Sections 12, 13, 15 and 23 of the Exchange Act.

**List of Subjects**

*17 CFR Part 210*

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 228*

Reporting and recordkeeping requirements, Securities, Small businesses.

*17 CFR Parts 229, 240 and 249*

Reporting and recordkeeping requirements, Securities.

**Text of Amendments**

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 79e(b), 79k(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262 *et seq.*, unless otherwise noted.

2. Section 210.2–02T is amended by:

a. Redesignating existing paragraph (b) as paragraph (c).

b. Revising newly redesignated paragraph (c).

b. Adding new paragraph (b).

The addition and revision read as follows:

**§ 210.2–02T Accountants' reports and attestation reports on management's assessment of internal control over financial reporting.**

* * * * *

(b) The requirements of Section 210.2–02(f) shall not apply to a registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by a registrant that is neither a "large accelerated filer" nor an "accelerated filer," as those terms are defined in § 240.12b–2 of this chapter, for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(c) This temporary section will expire on June 30, 2009.

## PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

3. The authority citation for Part 228 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, 7201 *et seq.*, and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Section 228.308 is amended by:

a. Adding an "s" to the word "instruction" in the heading at the end of the Section.

b. Redesignating the existing instruction to Item 308 as Instruction 2.

c. Adding new Instruction 1.

The additions read as follows:

**§ 228.308 (Item 308) Internal control over financial reporting.**

* * * * *

1. A small business issuer need not comply with paragraphs (a), (b) and (c) of this Item until it previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)).

* * * * *

4a. Section 228.308T is added to read as follows:

**§ 228.308T (Item 308T) Internal control over financial reporting.**

**Note to Item 308T:** This is a special temporary section that applies only to an annual report filed by the small business issuer for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the small business issuer's internal control over financial reporting (as defined in § 240.13a–15(f) or § 240.15d–15(f) of this chapter). This report shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the small business issuer specifically states that the report is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the small business issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the small business issuer's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or § 240.15d–15 of this chapter; and

(3) Management's assessment of the effectiveness of the small business issuer's internal control over financial reporting as of the end of the registrant's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the small business issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the small business issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the small business issuer's internal control over financial reporting.

(b) *Changes in internal control over financial reporting.* Disclose any change in the small business issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or § 240.15d–15 of this chapter that occurred during the small business issuer's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably

likely to materially affect, the small business issuer's internal control over financial reporting.

*Instructions to paragraphs (a) and (b) of Item 308T*

1. A small business issuer need not comply with paragraphs (a) and (b) of this Item until it previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)).

2. The small business issuer must maintain evidential matter, including documentation to provide reasonable support for management's assessment of the effectiveness of the small business issuer's internal control over financial reporting.

(c) This temporary Item 308T, and accompanying note and instructions, will expire on June 30, 2009.

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

5. The authority citation for Part 229 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

6. Section 229.308 is amended by:

a. Adding an "s" to the word "instruction" in the descriptive heading at the end of the section.

b. Redesignating the existing instruction to Item 308 as Instruction 2.

c. Adding new Instruction 1.

The additions read as follows:

**§ 229.308 (Item 308) Internal control over financial reporting.**

* * * * *

1. A registrant need not comply with paragraphs (a), (b) and (c) of this Item until it previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)).

* * * * *

6a. Section 229.308T is added to read as follows:

**§ 229.308T (Item 308T) Internal control over financial reporting.**

**Note to Item 308T:** This is a special temporary section that applies only to a registrant that is neither a "large accelerated filer" nor an "accelerated filer" as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report filed by the registrant for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the registrant's internal control over financial reporting (as defined in § 240.13a–15(f) or § 240.15d–15(f) of this chapter). This report shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the report is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the registrant;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the registrant's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or § 240.15d–15 of this chapter; and

(3) Management's assessment of the effectiveness of the registrant's internal control over financial reporting as of the end of the registrant's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the registrant's internal control over financial reporting identified by management. Management is not permitted to conclude that the registrant's internal control over financial reporting is effective if there are one or more material weaknesses in the registrant's internal control over financial reporting.

(b) *Changes in internal control over financial reporting.* Disclose any change in the registrant's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or § 240.15d–15 of this chapter that occurred during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

*Instructions to paragraphs (a) and (b) of Item 308T*

1. A registrant need not comply with paragraphs (a) and (b) of this Item until it previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)).

2. The registrant must maintain evidential matter, including documentation to provide reasonable support for management's assessment of the effectiveness of the registrant's internal control over financial reporting.

(c) This temporary Item 308T, and accompanying note and instructions, will expire on June 30, 2009.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11 and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

8. Section 240.13a–14 is amended by adding a sentence at the end of paragraph (a) to read as follows:

(a) * * * The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15 of this chapter.

* * * * *

9. Section 240.13a–15 is amended by revising the first sentences of paragraphs (c) and (d) to read as follows:

**§ 240.13a–15 Controls and procedures.**

* * * * *

(c) The management of each such issuer that previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)), other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting.

* * *

(d) The management of each such issuer that previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15

U.S.C. 78m(a) or 78o(d), other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

* * *

* * * * *

10. Section 240.15d–14 is amended by adding a sentence at the end of paragraph (a) to read as follows:

**§ 240.15d–14 Certification of disclosure in annual and quarterly reports.**

(a) * * * The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15 of this chapter.

* * * * *

11. Section 240.15d–15 is amended by revising the first sentences of paragraphs (c) and (d) to read as follows:

**§ 240.15d–15 Controls and procedures.**

* * * * *

(c) The management of each such issuer that previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)), other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting.

* * *

(d) The management of each such issuer that previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)), other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

* * *

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for Part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

13. Form 10–KSB (referenced in § 249.310b) is amended by adding temporary Item 8A(T) to Part II after Item 8A.

The addition reads as follows:

**Note:** The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

PART II

* * * * *

Item 8A(T). Controls and procedures.

(a) Furnish the information required by Items 307 and 308T of Regulation S–B (17 CFR 228.307 and 228.308T) with respect to an annual report that the small business issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 8A(T) will expire on June 30, 2009.

* * * * *

14. Form 10–K (referenced in § 249.310) is amended by adding temporary Item 9A(T) to Part II following Item 9A.

The addition reads as follows:

**Note:** The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

PART II

* * * * *

Item 9A(T). Controls and procedures.

(a) If the registrant is neither a large accelerated filer nor an accelerated filer as those terms are defined in § 240.12b–2 of this chapter, furnish the information required by Items 307 and 308T of Regulation S–K (17 CFR 229.307 and 229.308T) with respect to an annual report that the registrant is required to file for a fiscal year ending on or after December 15, 2007, but before December 15, 2008.

(b) This temporary Item 9A(T) will expire on June 30, 2009.

* * * * *

15. Form 20–F (referenced in § 249.220f), Part II, is amended by:

a. adding an "s" to the word "Instruction" in the descriptive heading at the end of Item 15.

b. redesignating the existing Instruction to Item 15 as Instruction 2.

c. adding new Instruction 1 to Item 15.

d. revising Item 15T.

The additions and revision read as follows.

**Note:** The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20–F

* * * * *

PART II

* * * * *

Item 15. Controls and Procedures.

* * * * *

1. An issuer need not comply with paragraphs (b), (c) and (d) of this Item until it previously has been required to file an annual report pursuant to Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

* * * * *

Item 15T. Controls and Procedures.

*Note to Item 15T:* This is a special temporary section that applies instead of Item 15 only to: (1) An issuer that is an "accelerated filer," but not a "large accelerated filer," as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after July 15, 2006 but before July 15, 2007; or

(2) an issuer that is neither a "large accelerated filer" or an "accelerated filer" as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Disclosure Controls and Procedures.* Where the Form is being used as an annual report filed under section 13(a) or 15(d) of the Exchange Act, disclose the conclusions of the issuer's principal executive and principal financial officers, or persons performing similar functions, regarding

the effectiveness of the issuer's disclosure controls and procedures (as defined in 17 CFR 240.13a–15(e) or 240.15d–15(e)) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of 17 CFR 240.13a–15 or 240.15d–15.

(b) *Management's annual report on internal control over financial reporting.* Where the Form is being used as an annual report filed under section 13(a) or 15(d) of the Exchange Act, provide a report of management on the issuer's internal control over financial reporting (as defined in § 240.13a–15(f) or 240.15d–15(f) of this chapter). The report shall not be deemed to be filed for purposes of section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the issuer's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or 240.15d–15 of this chapter; and

(3) Management's assessment of the effectiveness of the issuer's internal control over financial reporting as of the end of the issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the issuer's internal control over financial reporting.

(c) *Changes in internal control over financial reporting.* Disclose any change in the issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or 240.15d–15 of this chapter that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

*Instructions to Item 15T*

1. An issuer need only comply with paragraphs (b) and (c) of this Item until it previously has been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

2. The registrant must maintain evidential matter, including documentation to provide reasonable support for management's assessment of the effectiveness of the issuer's internal control over financial reporting.

(d) This temporary Item 15T, and accompanying note and instructions, will expire on June 30, 2009.

* * * * *

16. Form 40–F (referenced in § 249.240f) is amended by revising the "Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B.(6)" as follows:

a. redesignating existing Instruction 1 as Instruction 2.

b. redesignating existing Instruction 2T as Instruction 3T.

c. adding Instruction 1.

d. revising newly redesignated Instruction 3T.

The addition and revision read as follows:

**Note:** The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 40–F

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Information To Be Filed on This Form

* * * * *

(6) * * *

* * * * *

1. An issuer need not comply with paragraphs (c), (d) and (e) of this Item until it previously has been required to file an annual report pursuant to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

2. The issuer must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the issuer's internal control over financial reporting.

3T. Paragraph (d) of this General Instruction B.6 does not apply to: (1) An issuer that is an "accelerated filer," but not a "large accelerated filer," as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after July 15, 2006 but before July 15, 2007; or (2) an issuer that is neither a "large accelerated filer" or an "accelerated filer," as those terms are defined in Rule 12b–2 of this chapter, with respect to an annual report that the issuer is required to file for a fiscal year ending on or after December 15, 2007, but before December 15, 2008. Management's report on internal control over financial reporting that is included in an annual report filed by the type of issuer and within the period set forth in (1) or (2) above in this Instruction 3T shall not be deemed to be filed for purposes of section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

This temporary Instruction 3T will expire on June 30, 2009.

* * * * *

By the Commission.

Dated: August 9, 2006.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–13277 Filed 8–14–06; 8:45 am]

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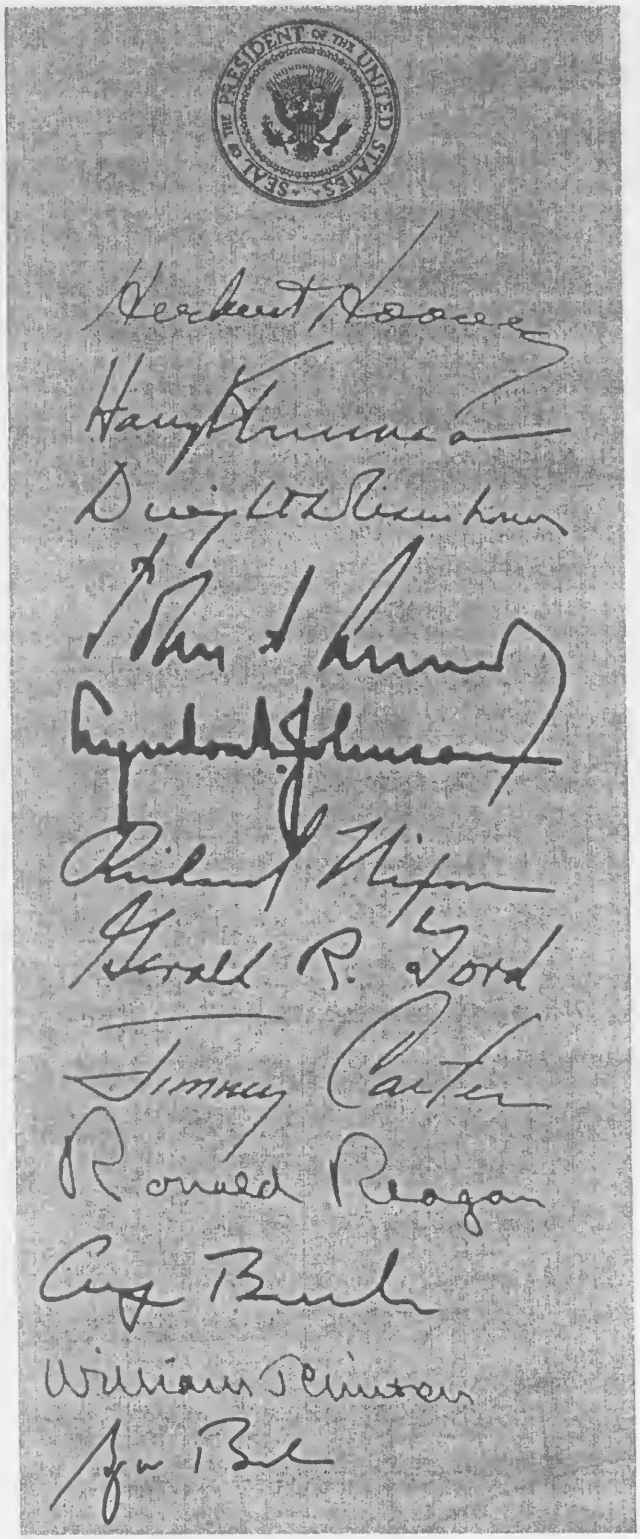


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