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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 315

RIN 3206–AK58

Excepted Service—Appointment of Persons With Disabilities and Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation regarding the excepted service appointments of persons with mental retardation, severe physical disabilities, and psychiatric disabilities. The regulation improves the Federal Government's ability to hire persons with these disabilities. It is designed to remove barriers and increase employment opportunities for persons with disabilities.

DATES: *Effective Dates:* August 25, 2006.

Conformity date: For all new appointments under 5 CFR 213.3102(u), agencies may begin using the authority on August 25, 2006. Agencies must convert all individuals who are serving under the two authorities that are abolished by this regulation, 5 CFR 213.3102(t) and 213.3102(gg), to the new appointing authority, 5 CFR 213.3102(u), by January 22, 2007.

FOR FURTHER INFORMATION CONTACT: Deidre Dessommes by telephone on 202–606–0960, by FAX on 202–606–2329, by TDD on 202–418–3134, or by e-mail at *deidre.dessommes@opm.gov*.

SUPPLEMENTARY INFORMATION: On January 11, 2005, OPM issued a proposed regulation at 70 FR 1833 to implement changes in the three existing Schedule A excepted service appointing authorities for persons with mental retardation, severe physical disabilities, and psychiatric disabilities, which agencies use to hire people with disabilities. The proposed regulation allowed agencies to determine, on a case-by-case basis, whether individuals with these disabilities can receive an appointment based solely on medical documentation submitted by the applicant. The proposal also sought to consolidate the three separate Schedule A appointing authorities into one authority.

We received written comments from 17 agencies, 12 public service organizations, 7 Federal employees, and 35 individuals. In addition, we held a teleconference, at the request of the Office of Management and Budget, on February 15, 2005, with 16 agencies to discuss specific operational issues agencies had regarding the proposal. While many of these comments generally supported the proposed changes, 9 agencies, 1 public service organization, and 5 individuals expressed serious concerns over the broadened certification and determination of disability procedures and the potential liability agencies may incur as a result of these changes. After reviewing the comments, we are especially concerned that agency personnel lack the expertise to make medical disability determinations. This may result in inconsistent determinations across and within agencies and unanticipated inequities to disabled individuals; people who are not disabled could be appointed at the expense of those for whom these authorities were intended. After careful consideration of these comments, we determined that some of the proposed changes would result in unforeseen burdens and difficulties being imposed on hiring agencies as well as disabled individuals and have modified the final regulation accordingly.

The final regulation modernizes the appointment processes for people with disabilities in several significant ways:

- We are consolidating the three separate Schedule A appointing authorities, 5 CFR 213.3102(t) (mental retardation), 213.3102(u) (severe physical disabilities), and 213.3102(gg) (psychiatric disabilities) into one appointing authority, 5 CFR 213.3102(u).
- We are expanding agency acceptance of proof of disability and an applicant's job readiness certification to include broader types of certifying entities. Agencies may accept proof and certification from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.
- We are clarifying the employment options for appointments under this authority. In cases where an applicant does not have certification of job readiness, an agency may appoint the individual to a temporary appointment to determine the applicant's readiness for continued employment.
- We are clarifying that agencies may also make temporary (for positions not expected to last more than 1 year), time-limited and permanent appointments under this authority.
- We are clarifying the distinction between proof of disability and certification of job readiness (i.e., the applicant is likely to succeed in performing the duties of the position for which he or she is applying). This will help agencies make proper appointments and lessen confusion expressed by commenters.

Comments

In addition to the concerns noted in the previous paragraphs, OPM received comments on other aspects of the proposed regulation. We categorized the comments by the following areas: Consolidation of appointing authorities, proof of disability, certification of job readiness, employment options, noncompetitive conversion, and miscellaneous comments.

Consolidation of Appointing Authorities

OPM received comments from 14 agencies, 2 organizations, and 3 individuals regarding the consolidation of the three appointing authorities into one. Most of these comments favored streamlining these appointing authorities. One agency commented that the consolidation will cause an additional workload to agencies; another agency asked OPM to provide guidance on converting individuals currently serving on the § 213.3102(t) and (gg) appointments to the § 213.3102(u) authority. We are unclear

how combining the authorities will increase agency workload. We are providing additional guidance on executing the final regulation in the ''Implementation'' section of this final regulation's Supplemental Information and will update the Guide to Processing Personnel Actions accordingly.

Another agency asked whether OPM considered separating the § 213.3102(gg) authority for appointing persons with psychiatric disabilities from the other two because such disabilities are hidden and difficult to detect. We are not sure how discerning a disability relates to the type of appointing authority under which an agency will appoint an individual. However, we believe streamlining the three separate authorities under one appointing authority will prove to be less confusing procedurally for the hiring agencies as well as help in reducing the number of appointing authorities that currently exist.

One agency stated the consolidation of authorities could negatively impact individuals currently appointed under three separate authorities during a reduction in force (RIF). We understand the agency's concern; however, depending on the actual circumstances of the restructuring, consolidation could have either a positive or negative impact compared with the current appointing authorities' impact. Agencies have discretion in determining which positions to abolish, as well as discretion to provide competing excepted service employees with certain assignment rights. (See 5 CFR part 351 for details.)

One individual opposed the consolidation on the grounds that it will impact prior discrimination claims brought against agencies and therefore may have a negative economic impact on these agencies. We believe that consolidation will have no impact on previous discrimination claims. The basis for these claims will not be affected by the combining of three authorities into one.

Proof of Disability

Proof of disability is required for appointments of persons with mental retardation, severe physical disabilities, or psychiatric disabilities. Previously, past guidance limited proof of disability to State Vocational Rehabilitation Agencies or the Department of Veterans Affairs (VA); agencies did not have the discretion to make determinations without the certification. It was also unclear what ''certification'' referred to in the language of the appointing authority. The final regulation allows agencies to accept as proof of disability documentation from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

One agency and one individual asked what level of agency authority is responsible for making determinations of the disability and of the likelihood that applicants are likely to succeed in performing the duties of the position. In the final regulation, we decided against providing agencies the option of making these determinations based upon comments we received—in sum, that agency personnel lack the expertise necessary to make medical disability determinations.

One individual asked whether a disabled person could submit the same documentation or certification more than once when applying for a position under this authority. We are not imposing any requirements concerning the recency of the documentation (provided the information is accurate) or any limitations on the number of times an applicant may submit such documentation.

Another individual stated that requiring certification by applicants already employed on a permanent Schedule A excepted service appointment is repetitive, burdensome and discriminatory. The final regulation does not require certification of current Schedule A employees. To clarify this, we will address it further in the ''Implementation'' section of this preamble.

An agency and a public service organization commented that the requirement that applicants with life-long or well-established disabilities submit documentation places a burden on these individuals because their documentation may not be available. We agree in part that this requirement may result in a burden on some individuals. However, agencies must ensure that individuals seeking appointment under this authority meet the intent of Executive Orders 12125 and 13124. In addition, by expanding the certification resources, we believe agencies will hire more individuals which will lead to expanded job opportunities for persons with disabilities.

Certification of Job Readiness

A public service organization asked that we clarify the processes for documenting an applicant's disability and his/her ability to perform the duties of the position. As stated in a previous paragraph, the previous guidance was confusing in regards to both certifications. The final regulation makes a distinction between (1) proof of an applicant's disability, and (2) certification of the applicant's job readiness. As noted in a previous paragraph, proof of disability is required for all appointments of persons with mental retardation, severe physical disabilities, or psychiatric disabilities. The final regulation allows agencies to accept as proof of disability documentation from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or U.S. territory, to practice medicine), a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

Certification of job readiness is a determination that a disabled applicant is likely to succeed in the performance of the duties of the position he or she is seeking. Certification of job readiness is required for appointments of persons with mental retardation, severe physical disabilities, or psychiatric disabilities. The same entities listed in a previous paragraph that may provide proof of disability may also certify an individual's job readiness. In addition, agencies may give individuals a temporary appointment in order to determine the applicant's job readiness, in lieu of job readiness certification. Agencies may convert individuals serving on a temporary appointment under § 213.3102(u) to a time-limited or permanent appointment under § 213.3102(u) at any time during the temporary appointment.

Operational aspects of documentation will remain with the agencies. We believe it is the agencies' responsibility to ensure procedures are followed and that proper appointing authorities are used.

One organization suggested modifying § 213.3102(u)(ii), consistent with sections 501 and 504 of the Rehabilitation Act, to state that certification of whether an individual is likely to succeed in the performance of a job is made ''with or without reasonable accommodation.'' We are not adopting this suggestion because agencies already are required to make reasonable accommodation determinations for the work environment.

Two agencies recommended that OPM allow instructors, teachers, professors and other education professionals to certify an individual's ability to perform the duties of the job. We are not adopting this suggestion on the basis that individuals in these professions may not be specifically trained or licensed to make employability determinations.

One individual suggested that Federal agencies should require certification from a State Vocational Rehabilitation Agency (SVRA). We disagree; entities other than SVRAs (*e.g.*, VA, private Vocational Rehabilitation Agencies, etc.) provide certifications of job readiness. In addition, in many cases SVRA certification is time-consuming and places an unnecessary burden on individuals seeking Federal employment.

Three agencies and a public service organization commented that agencies may lack the expertise to determine whether applicants are likely to successfully perform the duties of a particular position. An agency asked what the impact would be if an agency did not agree with another agency's certification of job readiness. As stated in a previous paragraph, we decided against giving agencies the discretion to interpret an individual's certification of job readiness, which may result in inconsistent determinations across and within agencies and unanticipated inequities to disabled individuals. As noted in a previous paragraph, agencies have the discretion to decide from which entities they will accept certification of job readiness.

Another agency recommends the final regulation expands on the criteria that agencies should use to predict probable job success. We believe that the hiring agency, rather than OPM, is in the best position to determine job success for the position it wants to fill.

Employment Options

One agency asked that OPM clarify the temporary and other employment options. We agree clarification is needed. Under the new § 213.3102(u) authority, an agency may make:

—A temporary appointment for an individual who has proof of disability but lacks certification for job readiness. Using some type of temporary appointment in lieu of certification of job readiness has long been available to agencies. We are continuing this practice but clarifying it in the context of the revised appointing authority. The individual may work under the § 213.3102(u) appointment until the agency determines that the individual is able to perform the duties of the position, or the individual gains the certification from one of the entities listed in the appointing authority. Once certification is obtained, the agency may then appoint the individual to a time-limited or permanent appointment under the § 213.3102(u) authority. If the individual does not gain certification during the appointing authority timeframe, or does not demonstrate satisfactorily his or her ability to perform the duties of the job, the agency must separate the employee. (See 5 CFR 213.104 for the definition and restrictions on temporary appointments in the excepted service.)

—A temporary appointment of an individual who provides proof of a disability and certification for job readiness, when the duties of the position do not require it to be filled on a permanent basis.

—A time-limited appointment of an individual who provides proof of disability and certification for job readiness, when the duties of the position do not require it to be filled on a permanent basis. (See 5 CFR 213.104 for the definition of time-limited.)

—A permanent appointment of an individual who provides proof of disability and certification for job readiness. However, agencies are cautioned that the intent of Executive Orders 12125 and 13124 concerning employment of persons with mental retardation, severe physical disabilities, and psychiatric disabilities is to permit these individuals to obtain ''civil service competitive status.'' Civil service competitive status is obtained through conversion to the competitive service rather than remaining in the excepted service.

The noncompetitive conversion of individuals occurs after the individual serves at least 2 years under a time-limited or permanent appointment under the revised § 213.3102(u) authority. Time served in a temporary appointment under § 213.3102(u) described in a previous paragraph is creditable toward the 2 years required for conversion. Time served in a temporary appointment in the competitive or excepted service prior to an appointment under § 213.3102(u) is also creditable, as long as the position is in the same line of work as the position filled by the time-limited or permanent § 213.3102(u) appointment.

One agency commented that the process requiring certification of a disability for a temporary appointment is overly bureaucratic and presents a barrier to employment of disabled individuals. We disagree with this comment; agencies need proof that an applicant indeed has a disability in order to ensure the individual is eligible for appointment.

An agency asked whether these regulations impose a limitation on the number of times a person can be employed under a temporary appointment. The reference to time limitations on temporary appointments is found in § 213.104; this final regulation makes no change to that section.

An agency commented that the proposed regulation created an extra step to hire individuals with disabilities on a temporary appointment if they have already demonstrated the ability to perform the job duties in a satisfactory manner. The agency suggested individuals with disabilities should be hired on a permanent basis through which the 1st year of service could serve as the trial period. OPM does not agree and is retaining the temporary employment option for those instances when an agency needs to determine an individual's job readiness.

An agency suggested that the regulation include a statement that applicants may be appointed to temporary appointments under this authority with noncompetitive conversion to a permanent excepted service appointment without further certification of job readiness. OPM agrees and revised the new, consolidated authority to clarify this point.

An individual asked whether a temporary appointment is required for employees already in the Federal workforce who are seeking permanent employment under this authority. The temporary employment option is not intended for individuals already in the Federal workforce who have already demonstrated their ability to perform the duties of a particular job.

Noncompetitive Conversion

Two individuals commented that the 2-year requirement for noncompetitive conversion to the competitive service is excessive. One individual suggested we shorten this time period to 1 year. Executive Orders 12125 and 13124 make it very clear that the 2 years is required for conversion to the competitive service.

An agency suggested that conversion to a career-conditional appointment should be a mandatory condition of this hiring authority. OPM disagrees on the grounds that conversion to a career or

career-conditional appointment is not an employee right. Agencies maintain the discretion to determine whether an employee is ready for placement in the permanent career workforce. However, as noted in a previous paragraph, we caution agencies about the intent of Executive Orders 12125 and 13124 with regard to conversion of these individuals to the competitive service.

One agency suggested that OPM specify in the final regulation that conversions to the competitive service can be made after the individual completes 2 or more years of satisfactory service under either a permanent or temporary appointment under this authority. We disagree. It is longstanding practice for appointing authorities that contain conversion provisions, both in the excepted and competitive services, to require individuals to serve on nontemporary appointments before conversion. We see no reason to change this policy. However, we are adding clarification in section 213.3102(u) concerning the applicable appointments (time-limited or permanent) required for conversion.

Miscellaneous Comments

An agency and a public service organization commented that the term ''mental retardation'' is outdated and recommended we replace it with ''persons with a cognitive disability'' or ''developmental disability.'' OPM recognizes the term ''mental retardation'' is considered outdated, but the term is used in the authorizing Executive Order 12125, dated March 15, 1979. We are reluctant to change a term used in the Executive order.

An individual suggested that OPM change the term ''disabilities'' to ''medical conditions.'' OPM is not adopting this suggestion because ''medical conditions'' is a broader term that is undefined and general.

Two agencies suggested that OPM establish disability program points of contact (POCs) to provide technical guidance to agencies and to update contact information on the OPM Web site. OPM agrees and intends to establish one or more POCs within our Human Capital Leadership and Merit System Accountability Division.

Five agencies and one individual requested clarification and definition with respect to the following terms: ''certain conditions;'' ''severe physical disabilities;'' and ''certification.'' OPM does not use the phrase ''certain conditions'' in the final regulation. We used it in the supplementary portion of the proposed regulation to generally mean instances in which a hiring agency could make determinations of medical disabilities or employability. We are not defining ''severe physical disabilities'' on the basis that doing so may limit flexibility and because such a definition or finite list may exclude future conditions from consideration under this authority. We agree the term ''certification'' needs clarification. For the purposes of this regulation, we made a distinction between a determination of disability and a certification that a disabled applicant can perform the duties of the position.

Three public service organizations and five individuals asked whether individuals with specific conditions such as hearing impairments, kidney disease, epilepsy, learning disabilities, or cognitive deficits, or survivors of traumatic and/or acquired brain injuries would be included under this regulation. In addition, a public service organization commented that the regulation will allow OPM the opportunity to clarify the full coverage of individuals with disabilities. As stated in a previous paragraph, we are not providing a list of qualifying conditions for inclusion under this subpart. Further, there is no intent to specifically include or exclude any one particular type of disability.

Four agencies and two individuals commented that the regulation should address disabled employees currently in the Federal workforce who are looking for upward mobility and career progression. Because the appointing authority is aimed at initial entry to Federal employment, we are not adopting this suggestion.

Two individuals commented that this regulation should offer a hiring priority and/or other incentives to attract individuals with disabilities to the Federal Government. We are not adopting this suggestion because hiring priorities are established by statute or Executive order.

One agency asked whether OPM will require agencies to submit annual reports describing their use of this authority. There is no such requirement in the final regulation, however, OPM captures the statistical data on the use of the Schedule A appointing authorities in the Central Personnel Data File. This will continue with the implementation of the new regulation. OPM monitors, on an ad hoc basis, the use of all Federal Government-wide appointing authorities, including the Schedule A authorities for the employment of individuals with disabilities.

One individual commented that the regulation does not hold Federal agencies accountable for using this authority nor does it encourage them to employ persons with disabilities. By law, agencies have broad discretion in terms of how they fill their positions. The decision to hire, and under what authority they do so, rests with the agency. In addition, the Code of Federal Regulations is not the proper document to include anything that is not regulatory in nature. We do believe the modernized certification flexibilities provide encouragement for agencies to increase their use of this authority.

An agency suggested that OPM should ensure that the number of persons with disabilities in the Federal workforce increases. Agencies are responsible for making their hiring decisions, based upon their resources and human capital needs. OPM's role is to provide agencies with the flexibilities for doing so and encourage their use.

Implementation

Agencies must move those who are currently serving under 5 CFR 213.3102(t) and 213.3102(gg) authorities to the new authority, 5 CFR 213.3102(u), as soon as possible. Those individuals must serve under the same time limits as the appointment from which they are being moved. They are eligible for noncompetitive conversion as long as the original appointment (from which they are converting) is not a temporary one. A current employee's service under 5 CFR 213.3102(u) and 213.3102(gg), regardless of whether the appointment is temporary or not, will count toward the 2-year period needed for noncompetitive conversion.

For those individuals who are currently serving under 5 CFR 213.3102(u), their appointments are unchanged.

Proof of disability and certification of job readiness are not required for individuals already serving in appointments under § 213.3102(u). They are also not required of those who will move from §§ 213.3102(t) and 213.3102(gg) to the revised § 213.3102(u) authority.

We will update OPM's Guide to Personnel Data Standards and the Guide to Processing Personnel Actions to reflect the new changes. These Guides are available on OPM's Web site, *http://www.opm.gov.*

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain potential applicants and Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161, 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Sec. 213.101 also issued under 5 U.S.C. 2103.

Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 13318, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.;* Pub. L. 105–339, 112 Stat 3182–83; and E.O. 13162.

■ 2. Amend § 213.3102 by removing and reserving paragraphs (t) and (gg), and by revising paragraph (u) to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(u) *Appointment of Persons with Mental Retardation, Severe Physical Disabilities, or Psychiatric Disabilities.*

(1) *Purpose.* An agency may appoint, on a permanent, time-limited, or temporary basis, a person with mental retardation, a severe physical disability, or a psychiatric disability according to the provisions described below.

(2) *Proof of disability.* (i) An agency must require proof of an applicant's mental retardation, severe physical disability, or psychiatric disability prior to making an appointment under this section.

(ii) An agency may accept, as proof of an individual's mental retardation, severe physical disability, or psychiatric disability, appropriate documentation (e.g., records, statements, or other appropriate information) issued from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

(3) *Certification of job readiness.* (i) An agency may accept certification that the individual is likely to succeed in the performance of the duties of the position for which he or she is applying. Certification of job readiness may be provided by any entity specified in paragraph (u)(2)(ii) of this section.

(ii) In cases where certification has not been provided, the hiring agency may give the individual a temporary appointment under this authority to determine the individual's job readiness. The agency may also accept, at the agency's discretion, service under another type of temporary appointment in the competitive or excepted services as proof of job readiness.

(4) *Permanent or time-limited employment options.* (i) An agency may make a permanent or time-limited appointment based upon:

(A) Proof of disability; and

(B) A certification of job readiness, or demonstration of job readiness through a temporary appointment.

(5) *Temporary employment options.* An agency may make a temporary appointment based upon proof of disability specified in paragraph (u)(2) of this section when:

(i) It is necessary to observe the applicant on the job to determine whether the applicant is able or ready to perform the duties of the position. When an agency uses this option to determine an individual's job readiness, the hiring agency may convert the individual to a permanent appointment whenever the agency determines the individual is able to perform the duties of the position; or

(ii) The individual has a certification of job readiness and the work is of a temporary nature.

(6) *Noncompetitive conversion to the competitive service.* (i) An agency may noncompetitively convert to the competitive service an employee who has completed 2 years of satisfactory service in a nontemporary appointment under this authority in accordance with the provisions of Executive Order 12125 as amended by Executive Order 13124 and § 315.709 of this chapter.

(ii) An agency may credit time spent on a temporary appointment specified in paragraph (u)(5) of this section towards the 2-year requirement.

* * * * *

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 3. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577. 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(d). Sec. 315.611 also issued under Section 511, Pub. L. 106–117, 113 Stat. 1575–76. Sec. 315.708 also issued under E.O. 13318. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987, Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

Subpart B—The Career-Conditional Employment System

■ 4. In § 315.201 revise paragraph (b)(1)(xii) to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xii) The date of nontemporary appointment under Schedule A, § 213.3102(u) of this chapter, of a person with mental retardation, a severe physical disability, or a psychiatric disability, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.709;

* * * * *

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

■ 5. Revise § 315.709 to read as follows:

§ 315.709 Appointment for Persons With Disabilities.

(a) *Coverage.* An employee appointed under § 213.3102(u) of this chapter may have his or her appointment converted to a career or career-conditional appointment when he or she:

(1) Completes 2 or more years of satisfactory service, without a break of more than 30 days, under a nontemporary appointment under § 213.3102(u);

(2) Is recommended for such conversion by his or her supervisor;

(3) Meets all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register and medical qualifications; and

(4) Is converted without a break in service of one workday.

(b) *Tenure on conversion.* An employee converted under paragraph (a) of this section becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section; or

(2) A career employee if he or she has completed 3 years of substantially continuous service in a temporary appointment under § 213.3102(u) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

[FR Doc. 06–6464 Filed 7–25–06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0080]

Imported Fire Ant; Addition of Counties in Arkansas and Tennessee to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all of 2 counties in Arkansas and all or portions of 21 counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of imported fire ant to noninfested areas of the United States.

DATES: This interim rule is effective July 26, 2006. We will consider all comments that we receive on or before September 25, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0080 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0080, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0080.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant (*Solenopsis invicta* Buren, *Solenopsis richteri* Forel, and hybrids of these species) is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by:

- Adding all of Perry County, AR, to the quarantined area and expanding the quarantined area in Polk County, AR; and
- Adding portions of Anderson, Davidson, Gibson, Knox, Rutherford, Tipton, Van Buren, and Williamson Counties, TN, to the quarantined area and expanding the quarantined area in Bedford, Benton, Blount, Carroll, Cumberland, Grundy, Haywood, Hickman, Humphreys, Loudon, Maury, Roane, and Sequatchie Counties, TN.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget

has waived its review under Executive Order 12866.

We are amending the imported fire ant regulations by designating all or portions of 2 counties in Arkansas and 21 counties in Tennessee as quarantined areas. We are taking this action because surveys conducted by APHIS and State and county agencies revealed that imported fire ant has spread to these areas. Agricultural activities in these imported fire ant-infested areas are at risk due to the potential of imported fire ants to directly or indirectly damage crops and agricultural machinery, and harm livestock.

This interim rule will affect businesses such as nurseries, landscaping operations, and timber companies that are located within the newly expanded quarantined areas and that transport regulated articles interstate. According to the 2002 Census of Agriculture, there are at least 537 nurseries and greenhouses in these 23 counties (table 1). These entities are now required to treat their regulated articles before moving them interstate.

TABLE 1.—NURSERIES AND MARKET SALES OF AGRICULTURAL PRODUCTS IN THE AFFECTED COUNTIES

Affected counties	Nurseries and greenhouses	Market sales of nurseries and green-houses ($1,000)	Market sales of all crops (including nurseries) ($1,000)	Market sales of livestock and poultry and products ($1,000)	Total sales of agriculturial products ($1,000)
Arkansas (2)	23	$2,853	$4,903	$109,111	$114,013
Tennessee (21)	532	53,298	239,554	261,441	500,995
Total	555	56,151	244,457	370,552	615,008

According to the 2002 Census of Agriculture, the market value of all agricultural products sold in these 23 counties was more than $615 million, 67 percent of which were sales attributable to livestock, poultry, and animal products, and the remaining 33 percent to crop sales including nursery and greenhouse crops. Specifically, in 2002, the value of sales from nursery and greenhouse crops produced in these 23 counties was slightly more than $56 million. Therefore, there is a large agricultural economy at risk due to the potential of the imported fire ant to damage crops and injure livestock.

According to Small Business Administration criteria, a business engaged in crop production is considered to be a small entity if its annual receipts are not more than $750,000 (North American Industry Classification System [NAICS] Subsector 111). A business engaged in support activities for agriculture and forestry is considered small if its annual receipts are not more than $6 million (NAICS Subsector 115). Agricultural entities in the newly quarantined areas are predominantly, if not entirely, small entities.

Nurseries and greenhouses, as well as farm equipment dealers, construction companies, and those who sell, process, or move regulated articles from and through quarantined areas, will be affected by this rule. However, adverse economic effects of the rule on affected entities that move regulated articles interstate are mitigated by the availability of various treatments. In most cases these treatments permit the movement of regulated articles with only a small additional cost. For example, the treatment cost of an average shipment of nursery plants on a standard trailer truck ranges between 0.08 percent and 2 percent of the value of the plants transported, given a treatment cost per shipment of around $200.[1] The estimated annual compliance costs for these entities is small in comparison to the benefit gained through reduced human-assisted spread of imported fire ant to noninfested areas of the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

[1] An average nursery plant (i.e., potted) costs between $1 and $25, so that the value of a load for a standard tractor trailer transporting up to 10,000 plants ranges between $10,000 and $250,000; $200/$100,000 = 2 percent, and $200/$250,000 = 0.08 percent.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.81–3, paragraph (e) is amended as follows:

■ a. Under the heading Arkansas, by adding, in alphabetical order, a new entry for Perry County and by revising the entry for Polk County to read as set forth below.

■ b. Under the heading Tennessee, by adding, in alphabetical order, new entries for Anderson, Davidson, Gibson, Knox, Rutherford, Tipton, Van Buren, and Williamson Counties, and revising the entries for Bedford, Benton, Blount, Carroll, Cumberland, Grundy, Haywood, Hickman, Humphreys, Loudon, Maury, Roane, and Sequatchie Counties to read as set forth below.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

* * * * *

Arkansas

* * * * *

Perry County. The entire county.

* * * * *

Polk County. The entire county.

* * * * *

Tennessee

Anderson County. That portion of the county lying south of a line beginning at the intersection of the Roane/Anderson County line and Tennessee Highway 95; then northeast on Tennessee Highway 95 to Tennessee Highway 62; then southeast on Tennessee Highway 62 to the Anderson/Knox County line.

Bedford County. That portion of the county lying south of a line beginning at the intersection of the Marshall/Bedford County line and Tennessee Highway 270; then southeast on Tennessee Highway 270 to U.S. Highway 41A; then northwest on U.S. Highway 41A to Hickory Hill Road; then east on Hickory Hill Road to Parson Road; then north on Parson Road to Nashville Dirt Road; then northwest on Nashville Dirt Road to Unionville-Deason Road; then east on Unionville-Deason Road to Edd Joyce Road; then east on Edd Joyce Road to Coop Road; then southeast on Coop Road to Tennessee Highway 82; then east on Tennessee Highway 82 to Tennessee Highway 269; then south on Tennessee Highway 269 to Tennessee Highway 64; then northeast on Tennessee Highway 64 to Knob Creek Road; then east on Knob Creek Road to the Bedford/Coffee County line.

Benton County. That portion of the county lying south of a line beginning at the intersection of the Carroll/Benton County line and U.S. Highway 70; then east on U.S. Highway 70 to U.S. Highway 641; then south on U.S. Highway 641 to Shiloh Church Road; then northeast on Shiloh Church Road to Tennessee Highway 191; then northwest on Tennessee Highway 191 to the line of latitude 36° N; then east along the line of latitude 36° N to the Benton/Humphreys County line.

* * * * *

Blount County. That portion of the county lying south of a line beginning at the intersection of the Knox/Blount County line and U.S. Highway 129; then south on U.S. Highway 129 to U.S. Highway 321; then east on U.S. Highway 321 to the Blount/Sevier County line.

* * * * *

Carroll County. That portion of the county lying southeast of a line beginning at the intersection of the Gibson/Carroll County line and U.S. Highway 79/70A; then northeast on U.S. Highway 79/70A to U.S. Highway 79; then northeast on U.S. Highway 79 to Big Buck Road; then east on Big Buck Road to Tennessee Highway 436; then north on Tennessee Highway 436 to Thompson Road; then east on Thompson Road to Tennessee Highway 22; then southeast on Tennessee Highway 22 to Tennessee Highway 364 (Huntingdon Bypass); then east on Tennessee Highway 364 to U.S. Highway 70, then east on U.S. Highway 70 to the Carroll/Benton County line.

* * * * *

Cumberland County. That portion of the county lying southeast of a line beginning at the intersection of the Rhea/Cumberland County line and Tennessee Highway 68; then northwest on Tennessee Highway 68 to Cox Valley Road; then northeast on Cox Valley road to U.S. Highway 70; then east on U.S. Highway 70 to Market Street (in Crab Orchard); then north on Market Street to Main Street; then west on Main Street to Chestnut Hill Road; then north on Chestnut Hill Road to the line of latitude 35°56′ N; then east along the line of latitude 35°56′ N to the Cumberland/Morgan County line.

Davidson County. That portion of the county lying southeast of a line beginning at the intersection of the Williamson/Davidson County line and U.S. Highway 431; then northeast on U.S. Highway 431 to Tennessee Highway 254; then east on Tennessee Highway 254 to U S. Highway 31A/41A; then north on U.S. Highway 31A/41A to Tennessee Highway 255; then northeast on Tennessee Highway 255 to Interstate 40; then east on Interstate 40 to the Davidson/Wilson County line.

* * * * *

Gibson County. That portion of the county lying southeast of a line beginning at the intersection of the Madison/Gibson County line and U.S. Highway 45W; then northwest on U.S. Highway 45W to U.S. Highway 45 Bypass (Tennessee Highway 366); then north on U.S. Highway 45 Bypass to U.S. Highway 79/70A; then northeast on U.S. Highway 79/70A to the Gibson/Carroll County line.

* * * * *

Grundy County. That portion of the county lying southeast of a line beginning at the intersection of the Coffee/Grundy County line and the line of latitude 35°25′ N; then continuing east along the line of latitude 35°25′ N to Deer Run road; then north on Deer Run Road to Cabbage Patch Road; then east on Cabbage Patch Road to Tennessee Highway 108; then southeast on Tennessee Highway 108 to Tennessee Highway 56; then north on Tennessee Highway 56 to the Grundy/Warren County line.

* * * * *

Haywood County. That portion of the county lying south of a line beginning at the intersection of the Tipton/Haywood County line and Tennessee Highway 54; then east on Tennessee Highway 54 to U.S. Highway 70; then east on U.S. Highway 70 to Interstate 40; then northeast on Interstate 40 to the Haywood/Madison County line.

* * * * *

Hickman County. That portion of the county lying south of a line beginning at the intersection of the Humphreys/Hickman County line and Interstate 40; then northeast on Interstate 40 to Tennessee Highway 230; then east on Tennessee Highway 230 to Tennessee Highway 48; then southeast on Tennessee Highway 48 to Tennessee Highway 100; then northeast on Tennessee Highway 100 to Tennessee Highway 230; then south on Tennessee Highway 230 to Tennessee Highway 50; then southeast on Tennessee Highway 50 to the Hickman/Maury County Line.

Humphreys County. That portion of the county lying south of a line beginning at the intersection of the Benton/Humphreys County line and the line of latitude 36°; then continuing east along the line of latitude 36° to Forks River Road; then south on Forks River Road to Old Highway 13; then southeast on Old Highway 13 to Tennessee Highway 13; then south on Tennessee Highway 13 to Interstate 40; then east on Interstate 40 to the Humphreys/Hickman County line.

Knox County. That portion of the county lying south of a line beginning at the intersection of the Anderson/Knox County line and Tennessee Highway 62; then east on Tennessee Highway 62 to Tennessee Highway 131; then south on Tennessee Highway 131 to Middlebrook Pike; then southeast on Middlebrook Pike to North Cedar Bluff Road; then south on North Cedar Bluff Road to U.S. Highway 70; then northeast on U.S. Highway 70 to U.S. Highway 129; then south on U.S. Highway 129 to the Knox/Blount County line.

* * * * *

Loudon County. The entire county.

* * * * *

Maury County. That portion of the county lying south of a line beginning

at the intersection of the Hickman/Maury County line and Jones Valley Road; then east on Jones Valley Road to Leipers Creek Road; then south on Leipers Creek Road to Tennessee Highway 247; then northeast on Tennessee Highway 247 to Tennessee Highway 246; then north on Tennessee Highway 246 to the Maury/Williamson County line.

* * * * *

Roane County. The entire county.

Rutherford County. That portion of the county lying northwest of a line beginning at the intersection of the Williamson/Rutherford County line and Rocky Fork Road; then northeast on Rocky Fork Road to Old Nashville Highway; then southeast on Old Nashville Highway to Tennessee Highway 102; then northeast on Tennessee Highway 102 to Weakley Lane; then north on Weakley Lane to Couchville Pike; then northwest on Couchville Pike to Corinth Road; then north on Corinth Road to the Rutherford/Wilson County line.

Sequatchie County. The entire county.

* * * * *

Tipton County. That portion of the county lying south of a line beginning at the intersection of the Shelby/Tipton County line and Tennessee Highway 14; then northeast on Tennessee Highway 14 to Tennessee Highway 179; then southeast on Tennessee Highway 179 to the Tipton/Haywood County line.

Van Buren County. That portion of the county lying south of Tennessee Highway 30.

* * * * *

Williamson County. That portion of the county lying northeast of a line beginning at the intersection of the Davidson/Williamson County line and U.S. Highway 31; then southwest on U.S. Highway 31 to U.S. Highway Business 431; then southeast on U.S. Highway Business 431 to Mack Hatcher Parkway; then north on Mack Hatcher Parkway to South Royal Oaks Boulevard; then northeast on South Royal Oaks Boulevard to Tennessee Highway 96; then east on Tennessee Highway 96 to Clovercroft Road; then northeast on Clovercroft Road to Wilson Pike; then north on Wilson Pike to Clovercroft Road; then northeast on Clovercroft Road to Rocky Fork Road; then east on Rocky Fork Road to the Williamson/Rutherford County line.

* * * * *

Done in Washington, DC, this 20th day of July 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–11938 Filed 7–25–06; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD26

Loan Interest Rates

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its lending rule to include the criteria the NCUA Board considers in setting a permissible interest rate for federal credit unions exceeding 15 percent and to establish procedures regarding publication of its determination. The amendment will allow NCUA to notify federal credit unions of any increase in the interest rate ceiling through a *Letter to Federal Credit Unions*, other NCUA publications, and a press release, instead of issuing an amendment to the regulation every 18 months as it has previously done. The amendment will eliminate unnecessary, periodic regulatory amendments and provides a more efficient and effective means of informing federal credit unions of the permissible interest rate.

DATES: This final rule is effective September 9, 2006.

FOR FURTHER INFORMATION CONTACT: Moisette I. Green, Staff Attorney, at Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Credit Union Act (the Act) sets a 15 percent ceiling on the interest rate federal credit unions may charge on loans to members unless, in 18-month intervals, the NCUA Board establishes a higher rate. 12 U.S.C. 1757(5)(A)(vi)(I). The Act authorizes the NCUA Board to establish a higher interest rate ceiling for periods of no more than 18 months based on consideration of certain economic criteria and after consulting with congressional committees, the Department of Treasury, and federal financial institution regulatory agencies. *Id.* The Board's practice has been to exercise this authority by amending the general lending regulation. 12 CFR 701.21(c)(7). In the past, when the Board increased the interest rate ceiling, it has issued a final rule under the Administrative Procedure Act (APA) and published it in the **Federal Register**. 5 U.S.C. 553(b). Most recently, on January 13, 2005, the Board issued a final rule setting a higher maximum interest rate of 18 percent until September 8, 2006. 70 FR 3861 (January 27, 2005).

The NCUA Board is amending its general lending rule regarding permissible interest rates to address the procedures for publication of a temporary increase in the maximum interest rate. This amendment provides that the Board, at least every 18 months, will make a determination in accordance with the requirements of the Act as to whether federal credit unions will be permitted to charge interest in excess of 15 percent and will provide notice of its determination through a *Letter to Federal Credit Unions*, other official NCUA publications, and in a press release.

This new procedure for providing notice to federal credit unions regarding the Board's determination on the permissible interest rate parallels the Board's long-standing procedure in providing notice to federal credit unions of its determination of the annual operating fee charged to federal credit unions. The operating fee is charged to federal credit unions under a specific provision in the Act. 12 U.S.C. 1755(a). The Act provides for the Board to assess an annual operating fee on federal credit unions ''[i]n accordance with rules prescribed by the Board.'' *Id.* The regulation implementing the statutory operating fee provision is 12 CFR 701.6. This regulation does not set a particular operating fee, but describes the basis for assessment, coverage, the requirement of notice to credit unions, and so forth. The Board establishes the annual operating fee as part of adopting its annual budget at the end of each year, sets the operating fee as a sliding scale based on asset size for federal credit unions, and provides notice to federal credit unions. The Board provides notice, by regular or electronic mail, to all federal credit unions through a *Letter to Federal Credit Unions* that sets out the operating fee scale. In addition, the operating fee is itemized for federal credit unions in the individual invoice sent annually to all federally insured credit unions regarding their capitalization deposit that supports share account insurance.

The interest rate provision in the Act does not require the Board to implement its authority in a rule or regulation, but provides only that the Board can ''establish'' a higher rate subject to certain criteria. 12 U.S.C. 1757(5)(A)(vi)(I). Although the Board has used the procedure of issuing a final rule amending the general lending regulation, the Board concludes the Act does not require it to do so and that it may act to ''establish'' an interest rate by Board action and provide notice by other means. Further, the Board believes the new procedure of individual notice to federal credit unions and elimination of potential regulatory amendments every 18 months are a more efficient and effective means for the Board to address and for federal credit unions to be informed of permissible interest rates in accordance with the Act. Accordingly, the Board is revising the current regulation to provide that it will determine, under the Act's criteria, no less than every 18 months regarding whether federal credit unions may charge interest rates in excess of 15 percent and will give notice to federal credit unions directly, in substantially the same way it provides notice of the federal credit union operating fee.

Under the APA, notice and public comment are not required for interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or when the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. *5 U.S.C. 553(b).* The Board has determined previously that notice and public comment for adjustments in the permissible interest rate ceiling are impractical and not in the public interest. *See* 70 FR 3861, 3863 (January 27, 2005). The Board notes the specific statutory criteria it must consider and the 18-month intervals for re-consideration make meaningful public comment virtually impossible. In addition, because of safety and soundness considerations, federal credit unions need to be able to forecast and adjust their rates to meet market changes with some degree of certainty as to what will be legally permissible. For these reasons, the Board's long-standing practice has been to issue a final rule, rather than seeking public comment, to notify federal credit unions of adjustments in the maximum allowable interest rate in order to provide maximum flexibility and certainty for federal credit unions.

Section 701.21(c)(7) of the NCUA regulations is amended to allow the Board to provide actual notice of any change in the interest rate ceiling to federal credit unions. The APA permits executive agencies to personally serve or otherwise provide actual notice to persons subject to a rule instead of publishing it in the **Federal Register**. 5 U.S.C. 553(b). To publish an increase in the interest rate ceiling and comply with the requirements of section 107 of the Act, the Board must determine the ceiling in enough time to prevent a reversion to the statutory 15 percent maximum. 12 U.S.C. 1757(5)(A)(vi)(I). Before publishing any increase in the interest rate ceiling, the Board must coordinate with congressional committees, the Department of the Treasury, and other financial regulators, and consider other factors, such as money market rates and credit union safety and soundness. *Id.* If the Board makes an adjustment, providing notice to federal credit unions directly is more expedient than publishing it in the **Federal Register**. Accordingly, the Board is amending its procedure to allow for the actual notice of any increase in the maximum interest rate.

The Board will notify federal credit unions of an increase in the interest rate ceiling through official NCUA publications and the media. NCUA's primary method of notifying federal credit unions will be through a *Letter to Federal Credit Unions.* NCUA currently uses these Letters to notify credit unions of policy statements, examination procedures, practices, and other significant regulatory matters, including, as noted above, the operating fee scale. The Letters are sent to all Federal credit unions by first-class or electronic mail. Interested persons may obtain copies of the Letters from the NCUA Web site or by contacting the NCUA Publications Office. Additionally, the Board will provide notice of an adjustment in the maximum interest rate in a press release. Federal credit unions will usually receive notice of an adjustment within two to three days of the Board's determination through these methods versus a general notice to the public of a regulatory amendment within a week through the **Federal Register**.

Additionally, the Board notes that the approach in this amendment to § 701.21(c)(7) tracks the rules and procedures of the Federal Open Market Committee for publishing information relating to open market operations. 12 CFR 271.3. The Board has determined the amendments to § 701.21(c)(7), the methods for publishing an adjustment in the interest rate ceiling for federal credit unions, relate to statements of policy, internal procedures, and practices for which public notice, comment, and a delayed effective date are not required under the APA. *See* 5 U.S.C. 553(b) and (d).

II. Regulatory Procedures

The Administrative Procedure Act

The amendments in this rule address the Board's procedure for providing notice to federal credit unions of the Board's decision regarding changes in the permissible interest rate and are procedural rather than substantive. Therefore, the rule is exempt from notice and public comment. 5 U.S.C. 553(b)(3)(A). The Board is establishing September 9, 2006 as the effective date of this rule because the current expiration date for the last amendment to the lending rule establishing an 18 percent ceiling is September 8, 2006. The Board notes that, currently, there are legislative proposals under consideration in Congress that may affect the provision in the Act on interest rates and, as necessary, it will make changes in the lending rule and its procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities, those credit unions with less than ten million dollars in assets. This rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within OMB, has determined that, for purposes of SBREFA, this is not a major rule. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the rule may be reviewed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Loan interest rates.

By the National Credit Union Administration Board on July 20, 2006.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 701 as set forth below:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 is revised to read:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.21 is also authorized by 5 U.S.C. 552. Section 701.31 is also authorized by 12 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Amend § 701.21 by revising paragraphs (c)(7)(i) and (ii) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(i) *General.* Except when the Board establishes a higher maximum rate, federal credit unions may not extend credit to members at rates exceeding 15 percent per year on the unpaid balance inclusive of all finance charges. Federal credit unions may use variable rates of interest but only if the effective rate over the term of a loan or line of credit does not exceed the maximum permissible rate.

(ii) *Temporary rates.* (A) At least every 18 months, the Board will determine if federal credit unions may extend credit to members at an interest rate exceeding 15 percent. After consultation with appropriate congressional committees, the Department of Treasury, and other federal financial institution regulatory agencies, the Board may establish a rate exceeding the 15 percent per year rate, if it determines money market interest rates have risen over the preceding six-month period and prevailing interest rate levels threaten the safety and soundness of individual federal credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth.

(B) When the Board establishes a higher maximum rate, the Board will provide notice to federal credit unions of the adjusted rate by issuing a *Letter to Federal Credit Unions*, as well as providing information in other NCUA publications and in a statement for the press.

(C) Federal credit unions may continue to charge rates exceeding the established maximum rate only on existing loans or lines of credit made before the effective date of any lowering of the maximum rate.

* * * * *

[FR Doc. E6–11907 Filed 7–25–06; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE248, Special Conditions No. 23–188–SC]

Special Conditions; Thielert Aircraft Engines (TAE) GmbH, Piper PA 28–161 Cadet, Warrior II and Warrior III Series Airplanes; Diesel Cycle Engine Using Turbine (Jet) Fuel

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, with the installation of a Thielert Aircraft Engines (TAE) Model TAE 125–1 aircraft diesel engine (ADE). These airplanes will have a novel or unusual design feature(s) associated with the installation of a diesel cycle engine utilizing turbine (jet) fuel. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for installation of this new technology engine. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* July 19, 2006.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 2002, TAE GmbH, of Lichtenstein, Germany applied for a supplemental type certificate to install a diesel cycle engine utilizing turbine (jet) fuel in Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes. The Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, currently approved under Type Certificate No. 2A13, is a four-place, low wing, fixed tricycle landing gear, conventional planform airplane. The Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes to be modified have gross weights in the range of 2,325 to 2,440 pounds in the normal category. The affected series of airplanes have been equipped with various gasoline reciprocating engines of 160 horsepower.

Expecting industry to reintroduce diesel engine technology into the small airplane fleet, the FAA issued Policy Statement PS–ACE100–2002–004 on May 15, 2004, which identified areas of technological concern involving introduction of new technology diesel engines into small airplanes. For a more detailed summary of the FAA's development of diesel engine requirements, refer to this policy.

The general areas of concern involved the power characteristics of the diesel engines, the use of turbine fuel in an airplane class that has typically been powered by gasoline fueled engines, the vibration characteristics and failure modes of diesel engines. These concerns were identified after review of the historical record of diesel engine use in aircraft and a review of the 14 CFR part 23 regulations, which identified specific regulatory areas that needed to be

evaluated for applicability to diesel engine installations. These concerns are not considered universally applicable to all types of possible diesel engines and diesel engine installations. However, after review of the TAE installation, the TAE engine type, and the requirements applied by the Lufthart Bundesamt, and applying the provisions of the diesel policy, the FAA proposed these fuel system and engine related special conditions. Other special conditions issued in a separate notice included special conditions for HIRF and application of § 23.1309 provisions to the Full Authority Digital Engine Control (FADEC).

Type Certification Basis

Under the provisions of § 21.101, TAE GmbH must show that the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 2A13 or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. 2A13 are as follows:

The certification basis of models Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes is:

Civil Air Regulations (CAR) 3 effective May 15, 1956, including Amendments 3–1 and 3–2; paragraph 3.387(d) of Amendment 3–4; paragraphs 3.304 and 3.705 of Amendment 3–7, effective May 3, 1962; FAR 23.955 and 23.959 as amended by Amendment 23–7, effective September 14, 1969; FAR 23.1557(c)(1) as amended by Amendment 23–18, effective May 2, 1977; FAR 23.1327 and 23.1547 as amended by Amendment 23–20, effective September 1, 1977; and FAR 36, effective December 1, 1969, through Amendment 36–4.

Equivalent Safety Items for:

Airspeed Indicator: CAR 3.757.

14 CFR part 23, at Amendment level 23–51, applicable to the areas of change:

14 CFR part 23, §§ 23.1; 23.3; 23.21; 23.23; 23.25; 23.29; 23.33; 23.45; 23.49; 23.51; 23.53; 23.63; 23.65; 23.69; 23.71; 23.73; 23.77; 23.141; 23.143; 23.145; 23.151; 23.153; 23.155; 23.171; 23.173; 23.175; 23.177; 23.201; 23.221; 23.231; 23.251; 23.301; 23.303; 23.305; 23.307; 23.321; 23.335; 23.337; 23.341; 23.343; 23.361; 23.361(b)(1); 23.361(c)(3); 23.363; 23.371; 23.572; 23.573; 23.574; 23.601; 23.603; 23.605; 23.607; 23.609; 23.611; 23.613; 23.619; 23.621; 23.623; 23.625; 23.627; CAR 3.159; 23.773; 23.777; 23.777(d); 23.779; 23.779(b); 23.781; 23.831; 23.863; 23.865; 23.867; 23.901; 23.901(d)(1); 23.903; 23.905; 23.907; 23.909; 23.925; 23.929; 23.939; 23.943; 23.951; 23.951(c); 23.954; 23.955; 23.959; 23.961; 23.963; 23.965; 23.967; 23.969; 23.971; 23.973; 23.973(f); 23.975; 23.977; 23.977(a)(2) in place of 23.977(a)(1); 23.991; 23.993; 23.994; 23.995; 23.997; 23.999; 23.1011; 23.1013; 23.1015; 23.1017; 23.1019; 23.1021; 23.1023; 23.1041; 23.1043; 23.1047; 23.1061; 23.1063; 23.1091; 23.1093; 23.1103; 23.1107; 23.1121; 23.1123; 23.1141; 23.1143; 23.1145; 23.1163; 23.1165; 23.1181; 23.1182; 23.1183; 23.1191; 23.1193; 23.1301; 23.1305; 23.1305(c)(8); 23.1309; 23.1311; 23.1321; 23.1322; 23.1327; 23.1331; 23.1337; 23.1351; 23.1353; 23.1357; 23.1359; 23.1361; 23.1365; 23.1367; 23.1381; 23.1431; 23.1461; 23.1501; 23.1519; 23.1521; 23.1521(d); 23.1527; 23.1529; 23.1541; 23.1543; 23.1549; 23.1551; 23.1555; 23.1557; 23.1557(c)(1)(ii), in place of §§ 23.1557(c)(i); 23.1567; 23.1581; 23.1583; 23.1585; 23.1587 and 23.1589.

Equivalent levels of safety for:

Cockpit controls: 23.777(d).

Motion and effect of cockpit controls: 23.779(b).

Liquid Cooling—Installation: 23.1061.

Ignition switches: 23.1145.

The type certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The type certification basis for the modified airplanes is as stated previously with the following modifications.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, with the installation of a TAE 125–1 ADE, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, with the installation of a TAE 125–1 ADE, must comply with the 14 CFR part 21, § 21.115 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, as defined in 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes will incorporate the following novel or unusual design features:

Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, with the installation of a TAE 125–1 ADE, will incorporate an aircraft diesel engine utilizing turbine (jet) fuel.

Discussion of Comments

A notice of proposed special conditions No. 23–06–04–SC for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, with the installation of a TAE 125–1 ADE, was published on June 14, 2006 (71 FR 34288). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, with the installation of a TAE 125–1 ADE. Should TAE GmbH apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. 2A13 to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, with the installation of a TAE 125–1 ADE. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, with the installation of a TAE 125–1 ADE.

1. Engine torque (Provisions similar to § 23.361, paragraphs (b)(1) and (c)(3)):

(a) For diesel engine installations, the engine mounts and supporting structure must be designed to withstand the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.

The effects of sudden engine stoppage may alternately be mitigated to an acceptable level by utilization of isolators, dampers, clutches and similar provisions, so that unacceptable load levels are not imposed on the previously certificated structure.

(b) The limit engine torque to be considered under paragraph 14 CFR part 23, § 23.361(a) must be obtained by multiplying the mean torque by a factor of four for diesel cycle engines.

(1) If a factor of less than four is utilized, it must be shown that the limit torque imposed on the engine mount is consistent with the provisions of § 23.361(c), that is, it must be shown that the utilization of the factors listed in § 23.361(c)(3) will result in limit torques being imposed on the mount that are equivalent or less than those imposed by a conventional gasoline reciprocating engine.

2. Powerplant—Installation (Provisions similar to § 23.901(d)(1) for turbine engines):

Considering the vibration characteristics of diesel engines, the applicant must comply with the following:

(a) Each diesel engine installation must be constructed and arranged to result in vibration characteristics that—

(1) Do not exceed those established during the type certification of the engine; and

(2) Do not exceed vibration characteristics that a previously certificated airframe structure has been approved for—

(i) Unless such vibration characteristics are shown to have no effect on safety or continued airworthiness, or

(ii) Unless mitigated to an acceptable level by utilization of isolators, dampers, clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

3. Powerplant—Fuel System—Fuel system with water saturated fuel (Compliance with § 23.951 requirements):

Considering the fuel types used by diesel engines, the applicant must comply with the following:

Each fuel system for a diesel engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80 °F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

Methods of compliance that are acceptable for turbine engine fuel systems requirements of § 23.951(c) are also considered acceptable for this requirement.

4. Powerplant—Fuel System—Fuel system hot weather operation (Compliance with § 23.961 requirements):

In place of compliance with § 23.961, the applicant must comply with the following:

Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, or for aircraft equipped with diesel cycle engines that use turbine or diesel type fuels, the initial temperature must be 110 °F, −0°, +5° or the maximum outside air temperature for which approval is requested, whichever is more critical.

The fuel system must be in an operational configuration that will yield the most adverse, that is, conservative results.

To comply with this requirement, the applicant must use the turbine fuel requirements and must substantiate these by flight-testing, as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

5. Powerplant—Fuel system—Fuel tank filler connection (Compliance with § 23.973(f) requirements):

In place of compliance with § 23.973(e) and (f), the applicant must comply with the following:

For airplanes that operate on turbine or diesel type fuels, the inside diameter of the fuel filler opening must be no smaller than 2.95 inches.

6. Powerplant—Fuel system—Fuel tank outlet (Compliance with § 23.977 requirements):

In place of compliance with § 23.977(a)(1) the applicant will comply with § 23.977(a)(2), except ''diesel'' replaces ''turbine.''

There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must, for diesel engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

7. Powerplant—Powerplant Controls and Accessories—Engine ignition systems (Compliance with § 23.1165 requirements):

Considering that the FADEC provides the same function as an ignition system for this diesel engine, in place of compliance to § 23.1165, the applicant will comply with the following:

The electrical system must comply with the following requirements:

(a) In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.

(b) The transition from the actual engine electrical network (FADEC network) to the remaining electrical system should be made at a single point only. If several transitions (for example, redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.

(c) There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.

(d) In case of loss of alternator power, the installation must guarantee that the battery will provide the power for an appropriate time after appropriate warning to the pilot. This period must be at least 120 minutes.

(e) FADEC, alternator and battery must be interconnected in an appropriate way, so that in case of loss of battery power, the supply to the FADEC is guaranteed by the alternator.

8. Equipment—General—Powerplant Instruments (Compliance with § 23.1305 requirements):

In place of compliance with § 23.1305, the applicant will comply with the following:

The following are required powerplant instruments:

(a) A fuel quantity indicator for each fuel tank, installed in accordance with § 23.1337(b).

(b) An oil pressure indicator.

(c) An oil temperature indicator.

(d) A tachometer indicating propeller speed.

(e) A coolant temperature indicator.

(f) An indicating means for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

Alternately, no indicator is required if the engine can operate normally for a specified period with the fuel strainer exposed to the maximum fuel contamination as specified in MIL–5007D and provisions for replacing the fuel filter at this specified period (or a shorter period) are included in the maintenance schedule for the engine installation.

(g) Power setting, in percentage.

(h) Fuel temperature.

(i) Fuel flow (engine fuel consumption).

9. Operating Limitations and Information—Powerplant limitations—Fuel grade or designation (Compliance with § 23.1521(d) requirements):

Instead of compliance with § 23.1521(d), the applicant must comply with the following:

The minimum fuel designation (for diesel engines) must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of § 23.1521.

10. Markings And Placards—Miscellaneous markings and placards—Fuel, oil, and coolant filler openings (Compliance with § 23.1557(c)(1) requirements):

Instead of compliance with § 23.1557(c)(1)(i), the applicant must comply with the following:

Fuel filler openings must be marked at or near the filler cover with—

For diesel engine-powered airplanes—

(a) The words ''Jet Fuel''; and

(b) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(c) A warning placard or note that states the following or similar: ''Warning—this airplane equipped with an aircraft diesel engine, service with approved fuels only.''

The colors of this warning placard should be black and white.

11. Powerplant—Fuel system—Fuel-Freezing:

If the fuel in the tanks cannot be shown to flow suitably under all possible temperature conditions, then fuel temperature limitations are required. These will be considered as part of the essential operating parameters for the aircraft and must be limitations.

(1) The takeoff temperature limitation must be determined by testing or analysis to define the minimum cold-soaked temperature of the fuel that the airplane can operate on.

(2) The minimum operating temperature limitation must be determined by testing to define the minimum operating temperature acceptable after takeoff (with minimum takeoff temperature established in (1) above).

12. Powerplant Installation—Vibration levels:

Vibration levels throughout the engine operating range must be evaluated and:

(1) Vibration levels *imposed on the airframe* must be less than or equivalent to those of the gasoline engine; or

(2) Any vibration level that is higher than that imposed on the airframe by the replaced gasoline engine must be considered in the modification and the effects on the technical areas covered by the following paragraphs must be investigated:

14 CFR part 23, §§ 23.251; 23.613; 23.627; CAR 3.159; 23.572; 23.573; 23.574 and 23.901.

Vibration levels imposed on the airframe can be mitigated to an acceptable level by utilization of isolators, dampers, clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

13. Powerplant Installation—One cylinder inoperative:

It must be shown by test or analysis, or by a combination of methods, that the airframe can withstand the shaking or vibratory forces imposed by the engine if a cylinder becomes inoperative. Diesel engines of conventional design typically have extremely high levels of vibration when a cylinder becomes inoperative. Data must be provided to the airframe installer/modifier so either appropriate design considerations or operating procedures, or both, can be developed to prevent airframe and propeller damage.

14. Powerplant Installation—High Energy Engine Fragments:

It may be possible for diesel engine cylinders (or portions thereof) to fail and physically separate from the engine at high velocity (due to the high internal pressures). This failure mode will be considered possible in engine designs with removable cylinders or other non-integral block designs. The following is required:

(1) It must be shown that the engine construction type (massive or integral block with non-removable cylinders) is inherently resistant to liberating high energy fragments in the event of a catastrophic engine failure; or,

(2) It must be shown by the design of the engine, that engine cylinders, other engine components or portions thereof (fragments) cannot be shed or blown off of the engine in the event of a catastrophic engine failure; or

(3) It must be shown that all possible liberated engine parts or components do not have adequate energy to penetrate engine cowlings; or

(4) Assuming infinite fragment energy, and analyzing the trajectory of the probable fragments and components, any hazard due to liberated engine parts or components will be minimized and the possibility of crew injury is eliminated. Minimization must be considered during initial design and not presented as an analysis after design completion.

Issued in Kansas City, Missouri, on July 19, 2006.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11878 Filed 7–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18850; Directorate Identifier 2004–SW–19–AD; Amendment 39–14694; AD 2004–16–15 R1]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N, N1, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N, N1, and SA–366G1 helicopters that currently requires inspecting the main gearbox (MGB) base plate for a crack and replacing the MGB if a crack is found. This amendment increases the time intervals for inspecting the MGB base plate and includes minor editorial changes throughout the AD. This amendment is prompted by crack growth tests that indicate that the inspection intervals can be increased without affecting safety. The actions specified by this AD are intended to detect a crack in an MGB base plate and prevent failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter.

DATES: Effective August 30, 2006.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov*, or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On August 4, 2004, we issued AD 2004–16–15, Amendment 39–13771 (69 FR 51358, August 19, 2004), to require visually inspecting the MGB for a crack in the MGB base plate, part number (P/N) 366A32–1062–03 or P/N 366A32–1062–06, close to the attachment hole using a 10x or higher magnifying glass. Stripping paint from the inspection area is also required, but only before the initial inspection. That action was prompted by the discovery of a crack in the MGB base plate of an MGB installed in a Model AS–365 N2 helicopter. The crack was located very close to the attachment points of one of the laminated pads, and it propagated to the inside of the MGB base plate and then continued into the MGB casing. That condition, if not detected, could result in failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter.

When we issued AD 2004–16–15, the cause of crack in the MGB base plate was still under investigation; therefore, we considered the previously issued AD to be interim action until the cause of the crack could be determined. The cause of the crack is still under investigation. However, since issuing AD 2004–16–15, crack growth tests have shown that the inspection intervals can be increased without affecting safety. We made this determination after Eurocopter conducted crack growth testing in laboratory bench tests. A cracked base plate was loaded with an alternating torque to simulate flight loading and cycles. Crack propagation speed was measured and assessed over a longer duration than the initial inspection interval and this resulted in extending the inspection intervals. The first inspection interval was determined using crack striations, which was a quick and conservative method used to ensure airworthiness and allow for timely issuance of service information by the manufacturer. Based on this additional information, a proposal to amend 14 CFR part 39 by revising AD 2004–16–15, Amendment 39–13771 (69 FR 51358, August 19, 2004), for the specified Eurocopter model helicopters, was published in the **Federal Register** on May 2, 2006 (71 FR 25789). That action proposed to increase the time intervals between each required inspection and proposed to include minor editorial changes in the AD.

The Direction Générale de L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model SA 365N, N1, SA 366 G1, AS 365 N2, N3, EC 155 B, and B1 helicopters, all serial numbers. The DGAC advises that a crack was detected in the MGB base plate of an AS 365 N2 helicopter. The crack was detected in the MGB base plate web, very close to the attachment of one of the laminated pads, and runs to the inside of the MGB base plate and then on the MGB casing. In time, the growth of the crack may lead to the loss of the transfer of rotor torque to the rotorcraft structure.

Eurocopter has issued Alert Service Bulletin (ASB) No. 05.00.45 for Model AS365 N, N1, N2, and N3 helicopters; ASB No. 05.29 for Model SA366 G1 helicopters; and ASB No. 05A005 for Model EC155 B and B1 helicopters. All of the ASBs are dated November 8, 2004 and supersede previously issued Eurocopter Alert Telex No. 05.00.45, No. 05.29, and No. 05A005, all dated February 5, 2004. The ASBs specify the same actions as the alert telexes—visually inspecting the MGB base plate for the absence of cracks, using a 10x magnifying glass to facilitate the crack inspection, and, if in doubt about the existence of a crack, inspecting for a crack using a dye-penetrant crack detection inspection. However, for the Eurocopter Model AS365 N, N1, N2, N3, and SA366 G1 helicopters, the 15-flying hour check for the MGB base plate that is specified in the alert telexes is replaced with check intervals not to exceed 55 flying hours. For the EC155 B and B1 helicopters, the check after the last flight of each day and without exceeding a 9-flying hour check interval is replaced with check intervals not to exceed 15 flying hours.

The DGAC classified ASB Nos. 05.00.45, 05.29, and 05A005 as mandatory and issued AD No. F–2004–023 R1, dated November 24, 2004, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed. The actions specified by this AD are still considered to be interim until the cause of the cracking can be determined.

We estimate that this AD will affect 142 helicopters of U.S. registry. The initial inspection will take about 0.5 work hour and each recurring inspection will take about 0.25 work hour. Replacing the MGB, if necessary, will take about 4 work hours. The average labor rate is $65 per work hour. It will cost approximately $25,000 to repair a cracked MGB base plate. Based on these figures, the total estimated cost impact of the AD on U.S. operators is $56,249, assuming that each of the 135 Model AS 365 and SA 366 helicopters are inspected 11 times (the initial inspection plus 10 recurring inspections) and each of the 7 Model EC 155 helicopters are inspected 40 times (the initial inspection plus 39 recurring inspections), and one cracked MGB base plate is found requiring the repair and replacement of one MGB. This estimate also assumes that a replacement MGB will not need to be purchased while a previously-installed MGB is being repaired.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–13771 (69 FR 51358, August 19, 2004), and by adding a new airworthiness directive (AD), Amendment 39–14694, to read as follows:

2004–16–15 R1 Eurocopter France: Amendment 39–14694. Docket No. FAA–2004–18850; Directorate Identifier 2004–SW–19–AD. Revises AD 2004–16–15, Amendment 39–13771.

Applicability

Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N, N1, and SA–366G1 helicopters with a main gearbox (MGB) base plate, part number (P/N) 366A32–1062–03 or P/N 366A32–1062–06, installed, certificated in any category.

Compliance

Required as indicated in the following compliance table and before installing a replacement main gearbox (MGB).

COMPLIANCE TABLE

For model . . .	If . . .	Or if . . .	Or if . . .
(1) SA–365N, N1 and SA–366G1 helicopters.	An MGB is installed that has less than 9,900 cycles and has never been overhauled or repaired, on or before accumulating 9,900 cycles, unless accomplished previously, and thereafter, at intervals not to exceed 55 hours time-in-service (TIS).	An MGB is installed that has 9,900 or more cycles and has never been overhauled or repaired, before further flight, unless accomplished previously, and thereafter, at intervals not to exceed 55 hours TIS.	An MGB is installed that is overhauled or repaired, before further flight, unless accomplished previously, and thereafter, at intervals not to exceed 55 hours TIS.
(2) AS–365N2 and AS 365 N3 helicopters.	An MGB is installed that has less than 7,300 cycles and has never been overhauled or repaired, on or before accumulating 7,300 cycles, unless accomplished previously, and thereafter, at intervals not to exceed 55 hours TIS.	An MGB is installed that has 7,300 or more cycles and has never been overhauled or repaired, before further flight, and thereafter, at intervals not to exceed 55 hours TIS.	An MGB is installed that has been overhauled or repaired, before further flight, and thereafter, at intervals not to exceed 55 hours TIS.
(3) EC 155B and EC155B1 helicopters.	An MGB base plate is installed that has less than 2,600 cycles, no later than 2,600 cycles, unless accomplished previously, and thereafter, at intervals not to exceed 15 hours TIS.	An MGB base plate is installed that has 2,600 or more cycles, before further flight, unless accomplished previously, and thereafter, at intervals not to exceed 15 hours TIS.	

One cycle equates to one helicopter landing in which a landing gear touches the ground.

To detect a crack in the MGB base plate and prevent failure of a MGB attachment point to the frame, which could result in severe vibration and subsequent loss of control of the helicopter, accomplish the following.

(a) Before the initial inspection at the time indicated in the compliance table of this AD, strip the paint from area ''D'' on both sides (''B'' and ''C'') of the MGB base plate as depicted in Figure 1 of this AD.

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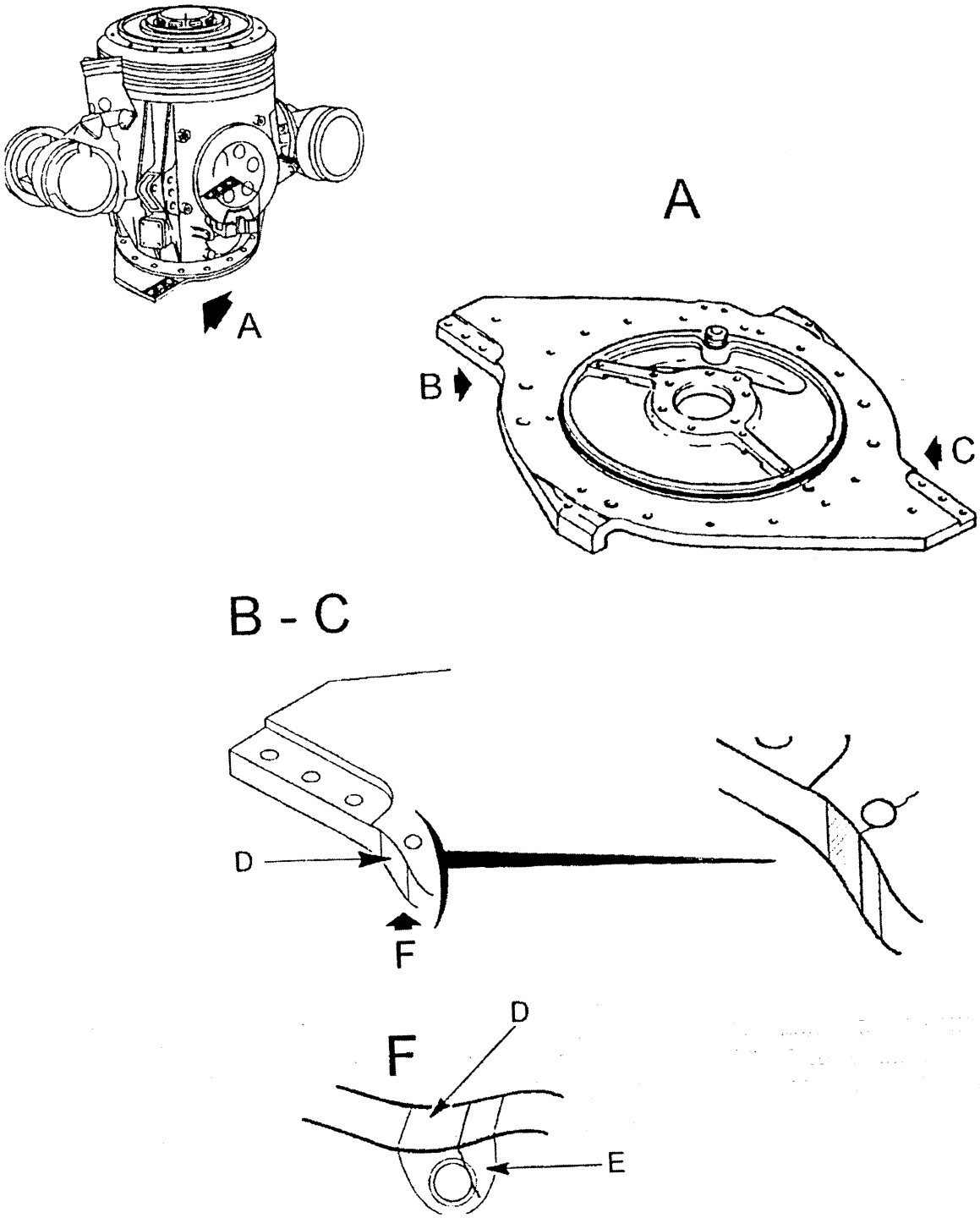

Figure 1

(b) At the times indicated in the compliance table, inspect area ''D'' of the MGB base plate for a crack using a 10x or higher magnifying glass. Area ''D'' to be inspected is depicted in Figure 1 of this AD.

Note 1: Eurocopter France Alert Service Bulletin (ASB) No. 05.00.45 for Model AS365 N, N1, N2, and N3 helicopters, ASB No. 05.29 for Model SA366 G1 helicopters, and ASB No. 05A005 for Model EC155 B and B1 helicopters, pertain to the subject of this AD. All three ASBs are dated November 8, 2004.

(c) If a crack is found in a MGB base plate, remove and replace the MGB with an airworthy MGB before further flight.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Ed Cuevas, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(e) This amendment becomes effective on August 30, 2006.

Note 2: The subject of this AD is addressed in Direction Générale de L'Aviation Civile (France) AD F–2004–023 R1, dated November 24, 2004.

Issued in Fort Worth, Texas, on July 18, 2006.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–6472 Filed 7–25–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25173; Directorate Identifier 2006–NE–24–AD; Amendment 39–14693; AD 2006–15–13]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems Propeller Models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for McCauley Propeller Systems propeller models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. This AD requires a onetime fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of propeller blades for cracks, and if any crack indications are found, removing the blade from service. This AD results from a report of two propeller blades on the same propeller assembly, found cracked during propeller overhaul. We are issuing this AD to detect cracks in the propeller blade that could cause failure and separation of the propeller blade and loss of control of the airplane.

DATES: This AD becomes effective August 10, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 10, 2006.

We must receive any comments on this AD by September 25, 2006.

ADDRESSES: Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- 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.

Contact McCauley Propeller Systems, 7751 East Pawnee, Wichita, KS 67277 for the service information referenced in this AD.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209, telephone: (316) 946–4148; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION: In May 2006, McCauley Propeller Systems received a report from an operator of two propeller blades found cracked during propeller overhaul. The propeller blades were installed on the same propeller assembly; on a ''Jetstream 41'' airplane. The cracks were located in the propeller blade retention groove, near the ledge where the split retainers seat and on or near the shot peened surface of the retention groove. To date, no further reports of these cracks have been received, and we know of no propeller blade failures due to these cracks. The FAA is continuing to investigate, however, and we may issue further ADs based on the inspection results reported to us under this AD. In order to assess the extent of any problem, we need to have all the inspection results reported to us, even those showing that no crack indications were found. This condition, if not corrected, could result in a failure and separation of the propeller blade and loss of control of the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of McCauley Propellers Alert Service Bulletin (ASB) ASB252, dated June 6, 2006. That ASB describes procedures for performing a onetime FPI and ECI of propeller blades for cracks.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other McCauley Propeller Systems propeller models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0 of the same type design. For that reason, we are issuing this AD to detect cracks in the propeller blade that could cause failure and separation of the propeller blade and loss of control of the airplane. This AD requires for certain blades, a onetime FPI and ECI of propeller blades for cracks within 100 operating hours time-in-service after the effective date of the AD, and if any crack indications are found, removal from service. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2006–25173; Directorate Identifier 2006–NE–24–D'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11,

2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006–15–13 McCauley Propeller Systems: Amendment 39–14693. Docket No. FAA–2006–25173; Directorate Identifier 2006–NE–24–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McCauley Propeller Systems propeller models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. These propellers are installed on BAE Systems (Operations) Limited Jetstream Model 4100 and 4101 series airplanes (Jetstream 41).

Unsafe Condition

(d) This AD results from a report of two propeller blades on the same propeller assembly, found cracked during propeller overhaul. We are issuing this AD to detect cracks in the propeller blade that could cause failure and separation of the propeller blade and loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Onetime Propeller Blade Inspection

(f) Perform a onetime fluorescent penetrant inspection and eddy current inspection of propeller blades, using the Equipment Required and Accomplishment Instructions of McCauley Propellers Alert Service Bulletin ASB252, dated June 6, 2006, using the following compliance schedule:

TABLE 1.—COMPLIANCE SCHEDULE

If the propeller blade:	Then inspect the propeller blade:
(1) Has 1,200 operating hours or more time-in-service (TIS) and has not reached first overhaul.	Within 100 operating hours TIS after the effective date of this AD.
(2) Has 1,000 operating hours or more TIS since last overhaul	Within 100 operating hours TIS after the effective date of this AD.
(3) Has fewer than 1,200 operating hours TIS	Before the propeller blade reaches 1,300 operating hours TIS.
(4) Has been overhauled but has fewer than 1,000 operating hours time-since-overhaul (TSO).	Upon reaching 1,100 operating hours TSO.

Propeller Blades Found Cracked

(g) Remove from service propeller blades found with any crack indications.

Reporting Requirements

(h) Within 10 calendar days of the inspection, use the Reporting Form for Service Bulletin 252 to report all inspection findings to:

(1) The FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, KS 67209, Attention: Jeff Janusz, telephone (316) 946–4148; FAX (316) 946–4107, e-mail: *jeff.janusz@faa.gov*; and

(2) McCauley Propeller Systems, 7751 East Pawnee, Wichita, KS 67277.

(3) The Office of Management and Budget (OMB) has approved the reporting requirements and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

(i) The Manager, Wichita Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(j) Under 39.23, we are limiting the availability of special flight permits for this AD. Special flight permits are available only if:

(1) The operator has not seen signs of external oil leakage from the hub; and

(2) The operator has not observed abnormal propeller vibration or abnormal engine vibration; and

(3) The operator has not observed any other abnormal operation from the engine or propeller; and

(4) The operator has not made earlier reports of abnormal propeller vibration, abnormal engine vibration, or other abnormal engine or propeller operations, that have not been addressed.

Related Information

(k) None.

Material Incorporated by Reference

(l) You must use McCauley Propeller Systems Alert Service Bulletin ASB252, dated June 6, 2006, to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact McCauley Propeller Systems, 7751 East Pawnee, Wichita, KS 67277, for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on July 18, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–11799 Filed 7–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[T.D. TTB–53; Re: Notice No. 62]

RIN 1513–AB08

Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Interim rule; Treasury decision.

SUMMARY: This interim rule, which parallels the recent amendments to the Federal Food, Drug and Cosmetic Act contained in the Food Allergen Labeling and Consumer Protection Act of 2004, adopts labeling standards for major food allergens used in the production of alcohol beverages subject to the labeling requirements of the Federal Alcohol Administration Act.

In addition, elsewhere in this issue of the **Federal Register**, we are publishing a notice of proposed rulemaking that proposes to make major food allergen labeling mandatory. That notice solicits comments from the public, including consumers and affected industry members, on the proposed labeling requirements and the time frame for making the requirements mandatory.

Under the interim regulations, producers, bottlers, and importers of wines, distilled spirits, and malt beverages may voluntarily declare the presence of milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as ingredients that contain protein derived from these foods, in their products, but are not required to do so. The interim regulations, however, set forth rules that are mandatory for how industry members must undertake such labeling, should they choose to do so. The regulations also contain procedures for petitioning for an exemption from the standards imposed on those alcohol beverage producers who wish to make voluntary allergen statements on their product labels.

DATES: *Effective Date:* This interim rule is effective on July 26, 2006.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290–1460.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, the presence of food allergens in foods has become a matter of public concern. In response, Congress passed the Food Allergen Labeling and Consumer Protection Act of 2004 to require the declaration in labeling of major food allergens in plain, common language on the foods regulated under the Federal Food, Drug and Cosmetic Act. A House of Representatives committee report also noted that the committee expected the Alcohol and Tobacco Tax and Trade Bureau (TTB) to issue regulations on allergen labeling for alcohol beverage products under TTB's existing authority to regulate alcohol beverage labeling, working in cooperation with the Food and Drug Administration (FDA). In addition, TTB had earlier received a petition concerning ingredient and allergen labeling for alcohol beverages. In response, TTB is issuing these interim regulations regarding voluntary labeling of major food allergens used in the production of alcohol beverage products. TTB also is proposing mandatory major food allergen labeling for alcohol beverage products in a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

A. FAA Act

TTB is responsible for the administration of the Federal Alcohol Administration Act, 27 U.S.C. 201 *et seq.*, (FAA Act), which governs, among other things, the labeling of wines containing at least 7 percent alcohol by volume, distilled spirits, and malt beverages in interstate and foreign commerce. These products are generically referred to as ''alcohol beverages'' or ''alcohol beverage products'' throughout this document.

In particular, section 105(e) of the FAA Act (27 U.S.C. 205(e)) gives the Secretary of the Treasury authority to issue regulations regarding the labeling of alcohol beverages to provide the consumer with adequate information concerning the identity and quality of such products, to prevent deception of the consumer, and to prohibit false or misleading statements. Section 105(e) also makes it unlawful for industry members ''to sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity'' with regulations prescribed by the Secretary. Regulations setting forth mandatory labeling information requirements for wine, distilled spirits, and malt beverages are contained, respectively, in parts 4, 5, and 7 of the TTB regulations (27 CFR parts 4, 5, and 7).

Most of the mandatory labeling requirements found in parts 4, 5, and 7 flow directly from the stated purpose of section 105(e) of the FAA Act, that is, to ''provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof * * *, the net contents of the package, and the manufacturer or bottler or importer of the product.'' Currently, the TTB labeling regulations contained in parts 4, 5, and 7 require the following information to appear on alcohol beverage labels: Brand name; product identity (class or type); the name and address of the bottler, packer, or importer; the net contents; and the alcohol content of distilled spirits, certain flavored malt beverage products, and wines over 14 percent alcohol by volume. Labels for wines with 14 percent alcohol by volume or less may contain either an alcohol content statement or the type designation

''table'' wine or ''light'' wine (see 27 CFR part 4.36(a)). In addition, labels must note the presence of sulfites, FD&C Yellow No. 5, and in the case of malt beverages, aspartame. A health warning statement applicable to all alcohol beverages containing 0.5 percent or more alcohol by volume is required by the Alcoholic Beverage Labeling Act of 1988, codified at 27 U.S.C. 213–219 and 219a and implemented in the TTB regulations at 27 CFR part 16.

B. Current Health-Risk Ingredient Disclosure on Alcohol Beverage Labels

Our predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), proposed on several occasions to adopt mandatory ingredient disclosure requirements for alcohol beverages. In each case, ATF ultimately decided not to adopt full ingredient labeling requirements. (See Notice No. 41, 70 FR 22274, April 29, 2005, for a more complete history of those ingredient labeling regulatory initiatives.)

These rulemaking actions included publication of T.D. ATF–150 (48 FR 45549, October 6, 1983), which rescinded the ingredient disclosure regulations that had been published in T.D. ATF–66 (45 FR 40538, June 13, 1980), but never implemented. T.D. ATF–150 did, however, mandate the disclosure of one ingredient, FD&C Yellow No. 5, on alcohol beverage labels. In the preamble to T.D. ATF–150, ATF stated:

> * * * there is no clear evidence in the record that any other ingredient besides FD&C Yellow No. 5 poses any special health problem. The Department will look at the necessity of mandatory labeling of other ingredients on a case-by-case basis through its own rulemaking initiative, or on the basis of petitions for rulemaking under 5 U.S.C. 553(e) and 27 CFR 71.41(c).

In conformity with that case-by-case review policy, ATF subsequently issued regulations requiring the disclosure on labels of sulfites in alcohol beverages (T.D. ATF–236, 51 FR 34706, September 30, 1986), because it was determined that the presence of undeclared sulfites in alcohol beverages posed a recognized health problem to sulfite-sensitive individuals.

In 1987, ATF entered into a Memorandum of Understanding (MOU) with FDA. See 52 FR 45502 (November 30, 1987). In the MOU, ATF made a commitment to consult with FDA regarding the necessity of requiring labeling statements for ingredients in alcohol beverages that pose a recognized public health problem and to initiate rulemaking proceedings to require disclosure of such ingredients where appropriate. The pertinent portion of the MOU states:

> ATF will be responsible for the promulgation and enforcement of regulations with respect to the labeling of distilled spirits, wine, and malt beverages pursuant to the FAA Act. When FDA has determined that the presence of an ingredient in food products, including alcoholic beverages, poses a recognized public health problem, and that the ingredient or substance must be identified on a food product label, ATF will initiate rulemaking proceedings to promulgate labeling regulations for alcoholic beverages consistent with ATF's health policy with respect to alcoholic beverages. ATF and FDA will consult on a regular basis concerning the propriety of promulgating regulations concerning the labeling of other ingredients and substances for alcoholic beverages.

Pursuant to the policies set forth in the MOU, ATF subsequently issued regulations requiring a declaration on labels when aspartame is used in the production of malt beverages (T.D. ATF–347, 58 FR 44131, August 19, 1993). It should be noted that FD&C Yellow No. 5, sulfites, and aspartame are not considered food allergens because they do not cause IgE (Immunoglobulin E)-mediated responses, but they may cause health problems in certain individuals.

C. Petition From Dr. Christine Rogers

On April 10, 2004, Christine A. Rogers, PhD., a senior research scientist in the Exposure, Epidemiology and Risk Program at the Harvard School of Public Health, petitioned TTB to change the regulations to require labeling of all ingredients and substances used in the production of alcohol beverages.

Dr. Rogers stated that she is allergic to egg protein and that she has had allergic reactions to egg in wine. For that reason, she expressed particular concern with the labeling of allergenic substances in alcohol beverage products. Dr. Rogers noted that allergic symptoms in consumers can include tingling or itching in the mouth, salivation, swelling of tissues, hives, abdominal cramps, vomiting, diarrhea, rapid loss of blood pressure, and death. She explained that allergic reactions to food vary based upon an individual's sensitivity to a particular allergen. The most sensitive allergic individuals are required to carry epinephrine with them for emergency use in the case of exposure to an offending allergen.

D. Enactment of FALCPA

On August 2, 2004, the President signed into law the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (see title II of Pub. L. 108–282, 118 Stat. 905). FALCPA amends portions of the Federal Food, Drug and Cosmetic Act (FD&C Act, 21 U.S.C. 301, *et seq.*) to require a food that is, or contains an ingredient that bears or contains, a major food allergen to list this information on its label using plain, common language. For example, instead of merely listing ''semolina,'' the label must also list ''wheat'', and instead of merely listing ''sodium casein,'' the label must also list ''milk.'' The FALCPA amendments define ''major food allergens'' as milk, egg, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as most ingredients containing proteins derived from these foods.

The effect of the FALCPA amendments is to add additional allergen information to the food label. The FALCPA amendments provide two ways for a manufacturer to disclose major food allergens on the label:

- The label can show the name of the food source from which the major food allergen is derived within parentheses in the ingredient list, for example, ''Ingredients: Water, wheat, whey (milk), albumen (eggs), and peanuts''; or
- The label can list the name of the food source from which the allergen is derived in summary form after, or adjacent to, an ingredient list, for example: ''Ingredients: Water, sugar, whey, and albumen. Contains: Milk and egg.''

Section 202 of FALCPA contains a number of congressional findings regarding the health risk posed by allergens. Congress found that approximately 2 percent of adults and 5 percent of infants and young children in the United States suffer from food allergies. Each year, roughly 30,000 individuals require emergency room treatment and 150 individuals die because of allergic reactions to food.

Congress found that the eight foods or food groups identified in FALCPA account for 90 percent of all food allergies. Since there is currently no cure for food allergies, a food-allergic consumer must avoid the food to which he or she is allergic. Congress further found that many consumers may not realize that a labeled food ingredient is derived from, or contains, a major food allergen. The FALCPA amendments fill this gap by ensuring that the food source from which a major food allergen is derived is clearly labeled in plain language.

FALCPA amends food labeling requirements in the FD&C Act. Pursuant to authority delegated to it by the Secretary of Health and Human Services, FDA is responsible for promoting and protecting the public health through enforcement of the FD&C

Act and for ensuring that the nation's food supply is properly labeled. However, it is TTB's responsibility to issue regulations with respect to the labeling of wine, distilled spirits, and malt beverages under the FAA Act. See the 1987 ATF–FDA MOU and *Brown-Forman Distillers Corp.* v. *Mathews,* 435 F. Supp. 5 (W.D. Ky. 1976).

The allergen labeling requirements in FALCPA apply to any food, as that term is defined in section 201(f) of the FD&C Act, other than raw agricultural commodities. As reflected in the 1987 MOU with FDA, TTB is responsible for the promulgation and enforcement of regulations with respect to the labeling of distilled spirits, wines, and malt beverages pursuant to the FAA Act. The House of Representatives Committee on Energy and Commerce called for TTB to work with FDA to promulgate appropriate allergen labeling regulations for alcohol beverages labeled under the FAA Act and TTB regulations, consistent with the 1987 MOU with FDA. The committee report accompanying FALCPA stated:

> The Committee expects, consistent with the November 30, 1987 Memorandum of Understanding, that the Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of Treasury will pursuant to the Federal Alcohol Administration Act determine how, as appropriate, to apply allergen labeling of beverage alcohol products and the labeling requirements for those products. The Committee expects that the TTB and the FDA will work together in promulgation of allergen regulations, with respect to those products. (H.R. Rep. No. 608, 108th Cong., 2d Sess., at 3 (2004); hereafter ''House committee report.'')

Congress thus recognized TTB's longstanding policy of consulting with FDA in determining what ingredients in alcohol beverages should be disclosed on labels, and called on TTB to work with FDA to promulgate appropriate allergen labeling regulations for alcohol beverages. The clear intent reflected in the House committee report is that TTB issue regulations similar to the FALCPA standards, pursuant to the policies expressed in the MOU with FDA and the authority of the FAA Act.

Under the MOU, the two agencies have over the years collaborated on many food safety issues and continue to exchange a wide variety of information, including relevant consumer complaints concerning the adulteration of alcohol beverages. The agencies consult regularly concerning the use and labeling of potentially harmful ingredients and substances in alcohol beverages. The laboratories of FDA and TTB regularly exchange information concerning methodologies and techniques for testing alcohol beverages.

Consistent with the expectations expressed in the House committee report, TTB consulted with FDA prior to issuing this interim rule. However, it should be emphasized that while this interim rule is promulgated in response to, among other things, the expectations set out in the legislative history of FALCPA, TTB's legal authority to establish this rule is based on the FAA Act.

FDA is the agency authorized to implement FALCPA with regard to foods. The House committee has set forth its expectation that TTB will implement allergen labeling for alcohol beverages, as appropriate, and will work with FDA in this effort. While TTB has generally strived to be consistent with FDA's interpretation of FALCPA, the implementation of regulations regarding major food allergen labeling for alcohol beverages under the FAA Act will necessarily differ in some respects from the requirements of FALCPA.

Accordingly, this interim rule reflects TTB's interpretation of its authority under the FAA Act, as guided by the language in the committee report. This regulation does not necessarily represent the views of FDA with regard to allergen labeling or the requirements of FALCPA.

II. Rulemaking History and Summary of Comments

On April 29, 2005, TTB published in the **Federal Register** (70 FR 22274) Notice No. 41, an advance notice of proposed rulemaking (the ANPRM). The notice was entitled ''Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Request for Public Comment.'' We provided a 60-day period for comments from consumers, interest groups, trade associations, industry, and other members of the public on several alcohol beverage labeling issues, including calorie and carbohydrate claims on labels, ''serving facts'' labeling, ''alcohol facts'' labeling, ingredient labeling, allergen labeling, and composite label approaches.

In the ANPRM, we invited comments on specific issues related to allergen labeling, including: Whether our regulations should require allergen labeling to be part of or adjacent to a list of ingredients, similar to the FALCPA requirements; whether an allergen must be labeled in an allergen statement even when the allergen name already appears in the product name; how processing or fining agents should be labeled; whether we should consider threshold levels in allergen labeling; what costs industry may incur from new labeling requirements; and how consumers might benefit from allergen labeling. We also invited submission of any other relevant information on the subject of allergen labeling.

During the 60-day comment period, we received several requests from alcohol beverage industry representatives and organizations to extend the comment period for an additional 60 to 90 days beyond the original June 28, 2005, closing date. In support of the extension requests, industry members noted that some of the questions posed in the notice were broad and far reaching from a policy standpoint while others were very technical, requiring research and coordination within the affected industries. In response to these requests, we extended the comment period for an additional 90 days. See Notice No. 48, 70 FR 36359, June 23, 2005. The extended comment period for the ANPRM closed on September 26, 2005.

We received more than 18,000 comments in response to the ANPRM, approximately 50 of which specifically addressed the subject of allergen labeling. Based on the clearly expressed congressional interest in allergen labeling, the particular risks that allergens pose to human health, FALCPA's effective date of January 1, 2006, and the relatively small number of comments submitted on allergen issues, we have decided to separate the allergen labeling rulemaking from the other issues discussed in the ANPRM. We will review the comments submitted on the other ANPRM issues, with a view to determining whether to proceed with future rulemaking action in those areas, separately from our action on allergen labeling. Accordingly, this document only addresses allergen issues, including the approximately 50 comments on allergens submitted in response to the ANPRM.

We note that of the comments we received on allergens, the vast majority favored mandatory labeling of the major food allergens. Industry members as well as consumer and public health advocates commented in support of major food allergen labeling.

The major trade associations representing the alcohol beverage industry expressed their support for mandatory labeling of major food allergens. The Beer Institute, the Brewers Association, the Distilled Spirits Council of the United States (DISCUS), the National Association of Beverage Importers (NABI), the Presidents' Forum, Spirits Canada, Wine America, and the Wine Institute submitted a consolidated comment, in which they stated that they fully

supported the purpose and objectives of FALCPA and stood ready to work with TTB in the implementation of allergen labeling. In a separate comment, the Brewers Association stated that ''mandatory rules regarding the disclosure of major allergens are necessary because certain types of allergens, or at least when present above scientifically determined harmful levels, can pose a significant threat to consumer health.''

Consumer and public health interest groups also submitted comments in support of mandatory labeling of major food allergens. The National Consumers League (NCL) submitted a comment supported by several groups, including the American Public Health Association and the American School Health Association. This comment urged TTB to adopt a uniform, mandatory labeling regime for all alcohol beverages that includes, among other things, an ingredient declaration listing each ingredient by its common or usual name and identifying any major food allergens present in the product. The Center for Science in the Public Interest (CSPI), a nonprofit health education and advocacy organization, submitted a comment in support of the adoption of a mandatory allergen disclosure policy for alcohol beverages consistent with the FALCPA requirements for food and the FDA policies implementing FALCPA.

We also received comments in support of allergen labeling from the American Medical Association; the American Academy of Allergy, Asthma and Immunology; the American College of Allergy, Asthma and Immunology; the Food Allergy and Anaphylaxis Network; the American Council on Science and Health; the American Society of Addiction Medicine; the American Dietetic Association; the American Nurses Association; Shape Up America; and several other public health organizations and health professionals.

Only a few comments questioned the usefulness of requiring allergen information on alcohol beverage labels. Furthermore, there were some disagreements among the commenters about the allergen labeling implementation issues that we raised in the ANPRM.

III. Interim Regulatory Changes

After careful consideration of the comments on this issue, TTB has determined that it should propose rules for the mandatory labeling of major food allergens used in the production of alcohol beverages. Consistent with the guidance expressed in the House committee report and our statutory mandate under the FAA Act to promulgate regulations ensuring that consumers receive adequate information about the identity and quality of alcohol beverages, we believe that alcohol beverage labels should provide consumers with sufficient information about the use of major food allergens in the production of alcohol beverages so that allergic consumers may make an informed decision as to whether consumption of a particular beverage may pose a risk of an allergic reaction. Accordingly, we are proposing mandatory labeling of major food allergens elsewhere in this issue of the **Federal Register.**

As explained below, we are issuing this interim rule to provide immediate guidance to industry members who wish to place allergen statements on alcohol beverage labels on a voluntary basis. The interim regulations also allow for the immediate filing of petitions for exemptions from the standards imposed on those producers who wish to make voluntary allergen statements on their labels.

A. Voluntary Labeling Approach

We note that in response to the ANPRM, some commenters urged TTB to require labeling of major food allergens for products labeled on or after January 1, 2006, which is the effective date of the FALCPA amendments. One commenter suggested that consumers will expect to see allergen information on alcohol beverage products at the same time that such information begins appearing on food labels under FALCPA, and that they may be misled by the absence of such information on labels of products that in fact contain major food allergens. Other commenters, recognizing that it may take some time before a final rule is issued, suggested that TTB allow voluntary labeling of major food allergens pending the completion of rulemaking.

In this regard, it should be noted that the congressional committees involved with FALCPA had different expectations of FDA and of TTB. The report of the Senate Committee on Health, Education, Labor, and Pensions, S. Rep. No. 226, 108th Cong., 2d Sess., at 10 (2004) (hereafter ''Senate committee report''), states:

> The committee intends the requirements of section 403(w) to be self-implementing. FDA will not be required to issue regulations to implement section 403(w). FDA may issue guidance, should the agency find that guidance would assist manufacturers or distributors, particularly small businesses, to comply with the requirements in this legislation.

On the other hand, as previously noted, the House committee report specifically stated its expectation that TTB would promulgate regulations, in consultation with FDA, to apply allergen labeling requirements to alcohol beverages, as appropriate. Given that the TTB regulations must be amended in order to implement allergen labeling, we believe it is appropriate to allow the public, including affected industry members, the opportunity to comment on allergen labeling standards before making them mandatory.

Accordingly, in order to make allergen labeling standards applicable to alcohol beverages at the earliest practicable date, and before the public comment procedures can be completed, TTB has determined that the best approach is to adopt voluntary regulatory standards for major food allergen labeling through an interim rule. TTB agrees with those commenters who suggested that producers of alcohol beverages be given immediate guidance with respect to the voluntary use of allergen labeling statements on labels. We have already received inquiries from industry members about the voluntary use of allergen statements on alcohol beverage labels. Because industry members may wish to begin providing allergen information to consumers on a voluntary basis right away, we are publishing standards that are effective immediately.

The interim rule also gives industry members an opportunity to file petitions for exemption from the standards imposed on those alcohol beverage producers who wish to make voluntary allergen statements on their product labels.

This interim rule amends parts 4, 5, and 7 of the TTB regulations to include specific requirements for those who choose to place voluntary declarations of major food allergens on labels. The amendments include the addition of new sections 4.32a, 5.32a, and 7.22a, which set forth specific format requirements for the voluntary labeling of major food allergens. In addition, we have added new sections 4.32b, 5.32b, and 7.22b, which allow any person to petition TTB for an exemption from the labeling standards that apply if voluntary major food allergen labeling is undertaken. A detailed discussion of the specific provisions within the interim regulations follows.

In consideration of the requirements for prior public notice and comment procedures under the Administrative Procedure Act, we are proposing the adoption of mandatory labeling standards in a separate document, Notice No. 62, which is published in the

Proposed Rules section of this issue of the **Federal Register.** The voluntary standards adopted in this interim rule document will remain in place until they are replaced by final action on the proposal for mandatory standards.

B. Labeling of Major Food Allergens

1. Definitions

Consistent with the FALCPA amendments, the interim regulations provide that when allergen labeling is undertaken, the product must be labeled ''Contains:'' followed by the name of the food source from which each major food allergen is derived, as set forth in the definition of ''major food allergen.''

The definition of the term ''major food allergen'' is consistent with the statutory definition in FALCPA. The interim regulations define the term ''major food allergen'' as any of the following: ''Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans.'' The term as defined also includes any food ingredient that contains protein derived from one of these eight foods or food groups, subject to certain exceptions explained below.

It should be noted that, consistent with guidance provided by FDA to the food industry, the interim regulations allow the terms ''soybean,'' ''soy,'' and ''soya'' as synonyms for the term ''soybeans,'' as used in the statute. Furthermore, also consistent with FDA guidance, the singular term ''peanut'' may be substituted for the plural term ''peanuts,'' and singular terms (for example, almond, pecan, or walnut) may be used in place of plural terms to describe the different types of tree nuts.

2. Labeling of Fish Species

FALCPA provides that in the case of tree nuts, the label must list the name of the specific type of nut (for example, almonds, pecans, or walnuts). In the case of Crustacean shellfish, the label must list the name of the species of shellfish (for example, crab, lobster, or shrimp). Finally, in the case of fish, the FALCPA amendments provide that the name of the species of fish (for example, bass, flounder, or cod) must appear on the label.

The interim regulations are consistent with the FALCPA amendments with respect to the labeling of tree nuts and Crustacean shellfish. However, for the reasons explained below, the interim regulations set forth in this document do not require labeling of the specific fish species when an industry member chooses to provide major food allergen information. The regulations instead require simply listing ''fish'' when any type of finfish protein is used in the production of an alcohol beverage.

Isinglass and fish gelatin are often used to clarify wines and beers. Isinglass is a substance obtained from the swim bladders of sturgeon and other fish. Fish gelatin is obtained from the skin of a fish. Fish gelatin most often is made from cod skins but can be made from any species of fish.

Vintners and brewers, when purchasing isinglass or fish gelatin from a manufacturer for fining purposes, often do not know, and have no way of easily finding out, which particular species of fish was used to make the product. Moreover, it may be difficult for industry members to determine by chemical analysis which particular fish species was the source of the isinglass or fish gelatin.

On August 1, 2005, the Flavor and Extract Manufacturers Association of the United States (FEMA) submitted a request to FDA for guidance concerning the labeling of fish species under the FALCPA amendments. In its request for guidance, FEMA asked FDA to allow for use of the term ''fish'' for labeling ''non-nutritive fish ingredients'' used in flavors. FEMA cited clinical and scientific evidence in support of its argument that many fish-allergic individuals will react adversely to more than one species of fish.

TTB recognizes that FALCPA requires the labeling of the particular species of fish used as an ingredient in a food product. However, it is our responsibility to implement allergen labeling regulations that are appropriate for alcohol beverages. It is likely that declarations of the use of fish in the production of alcohol beverages will generally involve the use of isinglass or fish gelatin as a processing aid. Because of the particular difficulty faced by the producer in determining the specific species of fish used in producing the isinglass or fish gelatin, and because at least some consumers may be allergic to more than one species of fish, TTB is persuaded that requiring labeling with the name of the specific type of fish would impose a difficult fact-finding burden on the alcohol beverage industry without offering consumers who may be allergic to more than one species of fish any significant additional information to help them avoid the risk of an allergic reaction. Accordingly, we believe that the goal of the FALCPA amendments with respect to alcohol beverages is adequately met if alcohol beverages produced using finfish protein are labeled merely with ''fish,'' rather than with the name of the fish species.

We would note that the data on this matter are not conclusive, and we are specifically inviting comments on this issue in our notice of proposed rulemaking. However, for purposes of the guidance provided in this interim rule for industry members who wish to make voluntary allergen labeling statements, we believe that there is a basis for concluding that a reference to ''fish'' on the label will provide adequate information to consumers about the presence of finfish protein in certain alcohol beverages.

3. Processing and Fining Agents

FALCPA amends the FD&C Act to require that, notwithstanding any other provision of law, a flavoring, coloring, or incidental additive that is or bears or contains a major food allergen must conform to FALCPA's labeling requirements. See 21 U.S.C. 343(w)(4). The FDA regulations define the term ''incidental additive'' to include, among other things, processing aids. See 21 CFR 101.100(a)(3). Therefore, if alcohol beverage industry members choose to make major food allergen declarations, the interim regulations treat major food allergens used as fining or processing agents in the same way as any other major food allergen used in the production of the alcohol beverage.

4. Threshold Levels

The FALCPA amendments, which took effect for foods labeled on or after January 1, 2006, require allergen labeling for foods regulated by FDA without the establishment of any threshold levels for labeling. Furthermore, pursuant to our authority under the FAA Act to ensure that labels provide consumers with adequate information about the identity and quality of alcohol beverage products, the interim regulations provide that if an industry member chooses to label for any major food allergen, all major food allergens and proteins derived from the major food allergens used in production must be declared on the beverage label, unless the product or class of products is covered by an approved petition for exemption. Accordingly, TTB is not setting thresholds in this interim regulation.

TTB believes that this position will ensure that consumers have adequate information about the potential presence of even trace amounts of major food allergens in alcohol beverage products. As more accurate scientific data become available in the future, we may revisit the threshold issue as appropriate.

C. Exceptions From Allergen Labeling Requirements

The interim regulations contain three exceptions from major food allergen labeling. Two of these exceptions are provided within the definition of ''major food allergen,'' and the third is an exemption through a TTB petition process.

1. Highly Refined Oil

The FALCPA amendments exclude from the definition of ''major food allergen'' any highly refined oil derived from one of the eight foods or food groups listed in that definition and any ingredient derived from such highly refined oil. The Senate committee report at page 7 indicates that the exception for highly refined oils was intended to apply to refined, bleached, deodorized (RBD) oils. Both the House committee report at page 16 and the Senate committee report at page 7 specifically identify peanut oil as one of the highly refined oils covered by the exception. We believe this exception from labeling for highly refined oils is also appropriate in the case of alcohol beverages, and we therefore have included this as an exception from the definition of a major food allergen in the interim regulatory texts.

2. Exemptions Under the FD&C Act

FALCPA added two processes to the FD&C Act at 21 U.S.C. 343(w)(6) and (7) by which any person may obtain an exemption from the allergen labeling requirements imposed by the statute.

Subsection (w)(6) allows any person to petition the Secretary of Health and Human Services to exempt a food ingredient from the allergen labeling requirements. Under its delegated authority, FDA performs the function of the Secretary in this area. In this situation, the burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the food ingredient, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health. FDA must approve or deny any such petition within 180 days of receipt or the petition will be deemed denied, unless an extension is mutually agreed upon by FDA and the petitioner.

Subsection (w)(7) allows any person to file a notification containing scientific evidence demonstrating that an ingredient ''does not contain allergenic protein.'' The scientific evidence must include the analytical method used to produce the evidence that the ingredient, as derived by the method specified in the notification, does not contain allergenic protein. Alternatively, the notification may contain a determination from FDA under a premarket approval or notification program provided for in section 409 of the FD&C Act (21 U.S.C. 348) that the ingredient does not cause an allergic response that poses a risk to human health. FDA has 90 days to object to a notification. Absent an objection, the food ingredient is exempt from the FDA labeling requirements for major food allergens.

Many ingredients and food additives used in the production of foods regulated by FDA are also used in the production of alcohol beverages regulated by TTB. Under the two exemption processes described above, certain ingredients and food additives may be exempted from the allergen labeling requirements of the FD&C Act. We believe it is appropriate to allow alcohol beverage industry members to rely on the exemptions from major food allergen labeling requirements allowed under the FD&C Act and FDA procedures. We have therefore included in the definition of ''major food allergen'' an exception for uses of food ingredients that are exempt pursuant to 21 U.S.C. 343(w)(6) or (7).

It is important to note in this regard that alcohol beverage industry members must consider two issues when determining whether an ingredient exempted under the FD&C Act is also not subject to TTB allergen labeling requirements. First, the ingredient they used or intend to use in a product must be the same ingredient that is exempt under the FD&C Act. Second, the proposed use must be consistent with any conditions of use in the FD&C Act exemption for the ingredient.

3. Petitions for Exemption From TTB Regulations

We also recognize that major food allergens are used in alcohol beverage production in ways that may differ from the way they are used in the production of foods regulated by FDA. For this reason, new sections 4.32a, 5.32a, and 7.22a refer in each case to an exception for a product covered by a petition for exemption approved under new section 4.32b, 5.32b, or 7.22b. A petition may pertain to the use of a major food allergen in the production of one specific alcohol beverage product or it may pertain to a class of products using a particular process involving a major food allergen.

As stated above, TTB's jurisdiction extends to the labeling of wines, distilled spirits, and malt beverages. Accordingly, we only will accept a petition seeking an exemption from the labeling of a major food allergen when the material in question is used in the production of an alcohol beverage product regulated by TTB. If an exemption from the FD&C Act allergen labeling requirements is also desired, the interested party must submit a petition or notification to FDA under 21 U.S.C. 343(w)(6) or (7), rather than submit a petition under the applicable TTB regulation.

The use of the TTB petition process is similar to that of the petition and notification processes provided for at 21 U.S.C. 343(w)(6) and (7), except that the TTB petition procedure focuses on products instead of ingredients. The TTB petition process may be used:

- When it is asserted that the product or class of products, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health; or
- When it is asserted that the product or class of products, as derived by the method specified in the petition, does not contain allergenic protein, even though a major food allergen was used in production.

The interim TTB regulations provide for only a petition procedure, rather than both the petition procedure and the notification procedure provided for in the FALCPA amendments to the FD&C Act. We believe that having one petition procedure, rather than separate petition and notification procedures, will simplify the process for industry, and will allow our personnel adequate time to review the evidence presented in each request for an exemption. TTB is not in a position to administer a 90-day notice procedure similar to the notification procedure in subsection (w)(7) of the statute. The interim regulation petition procedure is therefore similar to the petition procedure in subsection (w)(6) of the statute in that the regulation places the burden on the petitioner to provide evidence in support of the exemption and gives TTB 180 days to respond.

The interim regulations provide that a petition for exemption from major food allergen labeling must be submitted to the appropriate TTB officer. The appropriate TTB officer to whom petitions must be submitted is the Assistant Administrator, Headquarters Operations. The petition should be sent to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20220 and should bear the notation: ''Attention: Petition for Exemption from Major Food Allergen Labeling'' to ensure prompt processing.

In addition, the interim regulations provide that if TTB does not approve or deny the petition for exemption within 180 days of receipt, the petition is deemed denied, unless an extension of time is mutually agreed upon by TTB and the petitioner. The regulations also provide that a determination under this section constitutes a final agency action and that even though a petition is deemed denied because no action was taken within the 180-day period, the petitioner may resubmit the petition at any time. A resubmitted petition will be treated as a new petition.

As a result of FDA's implementation of FALCPA and our establishment of this interim rule, TTB and FDA will both be regulating allergen labeling, with TTB overseeing labeling for alcohol beverages and FDA the labeling for all other products that are foods under the FD&C Act. As noted, TTB and FDA are parties to an MOU signed in 1987. That MOU provides that FDA and TTB will exchange information generally about appropriate labeling for, and the adulteration of, alcohol beverages, including information about methodologies and techniques for testing such beverages. Consistent with these general MOU provisions and both agencies' recognition that, generally, the regulation of allergen labeling should be consistent for alcohol beverages and all other foods, TTB intends to confer with FDA, as appropriate and as FDA resources permit, on petitions submitted under this interim rule.

Consistent with FALCPA, the interim rule places the burden on the petitioner to provide adequate evidence in its initial petition submission to justify an exemption from labeling. TTB may require the subsequent submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition.

FALCPA provides that FDA shall promptly post to a public site all petitions within 14 days of receipt and shall promptly post the Government's response to each. Our interim regulations are consistent with FALCPA's requirement to make petitions and responses available to the public, but may go beyond the requirements of FALCPA in some respects. The interim regulations provide that petitions submitted to TTB, and TTB's response to those petitions, will be posted to the TTB Web site (*http://www.ttb.gov*). However, TTB will not post lengthy materials submitted in support of a petition on its Web site; we will, instead, make such materials available to the public in accordance with the procedures set forth in the Freedom of Information Act, 5 U.S.C. 552.

A person who provides trade secrets or other confidential commercial or financial information in either a petition for exemption or in any supporting documentation submitted in connection with such a petition may request that TTB give confidential treatment to that information. The interim regulations set forth the standards for making such a request. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment.

IV. Notice of Proposed Rulemaking

In the Proposed Rules section of this issue of the **Federal Register**, we have published a notice of proposed rulemaking, Notice No. 62, to solicit public comment on our proposal to impose mandatory allergen labeling requirements on alcohol beverage products. That notice gives the public, including affected industry members, an opportunity to comment on the mandatory labeling of major food allergens, the time required by industry members to incorporate the required changes on their labels, and how to minimize any added compliance costs.

V. Regulatory Analysis and Notices

A. Executive Order 12866

We have determined that this interim rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

B. Regulatory Flexibility Act

Because this interim rule was not required to be preceded by a notice of proposed rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

C. Paperwork Reduction Act

This interim rule includes a new collection of information involving the declaration of major food allergens on an alcohol beverage label and the submission of petitions for exemption from allergen labeling. This collection is voluntary.

The collection of information has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507(j) and assigned control number 1513–0121. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information is contained in §§ 4.32a, 4.32b, 5.32a, 5.32b, 7.22a, and 7.22b. The likely respondents are individuals and business or other for-profit institutions, including partnerships, associations, and corporations.

- *Estimated total annual reporting and/or recordkeeping burden:* 730 hours.
- *Estimated average annual burden per respondent/recordkeeper:* 1.46 hours.
- *Estimated number or respondents and/or recordkeepers:* 500.
- *Estimated annual number of responses:* 520.

Comments on this collection of information may be sent by e-mail to OMB at *Alexander_T._Hunt@omb.eop.gov*, or by paper mail to Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to TTB at one of the following addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please reference the information collection's title and OMB number in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

Comments are invited on the accuracy of the burden. We also invite suggestions on how the burden may be reduced.

VI. Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

It has been determined, pursuant to 5 U.S.C. 553(b)(B) and (d), that good cause exists to issue these regulations without prior notice and public procedure, and without a delayed effective date. Because the industry needs immediate standards for the placement of voluntary statements listing major food allergens on alcohol beverage labels, and because industry members may wish to begin immediately to submit petitions for exemptions, it is impracticable and contrary to the public interest to issue these regulations for prior notice and comment, and with a delayed effective date.

VII. Drafting Information

The principal author of this document was Jessica M. Bungard, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau. However, other personnel participated in its development.

List of Subjects

27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Administrative practice and procedure, Advertising, Customs duties and inspection, Distilled spirits, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Malt beverages, Reporting and recordkeeping requirements, Trade practices.

Amendments to the Regulations

■ For the reasons discussed in the preamble, TTB amends 27 CFR parts 4, 5, and 7 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 2. A new § 4.32a is added to read as follows:

§ 4.32a Voluntary disclosure of major food allergens.

(a) *Definitions*. For purposes of this section the following terms have the meanings indicated.

(1) *Major food allergen*. *Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived. Name of the food source from which each major food allergen is derived* means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts'', as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the term ''soy'', soybean'', or ''soya'' may be used instead of ''soybeans''.

(b) *Voluntary labeling standards*. Major food allergens (defined in paragraph (a)(1) of this section) used in the production of a wine may, on a voluntary basis, be declared on any label affixed to the container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the wine, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 4.32b. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

(c) *Cross reference*. For mandatory labeling requirements applicable to wines containing FD&C Yellow No. 5 and sulfites, see §§ 4.32(c) and (e).

■ 3. A new § 4.32b is added to read as follows:

§ 4.32b Petitions for exemption from major food allergen labeling.

(a) *Submission of petition*. Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 4.32a. The burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 4.32a(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition for purposes of the time frames for decision set forth in paragraph (b) of this section.

(d) *Availability of information.* (1) *General.* TTB will promptly post to its public Web site, *http://www.ttb.gov,* all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is

submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

■ 2. A new § 5.32a is added to read as follows:

§ 5.32a Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section the following terms have the meanings indicated.

(1) *Major food allergen. Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived. Name of the food source from which each major food allergen is derived* means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts'', as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the term ''soy'', soybean'', or ''soya'' may be used instead of ''soybeans''.

(b) *Voluntary labeling standards.* Major food allergens (defined in paragraph (a)(1) of this section) used in the production of a distilled spirit product may, on a voluntary basis, be declared on any label affixed to the container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the distilled spirit product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 5.32b. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

(c) *Cross reference.* For mandatory labeling requirements applicable to distilled spirits products containing FD&C Yellow No. 5 and sulfites, see §§ 5.32(b)(5) and (7).

■ 3. A new § 5.32b is added to read as follows:

§ 5.32b Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 5.32a. The burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 5.32a(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition for purposes of the time frames for decision set forth in paragraph (b) of this section.

(d) *Availability of information.* (1) *General.* TTB will promptly post to its public Web site, *http://www.ttb.gov,* all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of

information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

■ 1. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 2. A new § 7.22a is added to read as follows:

§ 7.22a Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section the following terms have the meanings indicated.

(1) *Major food allergen. Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived. Name of the food source from which each major food allergen is derived* means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts); and

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts'', as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the name ''soy'', ''soybean'', or ''soya'' may be used instead of ''soybeans''.

(b) *Voluntary labeling standards.* Major food allergens (defined in paragraph (a)(1) of this section) used in the production of a malt beverage product may, on a voluntary basis, be declared on any label affixed to the container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the malt beverage product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 7.22b. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

(c) *Cross reference.* For mandatory labeling requirements applicable to malt beverage products containing FD&C Yellow No. 5, sulfites, and aspartame, see §§ 7.22(b)(4), (b)(6), and (b)(7).

■ 3. A new § 7.22b is added to read as follows:

§ 7.22b Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 7.22a. The burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 7.22(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition.

(d) *Availability of information.* (1) *General.* TTB will promptly post to its public Web site, *http://www.ttb.gov,* all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

Signed: February 16, 2006.

John J. Manfreda,

Administrator.

Approved: March 16, 2006.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. E6–11872 Filed 7–25–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS GRIDLEY (DDG 101) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: *Effective Date:* July 17, 2006.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS GRIDLEY (DDG 101) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS GRIDLEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * *	*	* *
USS GRIDLEY	DDG 101	1.86 meters.
* * * *	*	* *

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS GRIDLEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * *	*	* *
USS GRIDLEY	DDG 101	107.25° thru 112.50°.
* * * *	*	* *

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS GRIDLEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*		*	*
USS GRIDLEY	DDG 101	X	X	X	14.5
* * *	*	*		*	*

Approved: July 17, 2006.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. E6–11917 Filed 7–25–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS KIDD (DDG 100) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: *Effective Date:* July 14, 2006.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS KIDD (DDG 100) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS KIDD:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * *	*	* *
USS KIDD	DDG 100	1.89 meters.
* * * *	*	* *

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS KIDD:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * *	*	* *
USS KIDD	DDG 100	107.67° thru 112.50°.
* * * *	*	* *

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS KIDD:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * * *	*			*	*
USS KIDD	DDG 100	X	X	X	14.4
* * * *	*			*	*

Approved: July 14, 2006.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. E6–11923 Filed 7–25–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD13–06–007]

RIN 1625–AA08

Special Local Regulation: Annual Dragon Boat Races, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for the Dragon Boat Races held annually on the second Saturday and Sunday of June on the waters of the Willamette River, Portland, Oregon. These special local regulations limit the movement of non-participating vessels in the regulated race area. This rule will provide for the safety of life on navigable waters during the event. This rule will also remove special local regulations for the formerly-annual, Clarkston, Washington, Limited Hydroplane Races which no longer occur on a regular basis.

DATES: This rule is effective June 10, 2006.

ADDRESSES: Comments and material received from the public, as well as

documents indicated in this preamble as being available in the docket, will become part of this docket [CGD13–06–007] and are available for inspection or copying at U.S. Coast Guard Sector Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST1 Charity Keuter, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217–3992, and (503)240–9311

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 21, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation: Annual Dragon Boat Races, Portland, OR in the **Federal Register** (71 FR 14132). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. However advance notifications will be made to users of the waterway via marine information broadcasts and area newspapers.

Background and Purpose

We are revising 33 CFR 100.1302 because the annual Clarkston, Washington, Limited Hydroplane Races are no longer an event which occurs with any regularity. These races have not been conducted for at least 5 years and the sponsor has stated that they are no longer conducted. We are rewriting § 100.1302 for an event, the Dragon Boat Races in Portland, Oregon, that takes place annually and would benefit from a permanent rule.

This event may result in a number of recreational vessels congregating near the boat races. The regulated area is needed to protect event participants. Dragon Boats have very little freeboard and are susceptible to swamping. Accordingly, regulatory action is needed in order to provide for the safety of spectators and participants during the event.

Discussion of Comments and Changes

No comments or letters were received in response to the NPRM. Therefore, we made no changes from the proposed rule except to add a definition of the ''race area'' to clarify where it was located within the regulated area.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the regulation will encompass a small portion of the river for eighteen hours over two days.

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 would not have a significant economic impact on a substantial number of small entities. This regulated area will not have significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for only 18 hours annually and vessel traffic will be allowed to safely pass around the race area and through the remainder of the regulated area with a ''no wake'' zone enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Charity Keuter at (503) 240–9301. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. No comments were received.

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 would 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 effect 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 100.1302 to read as follows:

§ 100.1302 Special Local Regulation, Annual Dragon Boat Races, Portland, Oregon.

(a) *Regulated area.* All waters of the Willamette River shore to shore, bordered on the north by the Hawthorne Bridge, and on the south by the Marquam Bridge.

(b) *Definition.* For purposes of this section, *race area* means an area 536-meters-long by 80-feet-wide designated by buoys and floatation line markers within the regulated area described in paragraph (a) of this section. The buoys have 4-foot poles attached to them. Two of the buoys are red, one is white, and the other is yellow. The course runs from the north side of the Hawthorne bridge south along the east bank to the east most pier of the Markham bridge and from the south side of the Markham bridge to the east pier of the center span. The center span is left open to allow commercial traffic through during the event. The course then continues from the west Pier of the center span and to the first pier west on the south side of the piers and continues north and ends at River Place dock.

(c) *Enforcement period.* The event is a two-day event which will be enforced from 8 a.m. (PDT) to 5 p.m. (PDT) on the second Saturday and Sunday of June each year. In 2006, this section will be enforced from 8 a.m. until 5 p.m. on Saturday, June 10, and Sunday, June 11.

(d) *Special local regulation.* (1) Non-participant vessels are prohibited from entering the race area unless authorized by the Coast Guard Patrol Commander.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be moored to a waterfront facility in a way that will not interfere with the progress of the event or have permission to enter the area from the event sponsor or Coast Guard patrol commander. Spectators must proceed at a safe speed as not to cause a wake. This requirement will be strictly enforced to preserve the safety of both life and property.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Coast Guard Patrol Commander may be assisted by other Federal, State and local law enforcement agencies in enforcing this regulation.

Dated: May 30, 2006.

R.R. Houck,

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

[FR Doc. E6–11876 Filed 7–25–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0552; FRL–8075–8]

Butene, Homopolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises the exemption from the requirement of a tolerance for residues of butene, homopolymer when used as an inert ingredient in a pesticide chemical formulation. Miller Chemical and Fertilizer Corporatation submitted a petition to EPA under the Federal Food,

Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting a revision of an exemption (which has already been established) from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of butene, homopolymer.

DATES: This regulation is effective July 26, 2006. Objections and requests for hearings must be received on or before September 25, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0552. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 (SouthBuilding), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open 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: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address:*gandhi.bipin@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. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0552 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 25, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0552, 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.

II. Background and Statutory Findings

In the **Federal Register** of January 25, 2006 (71 FR 4138) (FRL–7744–4), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 5E6958) by Miller Chemical and Fertilizer Corporation, P. O. Box 333, 120 Radio Road, Hanover, PA 17331. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of butene, homopolymer; CAS Reg.No. 9003–29–6. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order todetermine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, butene, homopolymer, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, butene, homopolymer, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average molecular weight (MW) of 1100 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, butene, homopolymer meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to butene, homopolymer.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that butene, homopolymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of butene, homopolymer is 1100 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since butene, homopolymer conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the publichealth.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether butene, homopolymer has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to butene, homopolymer and any other substances and butene, homopolymer does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that butene, homopolymer has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of butene, homopolymer, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a

reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of butene, homopolymer.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that butene, homopolymer is an endocrine disruptor.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for butene, homopolymer nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of butene, homopolymer from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 10, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.960 the table is amended by revising the entry for ''Butene, homopolymer minimum number average molecular weight (in amu), 1,330'' to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* *	* * *
Butene, homopolymer	9003–29–6

Polymer	CAS No.
* *	* * *

[FR Doc. E6–11720 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0555; FRL–8077–4]

2-Propenoic Acid, 2-Methyl-, Polymer with Butyl 2-Propenoate, Methyl 2-Methyl-2-Propenoate, Methyl 2-Propenoate and 2-Propenoic Acid, Graft, Compound with 2-Amino-2-Methyl-1-Propanol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol when used as an inert ingredient in a pesticide chemical formulation. E. I. du Pont de Nemours and Company, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl -1-propanol.

DATES: This regulation is effective July 26, 2006. Objections and requests for hearings must be received on or before September 25, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0555. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Docket Facility is open 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: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@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. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0555 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 25, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0555, 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.

II. Background and Statutory Findings

In the **Federal Register** of April 19, 2006 (71 FR 20098) (FRL–8065–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6E7032) by E. I.

du Pont de Nemours and Company, Inc., 1007 Market St., Wilmington, DE 19898. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol; CAS Reg. No. 153163–36–1. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, does contain as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen and oxygen.

3. The polymer, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The number average molecular weight of the polymer, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, is 7,080 which is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol meet all the criteria for a polymer to be considered low risk

under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The numerical average MW of 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol is 7,080 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol and any other substances and 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol is an endocrine disruptor.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, methyl 2-propenoate and 2-propenoic acid, graft, compound with 2-amino-2-methyl-1-propanol from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 17, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.960 the table is amended by adding alphabetically a polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * *	* *
2-Propenoic acid, 2-Methyl-, Polymer with Butyl 2-Propenoate, Methyl 2-Methyl-2-Propenoate, Methyl 2-Propenoate and 2-Propenoic Acid, graft, Compound with 2-Amino-2-Methyl-1-Propanol.	CAS Reg. No.153163–36–1
* * *	* *

[FR Doc. E6–11807 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0550; FRL–8078–3]

2-Propenoic, 2-Methyl-, Polymers with Ethyl Acrylate and Polyethylene Glycol Methylacrylate C_{18-22} Alkyl Ethers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers (CAS No. 888969–14–0) when used as an inert ingredient in a pesticide chemical formulation. The Lubrizol Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers.

DATES: This regulation is effective July 26, 2006. Objections and requests for hearings must be received on or before September 25, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0550. All documents in the

docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Docket Facility is open 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: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@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. How Can I Access Electronic Copies of this Document?

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0550 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 25, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0550, 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.

II. Background and Statutory Findings

In the **Federal Register** of January 25, 2006 (71 FR 4137) (FRL–7749–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 5E6990) by The Lubrizol Corporation, 29400 Lakeland Blvd., Wickliffe, OH 44092. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers; CAS No. 888969–14–0. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents;

and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers, does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers, does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers, is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers, is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers, is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The number average molecular weight (MW) of the polymer, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers is 94,600, which is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers is 94,600 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers and any other substances and 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for

cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers is an endocrine disruptor.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a

''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 17, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.960, the table is amended by adding alphabetically a polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * *	* *
2-Propenoic, 2-methyl-, polymers with ethyl acrylate and polyethylene glycol methylacrylate C_{18-22} alkyl ethers	888969–14–0
* * *	* *

[FR Doc. E6–11824 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0588; FRL–8078–4]

Oxirane, Methyl-, Polymer with Oxirane, Monobutyl Ether; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, methyl-, polymer with oxirane, monobutyl ether; when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, methyl-, polymer with oxirane, monobutyl ether.

DATES: This regulation is effective July 26, 2006. Objections and requests for hearings must be received on or before September 25, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0588. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential BusinessInformation (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 in the electronic docketat *http://www.regulations.gov*, or, if only availablein hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open 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: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address:*gandhi.bipin@epa.gov*.

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- 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**.

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0588 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 25, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0588, 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., Mondaythrough Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 1, 2005 (70 FR 31453) (FRL–7711–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 5E6917) by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of oxirane, methyl-, polymer with oxirane, monobutyl ether; CAS Reg. No. 9038–95–3. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemicallyactive. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considersthe toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, oxirane, methyl-, polymer with oxirane, monobutyl ether, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer, oxirane, methyl-, polymer with oxirane, monobutyl ether, does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer, oxirane, methyl-, polymer with oxirane, monobutyl ether, does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer, oxirane, methyl-, polymer with oxirane, monobutyl ether, is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer, oxirane, methyl-, polymer with oxirane, monobutyl ether, is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer, oxirane, methyl-, polymer with oxirane, monobutyl ether, is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, oxirane, methyl-, polymer with oxirane, monobutyl ether, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 4,000 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, oxirane, methyl-, polymer with oxirane, monobutyl ether meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to oxirane, methyl-, polymer with oxirane, monobutyl ether.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that oxirane, methyl-, polymer with oxirane, monobutyl ether could be present in all

raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of oxirane, methyl-, polymer with oxirane, monobutyl ether is 4,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since oxirane, methyl-, polymer with oxirane, monobutyl ether conform to the criteria thatidentify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether oxirane, methyl-, polymer with oxirane, monobutyl ether has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approachbased on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to oxirane, methyl-, polymer with oxirane, monobutyl ether and any other substances and oxirane, methyl-, polymer with oxirane, monobutyl ether does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that oxirane, methyl-, polymer with oxirane, monobutyl ether has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at*http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of oxirane, methyl-, polymer with oxirane, monobutyl ether, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of oxirane, methyl-, polymer with oxirane, monobutyl ether.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that oxirane, methyl-, polymer with oxirane, monobutyl ether is an endocrine disruptor.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for oxirane, methyl-, polymer with oxirane, monobutyl ether nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of oxirane, methyl-, polymer with oxirane, monobutyl ether from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. '' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and foodretailers, not States. This action does not alter the relationships or

distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatorypolicies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 17, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

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

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

■ 2. Section 180.960 is amended in the table by removing the entry for ''α-Butyl-ω-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); molecular weight (in amu) 2,400—3,500'' and by alphabetically adding a polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * *	*
Oxirane, methyl-, polymer with Oxirane, Monobutyl Ether	9038–95–3
* * * *	*

[FR Doc. E6–11952 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0551; FRL–8075–7]

2H-Azepin-2-one, 1-Ethenylhexahydro-, Homopolymer I; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer; when used as an inert ingredient in a pesticide chemical formulation BASF AG submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer.

DATES: This regulation is effective July 26, 2006. Objections and requests for hearings must be received on or before September 25, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0551. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Docket Facility is open 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: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@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. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0551 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 25, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0551, 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.

II. Background and Statutory Findings

In the **Federal Register** of March 1, 2006 (71 FR 10505) (FRL–7762–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6E7026) by BASF AG, 67052 Ludwigshafen, Germany. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer; CAS Reg. No. 25189–83–7. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except

as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average molecular weight (MW) of 4,500 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer is 4500 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer and any other substances and 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer is an endocrine disruptor.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 2H-azepin-2-one, 1-ethenylhexahydro-, homopolymer from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 10, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.960 the table is amended by alphabetically adding a polymer to read as follow:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * *	* *
2H-Azepin-2-one, 1-ethenylhexahydro-, homopolymer	25189–83–7
* * *	* *

[FR Doc. E6–11953 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0556; FRL–8077–5]

2-Propenoic Acid, 2-Methyl-, Polymer with Ethenylbenzene, 2-Ethylhexyl 2-Propenoate, 2-Hydroxyethyl 2-Propenoate, N-(Hydroxymethyl) -2-Methyl-2-Propenamide and Methyl 2-Methyl-2-Propenoate, Ammonium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2- methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt when used as an inert ingredient in a pesticide chemical formulation. E. I. du Pont de Nemours and Company, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt.

DATES: This regulation is effective July 26, 2006. Objections and requests for hearings must be received on or before September 25, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0556. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Docket Facility is open 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: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address:*gandhi.bipin@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. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0556 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 25, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0556, 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.

II. Background and Statutory Findings

In the **Federal Register** of April 26, 2006 (71 FR 24693) (FRL–8066–3), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6E7037) by E. I. du Pont de Nemours and Company, Inc., 1007 Market St., Wilmington, DE 19898. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt; CAS Reg. No. 146753–99–3. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the

low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, does contain as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen and oxygen.

3. The polymer, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The number average molecular weight (MW) of polymer, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, is 29,296 which is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoicacid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt is 29296 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

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

EPA does not have, at this time, available data to determine whether 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt and any other substances and 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt is an endocrine disruptor.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethylhexyl 2-propenoate, 2-hydroxyethyl 2-propenoate, N-(hydroxymethyl) -2-methyl-2-propenamide and methyl 2-methyl-2-propenoate, ammonium salt from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input

by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 10, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

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

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

■ 2. Section 180.960 is amended by adding alphabetically to the table a polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * *	*
2-Propenoic Acid, 2-Methyl-, Polymer with Ethenylbenzene, 2-Ethylhexyl 2-Propenoate, 2-Hydroxyethyl 2-Propenoate, N-(Hydroxymethyl) -2-Methyl-2-Propenamide and Methyl 2-Methyl-2-Propenoate, Ammonium Salt	146753–99–3
* * * *	*

[FR Doc. E6–11951 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 63a

RIN 0925–AA28

National Institutes of Health Training Grants

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending the current regulations governing its training grants to reflect applicability of the regulations to institutional training grants supporting pediatric research training.

DATES: *Effective Date:* This final rule is effective August 25, 2006.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, Maryland 20892, telephone 301–496–4607 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 17, 2000, Congress enacted the Children's Health Act of 2000, Public Law 106–310. Title X, section 1002, of this law amended the Public Health Service (PHS) Act by adding section 452G (42 U.S.C. 285g–10). Section 452G directs the Director of the National Institute of Child Health and Human Development, after consultation with the Administrator of the Health Resources and Services Administration, to support activities to provide for an increase in the number and size of institutional training grants to institutions supporting pediatric training. We are amending the current regulations codified at 42 CFR part 63a, ''National Institutes of Health Training Grants,'' to implement this pediatric research training grants authority. More specifically, we are amending part 63a to reference section 452G of the PHS Act in the authority section and in paragraph (a)(2) of § 63a.1 of the regulations, and update information in the 18th, 19th, and 20th undesignated paragraphs of § 63a.11.

We announced our intention to amend the training grants regulations by publishing the notice of proposed rulemaking (NPRM), ''National Institutes of Health Training Grants,'' in the **Federal Register** of January 28, 2005 (70 FR 4080–4081). The NPRM provided for a 60-day public comment period. The comment period expired on March 29, 2005. We received no comments. Therefore, the amending action reflected in this final rule is the same as what we proposed in the NPRM.

We provide the following as public information.

Executive Order 12866

Executive Order 12866, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in section 3(f) of the Order, prepublication review by the Office of Management and Budget's Office of Information and Regulatory

Affairs (OIRA) is necessary. The OIRA reviewed this final rule under Executive Order 12866 and deemed it not a significant regulatory action as defined by the Executive Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory proposals be analyzed to determine whether they create a significant impact on a substantial number of small entities. The Secretary of Health and Human Services (Secretary) certifies that this final rule does not have such impact.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. The Secretary reviewed this final rule as required under the Executive Order and determined that it does not have federalism implications. The Secretary certifies that this final rule will not have an effect on the States, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

This final rule does not contain information collection requirements which are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35).

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance numbered program affected by the proposed regulation is: 93.865.

List of Subjects in 42 CFR Part 63a

Grant programs—health; Health—medical research.

Dated: April 12, 2006.

Elias A. Zerhouni,

Director, National Institutes of Health.

Approved: July 18, 2006.

Michael O. Leavitt,

Secretary.

■ For the reasons set forth in the preamble, we amend chapter 1 of title 42 of the Code of Federal Regulations as set forth below.

PART 63a—NATIONAL INSTITUTES OF HEALTH TRAINING GRANTS

■ 1. The authority citation of part 63a is revised to read as follows:

Authority: 42 U.S.C. 216, 2421(b)(3), 284(b)(1)(C), 285g–10, 287c(b), 300cc–15(a)(1), 300cc–41(a)(3)(C), 7403(h)(2).

■ 2. Section 63a.1 is amended by revising paragraph (a)(2) to read as follows:

§ 63a.1 To what programs do these regulations apply?

(a) * * *

(2) Grants awarded by NIH for research training with respect to the human diseases, disorders, or other aspects of human health or biomedical research for which the institute or other awarding component was established, for which fellowship support is not provided under section 487 of the Act and which is not residency training of physicians or other health professionals, as authorized by sections 405(b)(1)(C), 452G, 485B(b), 2315(a)(1), and 2354(a)(3)(C) of the Act; and,

* * * * *

■ 3. Section 63a.11 is amended by revising the 18th, 19th, and 20th undesignated paragraphs to read as follows:

§ 63a.11 Other HHS regulations and policies that apply.

* * * * *

''NIH Grants Policy Statement,'' (December 1, 2003). This version is located on the NIH Web site at: *http://grants./policy/nihgps_2003/index.htm.*

[**Note:** this policy is subject to change, and interested persons should contact the Office of Policy for Extramural Research Administration (OPERA), Office of Extramural Research, NIH, 6701 Rockledge Drive, Suite 350, MSC 7974, Bethesda, Maryland 20892–7974, telephone 301–435–0938 (or toll-free 800–518–4726), to obtain references to the current version and any amendments. Information may also be obtained by contacting the OPERA Division of Grants Policy via e-mail at *http://GrantsPolicy@mail.nih.gov.* Previous versions of the NIH Grants Policy Statement are archived at *http://grants.nih.gov/grantspolicy/policy.htm.*]

''Public Health Service Policy on Humane Care and Use of Laboratory Animals,'' Office of Laboratory Animal Welfare (Amended August, 2002).

[**Note:** this policy is subject to change, and interested persons should contact the Office of Laboratory Animal Welfare, 6705 Rockledge Drive, Suite 360, MSC 7982, Bethesda, Maryland 20892–7982, telephone 301–594–2382 (not a toll-free number), to obtain references to the current version and any amendments. Information may also be obtained by browsing the Office of Laboratory Animal Welfare Home Page site on the World Wide Web (*http://www.grants.nih.gov/grants/olaw/olaw.htm*).]

[FR Doc. E6–11924 Filed 7–25–06; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[File No. CCB/CPD No. 00–1; FCC 06–98]

Payphone Line Rates; New Services Test

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission issued this document responding to a petition for correction submitted by Verizon, Inc. and a petition for reconsideration submitted by the Wisconsin Pay Telephone Association (WPTA). The Commission granted Verizon's petition to correct the order by clarifying that Verizon's affiliate, Verizon North, is not a Bell Operating Company (BOC) by definition of the Act. The Commission denied the WPTA's petition for reconsideration of the Commission's decision that the Wisconsin Public Utility Commission should properly determine BOC intrastate payphone line rates in the State of Wisconsin to determine compliance with the new services test established by the Commission.

DATES: Effective August 25, 2006.

FOR FURTHER INFORMATION CONTACT: Ana Janckson-Curtis, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's order on reconsideration in File No. CCB/CPD No. 00–01 released on July 7, 2006. The full text of this document is available on the Commission's Web site and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

Procedural Matters

Paperwork Reduction Act Analysis

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

Report to Congress

The Commission will not send a copy of this order on reconsideration pursuant to the Congressional Review

Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

Background

In the Wisconsin Order, the Commission affirmed a Common Carrier Bureau order holding that section 276 of the Act grants this Commission jurisdiction to require BOCs to set their intrastate payphone line rates in compliance with the Commission's cost-based, forward-looking ''new services'' test. The Commission also found, however, that it lacks authority to impose this requirement on non-BOC LECs. The order also provided guidance to the states regarding application of the new services test.

Discussion

The Act defines ''Bell operating company'' to include 20 companies specifically named in the statute, as well as ''any successor or assign of such company that provides wireline exchange service,'' but it expressly excludes ''an affiliate of such company'' other than one of the named companies or their successors or assigns. As a result of a merger between GTE and Verizon, GTE North was renamed Verizon North and became an affiliate of Verizon, but it is not one of the companies defined as a BOC, nor is it a successor or assign of Verizon. Accordingly, the Commission concluded that Verizon North is not a BOC, and it is not within this Commission's jurisdiction to mandate application of the new services test to its intrastate payphone line rates.

The Wisconsin Commission has concluded that it has jurisdiction to determine whether payphone line rates comply with the new services test. It has also undertaken investigations and issued a Notice of Proceeding and Investigation and Assessment of Costs to Wisconsin Bell d/b/a SBC Wisconsin. This action is consistent with the Commission's previously stated view that payphone line rates should, to the extent possible, be reviewed by the appropriate state commission. In light of the decision of the Wisconsin Commission to review intrastate payphone line rates, and the actions of the Wisconsin Commission in undertaking investigations, the Commission denied the WPTA's request to evaluate Ameritech's and Verizon's payphone line rates.

Conclusion

This order grants Verizon's petition for correction by clarifying that the Commission's jurisdiction to mandate application of the new services test to intrastate payphone line rates does not extend to Verizon North, previously known as GTE North. Verizon North is not a BOC under the Act.

The order also denies the WPTA's petition for reconsideration, which asks the Commission to review cost support materials submitted by Verizon and Ameritech, and defers to the Wisconsin Commission to determine whether Ameritech's payphone line rates comply with the new services test established by the Commission and whether the new services test should apply to the payphone line rates of other Wisconsin LECs.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 276, and § 1.106 of the Commission's rules, 47 CFR 1.106, that the petition for correction filed by Verizon is granted as discussed herein.

It is also ordered that, for the reasons stated above, the WPTA petition for reconsideration *is denied.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–11899 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 02–278 and 05–338; FCC 06–42]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved for three years the information collections contained in the *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration (Report and Order).* The *Report and Order* states that the Commission will publish a document in the **Federal Register** announcing the effective date of this rule.

DATES: 47 CFR 64.1200(a)(3)(i), (ii), (iii), (iv) and (vi) published at 71 FR 25967 (May 3, 2006) are effective August 1, 2006.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon, Consumer Policy Division, Consumer & Governmental Affairs Bureau at (202) 418–0346.

SUPPLEMENTARY INFORMATION: This document announces that, on July 19, 2006, OMB approved for three years the information collections contained in 47 CFR 64.1200(a)(3)(i), (ii), (iii), (iv) and (vi), published at 71 FR 25967 (May 3, 2006). The OMB Control Number is 3060–1088. The Commission publishes this notice of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please write to Leslie F. Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1088, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *Leslie.Smith@fcc.gov*, or you may call (202) 418–0217.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval from OMB on July 19, 2006, for the collections of information contained in 47 CFR 64.1200(a)(3)(i), (ii), (iii), (iv) and (vi). The total annual reporting burden associated with this collection of information, including the time for gathering and maintaining the collections of information, is estimated to be: 5,000,000 respondents, a total annual hourly burden of 13,180,000 hours, and $60,000,000 in total annual costs. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–12024 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI80

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Northern Aplomado Falcons in New Mexico and Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), plan to reintroduce northern aplomado falcons (*Falco femoralis septentrionalis*) (falcon) into their historical habitat in southern New Mexico for the purpose of establishing a viable resident population in New Mexico and Arizona. The falcon is being re-established under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and would be classified as a nonessential experimental population (NEP). The geographic boundary of the NEP includes all of New Mexico and Arizona.

This action is part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the species'' historical range. This final rule provides a plan for establishing the NEP and provides for limited allowable legal taking of the northern aplomado falcon within the defined NEP area. Birds can only be released when they are a few weeks old, and this condition only occurs in the spring and summer of each year. In order to accomplish a release in 2006, we must expedite on-the-ground implementation.

DATES: The effective date of this rule is July 26, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, New Mexico 87113.

You may obtain copies of the final rule, environmental analysis, and monitoring plan from the field office address above, by calling (505) 346–2525, or from our Web site at *http://www.fws.gov/ifw2es/NewMexico/.*

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Acting Field Supervisor, New Mexico Ecological Services Field Office at the above address (telephone 505–346–2525, facsimile 505–346–2542).

SUPPLEMENTARY INFORMATION:

Background

Background information that was previously provided in our February 9, 2005, proposed rule (70 FR 6819) has been condensed in this rule.

Biological

The northern aplomado falcon (hereafter referred to as falcon) is one of three subspecies of the aplomado falcon and the only subspecies recorded in the United States. This subspecies was listed as an endangered species on February 25, 1986 (51 FR 6686). The falcon is classified in the Order Falconiformes, Family Falconidae. Historically, falcons occurred throughout coastal prairie habitat along the southern Gulf coast of Texas, and in savanna and grassland habitat along both sides of the Texas-Mexico border, southern New Mexico, and southeastern Arizona. Falcons were also present in the Mexican States of Tamualipas, Veracruz, Chiapas, Campeche, Tabasco, Chihuahua, Coahuila, Sinaloa, Jalisco, Guerrero, Yucatan, and San Luis Potosi, and on the Pacific coast of Guatemala and El Salvador (Keddy-Hector 2000). Falcons were fairly common in suitable habitat throughout these areas until the 1940s, but subsequently declined rapidly. From 1940 to the present in Arizona (Corman 1992), and from 1952 to 2000 in New Mexico (Meyer and Williams 2005), there were no documented nesting attempts by wild falcons. In 2001 and 2002, one pair of falcons nested in Luna County, New Mexico. This pair was unsuccessful in producing fledglings in 2001, but produced three fledglings in 2002. To date, the 2002 nest has been the only known successful falcon nest in either Arizona or New Mexico since 1952.

The causes for decline of this subspecies have included widespread shrub encroachment resulting from control of range fires and intense overgrazing (Service 1986; Burnham *et al.* 2002) and agricultural development in grassland habitats used by the falcon (Hector 1987; Keddy-Hector 2000). Pesticide exposure was likely a significant cause of the subspecies'' extirpation from the United States with the initiation of widespread DDT (dichloro-diphenyl-trichloroethane) use after World War II, which coincided with the falcon's disappearance (51 FR 6686, February 25, 1986). Falcons in Mexico in the 1950s were heavily contaminated with DDT residue, and these levels caused a 25 percent decrease in eggshell thickness (Kiff *et al.* 1980). Such high residue levels can often result in reproductive failure from egg breakage (Service 1990).

Collecting falcons and eggs may have also been detrimental to the subspecies in some localities. However, populations of birds of prey are generally resilient to localized collection pressure (Service 1990). Currently, long-term drought, shrub encroachment in areas of Chihuahuan grasslands, and the increased presence of the great-horned owl (*Bubo virginianus*), which preys upon the falcon, may be limiting recovery of this subspecies. On the other hand, falcons appear to be relatively tolerant of human presence. They have been observed to tolerate approach to within 100 meters (m) (328 feet (ft)) of their nests by researchers and have nested within 100 m (328 ft) of highways in eastern Mexico (Keddy-Hector 2000), and are frequently found nesting in association with well-managed livestock grazing operations in Mexico and Texas (Burnham *et al.* 2002). Burnham *et al.* (2002) concluded that falcons would be able to coexist with current land-use practices in New Mexico on the broad scale.

Over the past decade, widespread formal surveys have been conducted in southern New Mexico habitats capable of supporting individual or breeding falcons (suitable habitat). Standardized falcon surveys have been conducted annually in suitable falcon habitats on White Sands Missile Range and Fort Bliss by the Department of Defense throughout the past decade (Burkett and Black 2003; Griffin 2005a; Locke 2005). White Sands Missile Range in central New Mexico contains one million hectares (ha) (2.5 million acres (ac)). The northwest corner (81,000 ha (200,000 ac)) is highly suitable yucca/grassland preferred by falcons. There is presently no livestock grazing and no public access to this area. The 145,139-ha (358,643-ac) Armendaris Ranch, located in south central New Mexico, contains undeveloped Chihuauhuan desert grassland managed by Turner Properties in cooperation with the Turner Endangered Species Fund. Armendaris Ranch managers have volunteered to provide falcon

reintroduction sites, and the Armendaris Ranch and areas immediately adjacent to known falcon habitat in Luna County have been surveyed on several occasions in recent years (Howard 2006a; Meyer and Williams 2005). Falcon surveys were conducted in 2003 on the Gray Ranch in southeastern New Mexico, which contains 130,410 ha (322,000 ac) (Lewis 2005). It includes extensive desert grasslands at its lower elevations. Bird life is abundant on the Gray Ranch; 43 percent of New Mexico's avian species occur there and would provide an excellent prey base for falcons. The Bureau of Land Management (BLM) office in Las Cruces and the New Mexico Department of Game and Fish (NMDGF) have also recently sponsored formal surveys for falcons in suitable habitats in the subspecies'' historic range in New Mexico (Howard 2006a; Meyer and Williams 2005; Lister 2006a; Lister 2006c). Therefore, large areas of the southern New Mexico habitats most capable of supporting individual or breeding pairs of falcons have been formally surveyed for the presence of falcons during the past 10 years, and the results of these surveys follow.

After a 50-year absence, an unsuccessful nesting attempt was documented in Luna County, New Mexico, in the spring of 2001 (Meyer and Williams 2005). In 2002, a pair at this location successfully fledged three chicks. In 2003, only a single female was seen in the area of the 2002 nest. In 2004, a pair of falcons was seen for a short time at this location, but no nesting was detected and this male left in late May (Meyer and Williams 2005). In 2005, only a single female was observed at this site (Meyer 2005). In 2006, this breeding territory has been repeatedly surveyed, and no falcons were detected there from February through May, although a falcon was reported to be observed in a nearby area in late May (Lister 2006c).

Formal surveys and reliable sightings submitted to the Service show that a small number of falcons have occurred in New Mexico, with a small number of sightings occurring in every decade since the 1960s (Williams 1997; Howard 2006a; Howard 2006b; Meyer and Williams 2005; Service 2005; Howe 2006). Although it is a species highly sought after by bird watchers and other naturalists, an average of only 2.5 sightings was reported per year during the 1990s in New Mexico (Service 2005). Despite increasing public interest, survey effort, and reporting requirements (*e.g.,* section 10 (a)(1)(A) recovery permits), from 2000 through 2005, this average only increased to 4.0 sightings reported per year in the State, including the Luna County appearance of the first nest in either New Mexico or Arizona since 1952 (Service 2005). On May 8, 2002, two additional falcons were observed that were thought to be different from the known nesting pair in Luna County. However, only one individual thought to be from that potential second pair was present two days later, and a second falcon nest was never located anywhere in the NEP area (Meyer and Williams 2005). In 2003 and 2004, other than the Luna County territory, no additional falcons were reported from formal surveys in New Mexico (Meyer and Williams 2005). In 2005 and through April 2006, there were nine sightings at locations in New Mexico apart from the Luna County territory (Burkett 2005; Banwart 2006; Howard 2006b; Locke 2006). Only the sighting on August 11, 2005, detected more than one falcon. The two falcons observed on that day did not exhibit behaviors that indicated they were a pair, and a photograph taken of one suggested it was a juvenile (Howard 2005a;b). Repeated follow-up by highly qualified, experienced falcon surveyors of four of these detections, including the sighting of two birds, revealed that none of these falcons appeared to be local residents or defending a territory (Griffin 2005b; Howard 2005b; Lister 2006b; Lister 2006c; Locke 2006). Absolute numbers of falcons sighted in New Mexico are unknown because all but one sighting has been of unbanded birds. Montoya *et al.* (1997) and Macias-Duarte *et al.* (2004) banded a number of juvenile falcons in the Mexican State of Chihuahua between 1996 and 2002. To date, one juvenile bird banded in this study has been seen in New Mexico. It was observed on Otero Mesa in 1999 (Howard 2006a). In Arizona, the most recent documented occurrences of falcons were recorded in 1975 and 1977, with one unconfirmed sighting in southern Arizona near the Mexican border in November 2005 (Howard 2006a). These sightings in New Mexico and Arizona may represent falcons dispersing from the population in Chihuahua that were opportunistically foraging in areas rich in prey due to vegetative growth from precipitation (Howard 2005a).

It has been noted that significant re-colonization of habitats in Arizona and New Mexico by naturally occurring birds in Chihuahua would likely take decades, if it occurred at all, because the reproductive rate of the falcons in Chihuahua has typically been low. The low reproductive rate is possibly due to the effects of extended drought, and this population has not been expanding (Burnham *et al.* 2002; Jenny and Heinrich 2004). In addition, the majority of the breeding pairs in Chihuahua are clustered in close proximity to one another, but most are approximately 120 to 135 miles away from the southern New Mexico border (Howard 2006c). As stated in the Recovery Plan for the falcon (1990), ''Regardless of the status of the aplomado falcon in Mexico, an attempt should be made to establish populations in the United States. If release sites are carefully chosen, reestablished populations should be relatively free from pesticide contamination. Releases may facilitate range expansion because pesticide contamination may have reduced the ability of most populations to colonize new patches of suitable habitat. The potential for range expansion is now more promising as a result of recent brush control efforts in southern and coastal Texas and the discontinued use of DDT.''

Recovery Efforts

There are currently 46 pairs of aplomado falcons in the captive population, which produces more than 100 young per year. From this captive population, 1,142 captive-bred falcons have been released in Texas (Juergens and Heinrich 2005). The Peregrine Fund conducted a pilot release project in Texas from 1985 to1989, and increased restoration efforts began in 1993. These releases have established at least 44 pairs in southern Texas and adjacent Taumalipas, Mexico, where no pairs had been recorded since 1942 (Jenny *et al.* 2004). Moreover, pairs of reintroduced falcons began breeding in 1995, and to date have successfully fledged more than 244 young (Juergens and Heinrich 2005). Nests have been located on a variety of structures, both artificial and natural. Predation by great-horned owls, raccoons (*Procyon lotor*), and coyotes (*Canis latrans*) is significant, affecting more than half of all nesting attempts (Jenny *et al.* 2004). Nesting productivity increased by approximately 40 percent in 2003 and 2004, when falcons were provided artificial nesting structures with barred sides arranged so that falcons can enter the nest while predators cannot (Jenny *et al.* 2004). Pairs of falcons in south Texas successfully fledged young where they had never been successful prior to the use of the new artificial nests. Beginning in 2002, falcons have also been released in west Texas under a Safe Harbor Agreement with The Peregrine Fund. In 2005, 138 falcons were released at six sites on private ranches in the trans-Pecos region of the

State, and of these, 116 successfully reached independence (Juergens and Heinrich 2005).

All of these releases in Texas have occurred on private property under Safe Harbor Agreement permits, currently with an enrollment of more than 728,000 ha (1.8 million ac). Safe Harbor Agreements are between a private land owner and the Service that permit future incidental taking of listed species on their private land. Releases have also occurred on Laguna Atascosa, Matagorda Island, and Aransas National Wildlife Refuges in Texas. We believe that it is also possible to accelerate the establishment of a breeding population in the Southwest through reintroductions of captive-raised birds in New Mexico. The experience in Texas, where the population went from no known pairs in 1994, to 44 known pairs that produced at least 244 young by 2005, illustrates the rapidity with which a population can be established through reintroductions.

Despite the relative success of the falcon releases in Texas, we believe the Safe Harbor Agreements used to release falcons in Texas are not the best mechanism for re-establishing falcons in New Mexico and Arizona. Safe Harbor Agreements can only be developed for private land owners. There is a vast amount of public land in New Mexico and Arizona, totaling approximately 40 percent of the reintroduction area. Therefore, public land is very important for recovery of the falcon in this area. Not only is the public land important because of its high percentage in the reintroduction area, but it is important because of its habitat characteristics. The historical range in the NEP area is Chihuahuan Desert grassland, and public lands make up approximately 50 percent of the Chihuahuan Desert grassland compared to private land (Young *et al.* 2002). We believe there is very low probability that falcons will populate lands outside of their historical range because those habitats would not be suitable for falcons. Thus far, we have not detected falcons inhabiting areas outside of their historical range.

Extensive grasslands that would support individual or breeding falcons occur on Otero Mesa, White Sands Missile Range, southern Hidalgo County (Gray Ranch), and the Armendaris Ranch/Stallion Range area (Howard 2006a). Approximately one-half of the Chihuahuan Desert grasslands in New Mexico are federally managed, and often intermingled with State and private land. Falcons moving between Safe Harbor lands and non-Safe Harbor lands would receive different levels of protection from the Act. Activities that may affect falcons on Federal lands (or on non-Federal lands for projects using Federal permitting, funding, or authorization) would require section 7(a)(2) consultation. Falcons released on private lands with Safe Harbor Agreements that move to non-Safe Harbor lands would receive the full protection of the Act. Actions that may take falcons on private lands would also be subject to the Act's regulatory requirements. We believe such an approach would be less efficient than establishing an NEP, would be difficult to regulate, and would ultimately provide less conservation benefit to the falcon than establishing an NEP.

The Secretary has broad discretion to manage populations to better conserve and recover endangered species. The term ''experimental population'' means any population, including any of their offspring, authorized by the Secretary for release, only when the population is wholly separate geographically from nonexperimental populations of the same species. In the case of the falcon, (1) This subspecies has been known to disperse up to 250 kilometers, (2) it would be virtually impossible to preclude naturally occurring individual falcons from intermingling with the experimental population, and (3) there has been only one pair that has reproduced one time within the NEP area. Designation of a 10(j) NEP requires that the reintroduced animals be ''wholly separate'' from any existing population. We do not consider the pair of falcons that bred in 2002 in Luna County to constitute a population. Therefore, the exclusion of the counties surrounding the 2002 pair from the 10(j) designation is not necessary. We identify the experimental population as all falcons found within the NEP area, including reintroduced falcons and any lone dispersers and their offspring. We believe this is the best manner by which to manage the falcon reintroduction program to achieve species recovery. The Act does not require the protection of individuals to the exclusion or detriment of overall species recovery, or otherwise limiting the Department of the Interior's flexibility and discretion to define and manage an experimental population pursuant to section 10(j) (*Wyoming Farm Bureau Federation* v. *Babbitt*, 199 F.3d 1224 (10th Cir. 2000)). That decision affirmed the Service's determination of whether individual wolves constituted a population.

Regulations define ''population'' as a potentially self-sustaining ''group of fish or wildlife in the same taxon below the subspecific level, in common spatial arrangement that interbreed when mature,'' (50 CFR 17.3). The term experimental population means ''an introduced and/or designated population (including any off-spring arising solely therefrom) that has been so designated in accordance with the procedures of this subpart but only when, and at such times as the population is wholly separate geographically from nonexperimental populations of the same species'' (50 CFR 17.80). These definitions preclude the possibility of population overlap as a result of the presence of individual dispersing falcons, because by definition, lone dispersers do not constitute a population or even part of a population, since they are not in ''common spatial arrangement'' sufficient to interbreed with other members of a population. Congress defined ''species,'' consistent with its broad conservation and recovery goals, to constitute distinct, interbreeding population segments or subspecies, not individual animals. By definition then, an individual animal does not constitute a species, population, or population segment. In the case of the gray wolf, the Department of the Interior, exercising its discretion under section 10(j), reasonably interpreted the phrase ''current range'' to be the combined scope of territories defended by the breeding pairs of an identifiable wolf pack or population (*Wyoming Farm Bureau Federation* v. *Babbitt*, 199 F.3d 1224 (10th Cir. 2000)). We have used the same approach for the falcon. Therefore, a population of falcons does not exist in the NEP area. Breeding falcons are not evenly distributed between the United States border and the Chihuahuan group of falcon pairs. There is a gap of approximately 222 km (138 mi) between the Luna County pair in New Mexico and the most northern, known Chihuahuan breeding pair in Mexico (Howard 2006c). The single pair of New Mexico falcons that successfully reproduced only once in 2002 (after a 50-year absence) is neither self-sustaining, a group, nor in common spatial relationship with the group of approximately 25 to 35 breeding falcon pairs in Mexico. These Mexico falcons occur 160 kilometers (km) (100 miles (mi)) or more south of the United States border. They are clustered in common spatial relationship, are self-sustaining, and are interbreeding.

We do not consider the New Mexico 2002 nesting pair and any offspring produced by the pair to be a population. Biologically, the term ''population'' is not normally applied to a single pair, and so the few birds sighted in New Mexico could be considered dispersers

from the Chihuahuan population. In addition, we have no authority to manage a population in a different country. Therefore, the existence of a group in Mexico should not preclude conservation and management of falcons in the United States in order to achieve species recovery. Furthermore, two, or even three, birds are not considered a self-sustaining population. Self-sustaining populations require a sufficient number of individuals to avoid inbreeding depression and occurrences of chance local extinction (Caughley and Gunn 1996).

Designation of an NEP under section 10(j) of the Act requires that the reintroduced animals be ''wholly separate geographically'' from any existing population. As stated above, we do not consider the pair of falcons that bred in 2002 in Luna County, New Mexico, to constitute a population. Therefore, the exclusion of the counties surrounding the 2002 pair from the 10(j) designation is not necessary. Creating an NEP area that excludes the counties surrounding the documented New Mexico pair (Hidalgo, Grant, and Luna counties) would create a complex regulatory situation. If falcons that are released in the NEP area move into the excluded area, then they would receive the full protection of the Act. Federal land managers in the NEP-excluded area may therefore be subject to the full regulatory requirements of section 7(a)(2) for falcons that were released in the NEP area. If a falcon released in the NEP area settles on private lands, the private land owner would be prohibited from any action that may incidentally ''take'' the falcon. We believe the recovery of the falcon can be achieved without imposing these regulatory restrictions on land managers and the public that excluding some counties from the NEP area would require.

Reintroduction Sites

Falcons historically occurred in Chihuahuan Desert grasslands within the NEP area, and habitats in these areas are similar to those that support nesting falcons in northern Mexico populations. Primary considerations for identifying falcon release sites include areas: (1) Within or in proximity to potentially suitable habitat, including open grassland habitats that have scattered trees, shrubs, or yuccas for nesting and perching; (2) supporting available prey for falcons (*e.g.*, insects, small to medium-sized birds, rodents); (3) with minimal natural and artificial hazards (*e.g.*, predators, open-water tanks) and potential hazards that can be minimized where practical; (4) with access for logistical support; (5) with a large extent of potentially suitable habitat surrounding a release site and its proximity to other similar habitats; and (6) with a willing landowner or land manager.

While the NEP area will include both Arizona and New Mexico, the reintroduction sites will only be on lands within New Mexico. The State of Arizona is supportive of having falcons re-established in the State under a 10(j) designation, but does not wish to conduct reintroductions. Reintroduction sites within the NEP area will be selected to increase the distribution of the population and its rate of growth. Selection will be based upon suitability and extent of available habitat, as well as any dispersal patterns from prior releases. Released falcons are expected to move around within the areas of their release, but may disperse to more distant areas. The 10(j) designation and supporting 4(d) rule cover both private and public lands in New Mexico and Arizona, so Safe Harbor Agreements will not be necessary with private landowners.

Reintroduction

The rearing and reintroduction techniques that will be used in establishing this NEP have proven successful in establishing a wild population of falcons in southern Texas. Falcons will be raised in The Peregrine Fund's captive propagation facility in Boise, Idaho. Newly hatched falcon chicks are fed by hand in sibling groups for up to 25 days. They are then raised in sibling groups with minimal human exposure until their transportation to a reintroduction site at 32 to 37 days of age. Careful timing of the age for reintroducing falcons is important to increase their chances for successfully fledging and reaching independence (Sherrod *et al.* 1987). Falcons are shipped by air between Boise and the release locations and driven to the hack site (*i.e.*, release site). At the hack site, the falcons are placed in a protective box on top of a conspicuous tower and fed for 7 to 10 days. The box is then left open and falcons are allowed to come and go freely. Food is provided on the tower and, initially, the falcons return each day to feed. Eventually, the falcons begin chasing prey, making their own kills, and spending more and more time away from the hack site. A falcon is considered to be ''successfully released'' when it is no longer dependent on food provided at the hack site. This process generally takes from 3 to 6 weeks (Jenny *et al.* 2004). The hack site attendants will evaluate the progress of the released falcons. The reintroduction process can be extended to ensure a successful release or a bird may be returned to the propagation facility in Boise if it does not attain independence (Sherrod *et al.* 1987).

Status of Reintroduced Population

Before authorizing the release of any population, the Secretary shall determine, on the basis of the best available information, whether or not such a population is essential to the continued existence of an endangered species or a threatened species. The proposed experimental falcon population will be designated ''non-essential, experimental'' (NEP) because: (1) There are established populations in Mexico and a rapidly expanding population in south Texas; (2) reintroductions will continue in western Texas; (3) the Boise, Idaho, captive population is producing enough offspring to maintain the captive flock and provide falcons for release; and (4) the possible failure of this action would not appreciably reduce the likelihood of survival of the subspecies in the wild. We also believe the NEP designation lessens land-use restrictions associated with the Act, which makes the establishment of falcons in New Mexico and Arizona less controversial to private landowners and agency land managers, and should result in more cooperative falcon conservation efforts with stakeholders and a larger number of release sites and more widespread reintroductions. Therefore, the use of the NEP should be the fastest way to both (1) successfully establish a falcon population in New Mexico and Arizona, and (2) aid in recovery and eventual delisting of the falcon. Thus, we have determined this experimental population to be nonessential to the continued existence of the species according to the provisions of section 10(j) of the Act for the following reasons:

(a) With at least three populations—one in eastern Mexico, a second in northern Chihuahua, Mexico, and a third becoming established in southern Texas—the experimental population is not essential to the continued existence of the species. The threat of extinction from a single catastrophic event has been reduced by a gradual increase of the southern Texas and captive populations. Thus, loss of the experimental population will not appreciably reduce the likelihood of falcon survival in the United States; and,

(b) Any birds lost during the reintroduction attempt can be replaced through captive breeding. Production from the extant captive flock is already sufficient to support the release of birds

that would occur under this final rule, in addition to continued releases in west Texas (Juergens and Heinrich 2005).

We fully expect that the NEP will result in the establishment of a self-sustaining, resident population, which will contribute to the recovery of the species. We expect these reintroductions to be compatible with current or planned human activities in the NEP area (Burnham *et al.* 2002). There has been only one reported conflict between human activities and falcons in Texas, where 1,142 falcons have been released over the course of 20 years (Burnham *et al.* 2002; Bond 2005; Jenny 2005; Robertson 2006). That issue involved the use of agricultural pesticides in proximity to falcon reintroduction sites in Texas in the early 1990s, and a viable resolution of the conflict was obtained. The Service will use the best scientific and commercial data available, including, but not limited to, results from the monitoring plan developed with this rule and stakeholder meetings to prepare 5-year evaluations of the reintroduction program. If the actions carried forward as a result of this final rule fail to demonstrate sufficient success toward recovery, as determined by the Service, then the Service, in coordination with other Federal land managers, the States of Arizona and New Mexico, and private collaborators, would reevaluate management strategies.

Although there are still questions to research while these reintroductions proceed, the success of the southern Texas reintroductions suggests that this effort will have similar positive results for the recovery of the falcon. Based on that experience, we have good reason to believe that appropriately managed captively reared birds are suitable for release into the wild and can survive and successfully reproduce. Although prey-base biomass may be lower throughout the NEP area than in southern Texas, the prey-base biomass in the NEP area is similar to occupied habitat in Chihuahua, Mexico (Truett 2002). Furthermore, the establishment of a third self-sustaining population in the United States provides further assurance that the species will recover here. For example, if the southern Texas population was significantly impacted by a catastrophic event, such as a Gulf coast hurricane, the NEP in New Mexico and the reintroduced falcons in western Texas would provide buffers for the species in the wild while the southern Texas population recovered.

Location of Reintroduced Population

Section 10(j) of the Act requires that an experimental population be geographically separate from other populations of the same species. The NEP area covers all of New Mexico and Arizona, with the expectation that falcons would persist only within the Chihuahuan Desert, which extends north from Mexico into southern Texas, southern New Mexico, and southeastern Arizona. The NEP area is geographically isolated from existing falcon populations in Mexico and Texas by a sufficient distance to preclude significant contact between populations. There have been no documented nesting falcons in Arizona and only one known successful nest in New Mexico in over 50 years. However, we do not believe the presence of these falcons constitutes a population, as stated in the ''Recovery Efforts'' section above.

It is difficult to predict where individual falcons may disperse following reintroduction within the NEP area. A 70-day-old male falcon dispersed 136 km (84.5 mi) from a hack site in Texas (Perez *et al.* 1996), and a falcon banded in Chihuahua, Mexico, was observed 250 km (155 mi) north in New Mexico (Burnham *et al.* 2002). Perez *et al.* (1996) placed radio transmitters on 14 falcons in Texas and found that their home range size varied widely, from 36 to 281 square km (km^2) (14 to 108.5 square mi (mi^2)). Natal dispersal may be localized (Burnham *et al.* 2002). Designation of a large NEP area around planned release sites takes into consideration the potential occurrence and dispersal of falcons in a large geographic area. Any falcon found within the NEP area will be considered part of the NEP.

It is possible, though unlikely, that individual captive-bred falcons or their progeny from west Texas could disperse into the NEP area. The majority of falcon reintroductions in west Texas are further than 193 km (120 mi) from suitable habitat in New Mexico, and tall mountains separating the two regions may provide an obstacle to falcon migration. The Guadalupe Mountains span the border between Texas and New Mexico and rise to heights of 8,749 feet. Falcon reintroductions in west Texas only began in 2002, and as expected, there has not yet been any documented breeding by these reintroduced falcons. Furthermore, there have been no detections in New Mexico of falcons that were banded at west Texas reintroduction sites, and all of those reintroduced falcons should be banded.

Management

Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of falcons will conflict with existing human activities or hinder public use of the NEP area. The NEP designation will not require land managers to specifically manage for reintroduced falcons. When NEPs are located outside a National Wildlife Refuge or unit of the National Park System, we treat the population as proposed for listing and only two provisions of section 7 would apply: section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires Federal agencies to use their authorities to further the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

The Service, The Peregrine Fund, Turner Endangered Species Fund, the States of New Mexico and Arizona, BLM, Department of Defense (DOD), and other cooperators will manage the reintroduction. They will closely coordinate on reintroductions, monitoring, coordination with landowners and land managers, and public awareness, among other tasks necessary to ensure successful reintroductions of falcons.

(a) *Monitoring:* The Service has developed a monitoring plan specific to this NEP and associated release efforts (see **ADDRESSES** section). Falcons will be observed every day before they are released. Facilities for release of the birds will be modeled after facilities used for falcons in Texas. Information on survival of released birds, movements, behavior, reproductive success, and causes of any losses, will be gathered during the duration of the reintroduction program. Program progress will be summarized and reported annually at stakeholder meetings. As described above, we plan to evaluate the progress of the program every 5 years.

(b) *Disease:* (see information previously provided in our February 9, 2005, proposed rule).

(c) *Genetic Variation:* The captive breeding population of falcons is managed by The Peregrine Fund to maintain and maximize genetic diversity (Burnham *et al.* 2002). This

population was derived from nestlings collected from robust populations in Chiapas, Tabasco, and Veracruz, Mexico. Genetic testing was conducted to insure that progeny from falcons collected in southeastern Mexico would be suitable for release in northern Mexico and the United States, where the subspecies had been extirpated. Results from both mitochondrial DNA and microsatellite variation were analyzed, and revealed no genetic divergence between samples that would indicate any problems from reintroducing this lineage into the Chihuahuan grasslands of the United States (Kiff, *in litt.*, 1995; Mindell, *in litt.*, 1997; Burnham *et al.* 2002). This finding is consistent with the known dispersal tendencies of falcons and the fact that these populations are recognized as the same subspecies of northern aplomado falcon (*Falco femoralis septentrionalis*).

(d) *Mortality:* For purposes of section 9 of the Act, a population designated as experimental is treated as threatened, regardless of the species' designation elsewhere in its range. Therefore, for purposes of section 9 of the Act, northern aplomado falcons within the NEP will be treated as threatened wherever they are found. A threatened designation allows us greater discretion in devising management programs and special regulations for such a population.

The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as military training, livestock grazing, recreation, and other activities that are in accordance with Federal, tribal, State, and local laws and regulations. A person may take a falcon within the NEP area provided that the take is unintentional and was not due to knowing, intentional, or negligent conduct. Unintentional take will be considered ''incidental take,'' and is authorized under this final rule via a special rule under section 4(d) of the Act. Although a special rule under section 4(d) of the Act can contain the prohibitions and exceptions necessary and appropriate to conserve that species, regulations issued under section 4(d) for NEPs are usually less restrictive with regard to human activities in the reintroduction area. Thus, take of falcons which is not intentional and is incidental to otherwise lawful activity will be permitted. Applying the results obtained from the reintroductions in south Texas, we expect levels of incidental take to be low since the reintroductions should be compatible with existing land use practices in the area (Burnham *et al.* 2002; Bond 2005; Jenny 2005). Intentional take such as shooting, knowingly destroying a nest, or knowingly harassing falcons from an active nest for purposes other than authorized data collection, will not be permitted.

(e) *Special Handling:* (See information previously provided in our February 9, 2005, proposed rule).

(f) *Coordination with Landowners and Land Managers:* The Service and cooperators identified issues and concerns associated with falcon reintroductions through the National Environmental Policy Act (NEPA) scoping and two public comment periods. The reintroductions have also been discussed with potentially affected State agencies and some private landowners wishing to have falcons released on their property. Affected State agencies, landowners, and land managers have indicated support for the reintroduction, provided the falcon experimental population is established as a NEP, and land-use activities in the NEP area are not constrained without the consent of affected landowners.

(g) *Potential for Conflict with Military, Industrial, Agricultural, and Recreational Activities:* With proper management, we expect falcon reintroductions to be compatible with current and planned human activities in the NEP area, including agricultural, oil and gas development, military, or recreational activities. There has been only one reported conflict between human activities and falcons in Texas, where 1,142 falcons have been released over the course of 20 years (Burnham *et al.* 2002; Bond 2005; Jenny 2005; Robertson 2006), and that issue was resolved in the early 1990s. Well-managed activities on private, State, and some Federal lands within the NEP area should continue without additional restrictions during implementation of falcon reintroduction activities. As required by section 10(j) of the Act, when the NEP is located within a National Wildlife Refuge or National Park, for section 7 consultation purposes we will treat the reintroduced falcons as threatened under the Act, and therefore the consultation requirements of section 7(a)(2) will apply on these Federal lands. If proposed agricultural, oil and gas development, military, or recreational activities may affect the falcon's prey base within reintroduction areas, State and/or Federal biologists can determine whether falcons could be impacted and, if necessary, work with the other agencies and stakeholders in an attempt to avoid such impacts. If private activities impede the establishment of falcons, we will work closely with State and Federal agencies and/or landowners to suggest alternative procedures to minimize conflicts. The States of Arizona and New Mexico are not directed by this final rule to take any specific actions to provide any special protective measures, nor are they prevented from imposing restrictions under State law, such as protective designations and area closures. Neither of the States within the NEP area, both of which are participants in the northern aplomado falcon working group, has indicated that it would propose hunting restrictions or closures related to game species because of the falcon reintroduction.

The principal activities on private property near the initial release areas are agriculture, livestock production, and hunting. We do not believe that use of these private properties by falcons will preclude such private uses because these activities and the falcons' needs do not conflict with each other. These same human uses are occurring near falcon reintroduction sites in south Texas. As stated above, there has been only one reported conflict between human activities and falcons in Texas, where 1,142 falcons have been released over the course of 20 years (Burnham *et al.* 2002; Bond 2005; Jenny 2005; Robertson 2006), and that issue, which involved the use of pesticides, was resolved in the early 1990s.

Reintroduced falcons may disperse into other parts of the NEP area or even outside the NEP area. We believe that the frequency of movements outside the NEP area is likely to be very low based on the history of falcon reintroduction in Texas (Burnham *et al.* 2002), and the fact that the NEP area is large, spanning two entire States, while the reintroduction area is a relatively small portion. Any falcons outside the NEP area will be considered endangered under the Act. Any falcons that occur within the NEP area will be considered part of the NEP and will be subject to the protective measures in place for the NEP. The decreased level of protections afforded to falcons that cross into the NEP is not expected to have any significant adverse impacts to the wild population, since we do not anticipate this to occur very often.

(h) *Protection of Falcons:* We will reintroduce falcons in a manner that provides short-term protection from natural predators and human-related sources of mortality. Reintroduction methods designed to discourage predators include tall hacking towers as artificial nests and full-time biologists to feed and protect the young falcons and reduce natural mortality. Reintroducing falcons in areas with less human

activity and development will minimize human-related sources of mortality, such as from collisions. Should causes of mortality be identified, we will work with the private landowners or agency land managers to try to correct the problem.

(i) *Potential for Conflict with Natural Recolonization of Falcons:* Natural (*i.e.*, unaided) falcon recolonization of New Mexico and Arizona would be dependent on dispersing falcons from Mexico, Texas, or possibly unknown nesting pairs within the United States. We do not consider the unaided recolonization of falcons in the NEP area a likely occurrence for a number of reasons. The half-century absence of falcons in Arizona and New Mexico indicates that the Chihuahua, Mexico, falcon population is not likely to recolonize New Mexico and Arizona with sufficient numbers to establish a population in the foreseeable future. The low fledging success in Chihuahua and lack of significant expansion of that population since observations first began in 1992 (Montoya *et al.* 1997; Marcas-Duarte *et al.* 2004; Young *et al.* 2004; Juergens and Heinrich 2005) suggest that birds from Chihuahua are not likely to provide enough dispersers to populate New Mexico. Furthermore, the only birds that are known to be currently nesting in southern Texas are beyond the average dispersal distance for falcons. Natal dispersal to eventual breeding sites may be localized (Burnham *et al.* 2002). The longest known falcon dispersal distance is 250 km (155 mi) (Burnham *et al.* 2002), whereas the straight-line distance from currently breeding falcons near Brownsville, Texas, to Carlsbad, New Mexico, is approximately 973 km (605 mi), much further than any documented dispersal by falcons.

It is possible, though unlikely, that individual captive-bred falcons or their progeny from west Texas could disperse into the NEP area. The majority of falcon reintroductions in west Texas are farther than 193 km (120 mi) from suitable habitat in New Mexico, and tall mountains separating the two regions may provide an obstacle to falcon migration. The Guadalupe Mountains span the border between Texas and New Mexico and rise to heights of 8,749 feet. Falcon reintroductions in west Texas only began in 2002, and as expected, there has not yet been any documented breeding by these reintroduced falcons. Furthermore, there have been no detections in New Mexico of falcons that were banded at west Texas reintroduction sites, and all of those reintroduced falcons should be banded.

We do not consider the presence of the successful breeding pair in 2002 in Luna County to represent a population. The frequency and number of falcons in recent New Mexico sightings would, at that pace, be very unlikely to result in natural recolonization. Although there may be occasional falcon dispersal movements from Mexico to New Mexico, we do not believe this will lead to the establishment of a viable population within New Mexico. The population in Mexico has been known to exist since 1992, and likely existed prior to that; however, there has only been one known successful nest in the entire NEP area in over 50 years. Given the lack of a falcon population in the reintroduction area, and the low probability that falcons from Chihuahua, Mexico, can recolonize New Mexico, we believe that reintroductions are needed in order to establish a resident falcon population in the grasslands in the United States.

(j) *Public Awareness and Cooperation:* We will inform the general public of the importance of this reintroduction project in the overall recovery of the falcon. This designation will provide greater flexibility in the management of reintroduced falcons. NEP designation is necessary to secure needed cooperation of the States, landowners, Federal agencies, and other interests in the NEP area. For reasons stated, despite the relative success of the falcon releases in Texas, where there is relatively little public land, we believe the Safe Harbor Agreements used to release falcons in Texas are not the best mechanism for establishing falcons in New Mexico and Arizona. Safe Harbor Agreements can only be developed for private land owners, and the reintroduction area in New Mexico includes a vast amount of public land.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed NEP and draft environmental assessment in the proposed rule published on February 9, 2005 (70 FR 6819). We also contacted the appropriate Federal, State, and local agencies, tribes, scientific organizations, and other interested parties and invited them to comment on the proposed rule. The initial comment period was open from February 9, 2005, to April 11, 2005. A second comment period was open from September 16, 2005, through November 15, 2005, to solicit comments on the draft monitoring plan and to announce the dates, locations, and times of the public hearings (70 FR 54701).

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited opinions from six expert ornithologists who are familiar with this species to peer review the proposed rule. Three of the six peer reviewers submitted comments; the others did not. Their comments are included in the summary below.

We reviewed all comments received from the peer reviewers, State agencies, and the public for substantive issues and new information regarding the proposed NEP. Substantive comments received during the comment period have either been addressed below or incorporated directly into this final rule. The comments are grouped below as either peer review, State, or public comments.

Peer Review Comments

(1) *Comment:* While a small population of falcons exists in southeastern Chihuahua, Mexico, there is very little evidence of a tendency towards natural reestablishment in the United States. Despite arguments to the contrary, the occasional appearance of a vagrant or a nesting pair does not forecast reestablishment and certainly not the existence of a viable population.

Our Response: We agree with the commentor that any significant natural re-colonization of habitats in Arizona and New Mexico would likely take decades, if it occurred at all, because the reproductive rate of the population in Mexico is low, and this population is not significantly expanding, possibly due to extended drought (Burnham *et al.* 2002).

(2) *Comment:* Aplomado falcons are colonizing New Mexico and Arizona on their own, as part of a natural range expansion.

Our Response: Aplomado falcons are not likely to naturally recolonize in significant numbers. Please see our response to comment 1 and information under section 2 (''Biological'') of the Background section, above.

(3) *Comment:* Designation of an experimental population would hinder policy protections for naturally colonizing birds.

Our Response: Birds that naturally recolonize areas in New Mexico will have reduced protections under the NEP; however, birds are not likely to naturally colonize in significant numbers. Thus, the benefits to falcon recovery of having large numbers of birds reintroduced is much greater than the potential effect of reducing protection for very few naturally colonizing individuals. In addition, all falcons will still be protected from direct intentional taking (*e.g.*, hunting of falcons), and we anticipate little conflict with most otherwise lawful activities

occurring in the NEP (*e.g.*, grazing that uses best management practices). There has been only one reported conflict, which was resolved in the early 1990s, between human activities and falcons in Texas, where 1,142 falcons have been released over the course of 20 years (Burnham *et al.* 2002; Bond 2005; Jenny 2005; Robertson 2006). The areas that falcons inhabit on private lands with Safe Harbor Agreements in Texas are more densely populated by people than the public lands in New Mexico. Therefore, if conflicts are occurring, they would be detectable in Texas, and we have had no reported conflicts after the one in the early 1990s.

(4) *Comment:* One peer reviewer summarized the proposal as ''biologically sound, politically tenable, but ethically irresponsible.'' The reviewer asserts that limited recovery funds should be spent on higher priority species (*i.e.*, species with lower recovery priority numbers under the Service's Recovery Priority Guidelines).

Our Response: As we stated in the Recovery Priority Guidelines, ''the priority systems presented must be viewed as guides and should not be looked upon as inflexible frameworks for determining resource allocations (48 FR 43098).'' Many other factors, including landowner cooperation, likelihood of success of projects, public cooperation, and partner contributions, may play into the decision to focus on specific species or actions. The falcon reintroductions discussed in this rule are supported by all of these factors.

(5) *Comment:* Restoration of the falcon should occur within the natural predator community of the reintroduction area. Native predators (*e.g.*, great-horned owls) should not be killed to protect released falcons.

Our Response: The release protocols have been modified over time and include carefully chosen nest sites and use of nest boxes to minimize conflict with natural predators. The Service has no intention of killing native predators to benefit falcon releases.

State Comments

(6) *Comment:* In general, the States of Arizona and New Mexico supported the proposed rule. One State agency suggested we develop a 10(j) population that would also allow for naturally occurring falcons (*i.e.*, experimental status individuals will only be recognized outside areas that overlap with naturally occurring individuals) (50 CFR 17.80). Such a rule could also include zones for incremental State-wide expansion of the 10(j) population based upon an annual review by the Service and stakeholders.

Our Response: The incremental designation proposal would likely not increase recovery benefits to the falcon for two reasons. First, falcons have the capability to move about the landscape easily and there would likely be frequent movements between NEP areas and areas without this designation within New Mexico. Therefore, the suggested scenario would create a very complicated regulatory patchwork, as the same falcons move into and out of NEP areas, and thereby became subject to changed regulations under the Act. Second, we do not anticipate that falcons will require the protections of full endangered status in order to recover in New Mexico and Arizona. We believe that designating both States as NEP areas relieves concerns of landowners and managers regarding land-use restrictions, and will lead to more sites for reintroductions and faster recovery for the subspecies.

Public Comments

Issue 1: Procedural and Legal Compliance

(7) *Comment:* The Service should designate critical habitat for the falcon, rather than designating a 10(j) population. If you finalize the proposed rule, then a critical habitat designation would be precluded and little to no regulatory protections would remain for occupied or unoccupied habitat.

Our Response: The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. 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.

We believe it is not likely that falcons will naturally recolonize areas in Arizona and New Mexico in the near future even though there is ample suitable habitat to support falcons. Because there is available habitat, but virtually no naturally occurring falcons, we believe that releases under a 10(j) rule are more beneficial to long-term falcon conservation than designation of critical habitat.

(8) *Comment:* The proposed rule violates the ecosystem protection purposes identified in section 2(b) of the Act.

Our Response: We believe that releasing falcons under the section 10(j) provision of the Act is the most appropriate way to achieve conservation for this species, which has shown a remarkable ability to coexist with many human activities, and that this action is consistent with the intents and purposes of the Act. Falcon reintroductions are intended to return a missing predator to the grassland ecosystems to which it naturally belongs, and this should benefit ecosystem functioning.

(9) *Comment:* Does the 10(j) rule remove all section 7 responsibilities?

Our Response: For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or a unit of the National Park System, and therefore section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply in these units. When NEPs are located outside a National Wildlife Refuge or unit of the National Park System, for the purposes of section 7 of the Act we treat the population as proposed for listing and only two provisions of section 7 would apply: Section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires Federal agencies to use their authorities to further the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

(10) *Comment:* One commenter noted that if the proposed rule is finalized, the falcon would be treated as a species proposed for listing on BLM or DOD lands. The agencies would only be required to confer on actions that may jeopardize the species. If the population is deemed nonessential, the jeopardy threshold would never be reached, indicating that conferences would be an administrative task with no protection for the falcon. The Service should recognize that the BLM would no longer consult on many activities previously considered to be significant threats to falcon habitat such as oil and gas development, livestock grazing, military

operations, or pesticide use. In fact, under the current nonessential experimental population proposal, the BLM could authorize a road or pipeline that destroys an occupied falcon nest without the need for an incidental take permit.

Our Response: Consultation under section 7(a)(2) is only required for Federal projects that may affect listed species. It is unlikely that a Federal action would affect a significant number of falcons at the present time because the recent falcons sighted in New Mexico appear to be transients and there is a near absence of any falcon sightings in Arizona. Therefore, designating the reintroduced population as non-essential will not significantly change current practices regarding consultation under 7(a)(2), on areas outside of the National Wildlife Refuge and National Parks. Since the falcon will now be treated as a species proposed for listing, sections 7(a)(1) and 7(a)(4) will apply to Federal actions.

The falcon will be treated as a threatened species on BLM and DOD lands for purposes of section 9 of the Act. Through section 4(d) of the Act, we have greater discretion in developing management programs and special regulations for threatened species than we have for endangered species. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species.

While it is true that consultation requirements are lessened, we believe that the incidental take associated with otherwise lawful activities will not pose a long-term threat to falcon conservation under this rule, as most activities that occur in the 10(j) area are compatible with falcon recovery. Furthermore, Federal agencies will continue to analyze the impacts of their actions under NEPA. In addition, birds will continue to be reintroduced into New Mexico, which will provide some buffer to the population against individual birds lost to incidental take. A special rule under section 4(d) of the Act is included in this final action, and it authorizes unknowing or incidental take of falcons (*i.e.*, take that is incidental to an otherwise lawful activity). Direct take for research or educational purposes would require a section 10 recovery permit. Knowing take (*e.g.*, shooting) or take due to negligence will not be permitted. Additional information about the special rule can be found under the Final Regulation Promulgation section below.

(11) *Comment:* How will beneficial activities (*e.g.*, prescribed fire, fencing, bank stabilization, storm water runoff control) be handled under section 7 in the 10(j) area?

Our Response: These actions will be handled like any other projects subject to section 7 in the NEP area. Please see our response to comment 9 above.

(12) *Comment:* One commenter was concerned that lessees and allotment holders have to remove cows from allotments during nesting season.

Our Response: In our experience with reintroducing falcons in south Texas, livestock grazing using best management practices has been compatible with successful nesting by falcons. It is possible that the conference opinions for grazing on Federal lands would recommend additional grazing guidelines; however, these measures are not mandatory, and it would be up to the Federal agency and lessee or allotment holders to implement at their discretion.

(13) *Comment:* The final rule should confirm that military operations (*e.g.*, low-level overflight, bombing and gunnery activities, target placement) will not be affected by the 10(j) designation, even if occurring over National Park Service or National Wildlife Refuge lands.

Our Response: As stated in our response to comment 9, if aplomado falcons are found within a National Wildlife Refuge or unit of the National Park System and there may be impacts from military activities, section 7 consultation may be required. Any military operations that may affect the 10(j) falcons would only involve conferencing with the military and recommended actions, if any, would be at the discretion of the military to implement.

(14) *Comment:* In order to streamline future conference opinions, the final rule should provide authorization to Federal agencies to permit habitat destruction.

Our Response: Section 10(j) of the Act explicitly states that for the purposes of section 7, the species designated as non-essential will be considered a proposed species. Federal agencies will have an obligation to confer (rather than consult) with the Service on proposed activities that are likely to jeopardize the continued existence of the falcon. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

(15) *Comment:* The Service should clarify the terms ''willing landowner or manager'' as they relate to one of the criteria in the selection of release sites. The term ''manager'' should also refer to an allotment permit holder in the case of Federal or State lands.

Our Response: We will attempt to work with both land managers and allotment permit holders; however, we do not have authority over allotment permit holders or authority to require land managers to seek allotment permit holder approval of various projects.

Issue 2: Biological Issues

(16) *Comment:* Many commenters recommended that we omit the reference to a specific numbers of pairs, increase the number of pairs, and/or clarify the definition of ''population'' we used in the 10(j) proposed rule due to the lack of scientific agreement on defining this term. That definition was, ''a minimum of two successfully reproducing falcon pairs over multiple years.'' One commenter suggested that we instead define a population as ''sustained and predictable presence of more than negligible numbers of successfully reproducing individuals over a period of many years.''

Our Response: We have clarified the definition of ''population'' used in the proposed rule in the ''Recovery Efforts'' section of the Background.

(17) *Comment:* Naturally occurring falcons already exist on the landscape in New Mexico and adjacent northern Chihuahua, Mexico (*e.g.*, see Young *et al.* 2002, 2004; Meyer and Williams 2005). There have been about 45 credible sightings of falcons in New Mexico since 1990, within 3 to 6 credible observations per year since the late 1990s. The territory in Luna County, New Mexico, has been occupied from 2000 to 2005. Falcons have also recently been observed crossing the United States-Mexico border. The Service has not considered all of this new information. Therefore, a 10(j) rule does not seem to be a reasonable approach for falcon recovery.

Our Response: In the ''Recovery Efforts'' section of the Background, we clarify the reasons why we do not believe that a falcon population exists in Arizona and New Mexico. In the case of the falcon, (1) This subspecies has been known to disperse hundreds of kilometers, (2) it would be virtually impossible to preclude naturally occurring individual falcons from intermingling with the experimental population, and (3) there has been only one known pair that has reproduced (and only one time) in over 50 years within the designated experimental area. Therefore, we identified the experimental population as all falcons found within the experimental area, including reintroduced falcons and any lone dispersers and their offspring. We believe this is the best manner by which

to manage the falcon reintroduction program to achieve species recovery.

(18) *Comment:* In the proposed rule, there is an inaccurate statement that the proposed nonessential experimental population is geographically isolated from existing falcon populations in Mexico and Texas by a sufficient distance to preclude contact between populations. In fact, New Mexico is easily within the documented flying (*i.e.*, dispersal) distance of these falcon populations.

Our Response: Even though falcons from Mexico may enter New Mexico occasionally, the 10th Circuit Court in the wolf case (*Wyoming Farm Bureau Federation* v. *Babbitt*) supported the use of the 10(j) designation under very similar circumstances of occasional, low frequency contact. In over 50 years, we know of only one pair of successfully reproducing falcons in New Mexico. This one occurrence does not indicate that there is self-sustaining, regular interbreeding occurring between falcons in New Mexico and those in Mexico. The single pair of falcons that successfully reproduced once in 2002, after a 50-year absence, is not self-sustaining, not a group, and not in common spatial relationship with the group of approximately 25 to 35 breeding falcon pairs in the Mexican State of Chihuahua, 160 km (100 mi) south of the United States border. These Mexican birds appear to be self-sustaining and interbreeding, even though the population is not expanding. In addition, there is a significant gap between the location of the pair in the United States and the most northern breeding pair in Chihuahua, and even more distance to the main cluster of breeding pairs there. Please also see the ''Recovery Efforts'' section of the Background for additional discussion on this subject.

The only birds that are known to be currently nesting in Texas are beyond the average dispersal distance for falcons. Natal dispersal to eventual breeding sites may be localized (Burnham *et al.* 2002). The longest documented falcon dispersal distance is 250 km (155 mi) (Burnham *et al.* 2002). A straight-line distance from breeding falcons near Brownsville, Texas, to Carlsbad, New Mexico, is 973 km (605 mi), much farther than any documented falcon dispersal. It is possible, though unlikely, that individual captive-bred falcons or their progeny from west Texas could disperse into the NEP area. The majority of falcon reintroductions in west Texas are farther than 193 km (120 mi) from suitable habitat in New Mexico, and tall mountains separating the two regions may provide an obstacle to falcon migration. The Guadalupe Mountains span the border between Texas and New Mexico and rise to heights of 8,749 feet. Falcon reintroductions in west Texas began in 2002, and as expected, there has not yet been any documented breeding by these reintroduced falcons. Furthermore, there have been no detections in New Mexico of falcons that were banded at west Texas reintroduction sites, and all of these reintroduced falcons should be banded.

(19) *Comment:* The Service speculated about falcon numbers in New Mexico without conducting comprehensive surveys of potential falcon habitat. Additional falcons probably would be documented with additional surveys.

Our Response: Over the past decade, widespread formal surveys have been conducted in suitable falcon habitats in southern New Mexico. Please refer to the discussion on survey results under the Biology portion of the Background section.

(20) *Comment:* There is no justification for releasing such a large number of falcons in New Mexico, especially given the current increasing status of native birds and finite amount of suitable habitat.

Our Response: Young *et al.* (2005) indicated that there are approximately 9,060 km^2 (5,600 mi^2), or 906,000 ha (2,238,766 ac), of suitable habitat in New Mexico. We believe there is sufficient suitable habitat for falcon recovery in New Mexico. Montoya (1995) estimated that 1 falcon pair required 4,300 ha (10,625 ac) in Chihuahua, Mexico. If this size requirement for nesting territory also applies to the estimated quantity of suitable habitat in New Mexico, the State could support up to 200 pairs of falcons. Much of this suitable habitat occurs in Otero Mesa, Fort Bliss, White Sands Missile Range, the Jornada Plain (Armendaris Ranch and Jornada del Muerto), and the southwestern corner, or boot-heel, of New Mexico south of Interstate 10. Although releases will occur only in New Mexico, falcons will likely colonize suitable habitat in southeastern Arizona, further increasing the number of falcons inhabiting Chihuahuan Desert grasslands (Montoya 1995).

(21) *Comment:* The Tenth Circuit Court of Appeals found that Congress gave the Service considerable discretion in defining the term ''experimental population'' as it related to the establishment of an experimental population of wolves in the northern Rockies. In that case, the occasional presence of individual animals without any sustained successful reproduction appeared to be consistent with the purposes of a 10(j) population. The same logic should be applied to present rulemaking.

Our Response: We agree and discussed this court decision in the ''Recovery Efforts'' section of the Background, and in our responses to comments 17, 18, and 19.

(22) *Comment:* The proposed rule is not consistent with Service policy on 10(j) populations published in the **Federal Register** (49 FR 33885). As discussed in the policy, the proposal ''cannot reduce protections for native fish, wildlife, and plants that expand naturally into areas designated as experimental (49 FR 33885).'' The proposed rule appears to be a short-cut around natural falcon recovery that eliminates meaningful habitat protections with voluntary unenforceable measures.

Our Response: Please see our responses to comments 17, 18, and 19.

(23) *Comment:* It is not appropriate to conclude that in the long-term the Chihuahua population of falcons would not be able to produce dispersing falcons under improved conditions. Please consider evaluating Macías-Duarte (2004) and Jenny *et al.* (2004) in relation to Burnham *et al.* (2002) and Montoya *et al.* (1997).

Our Response: We evaluated the results in Macías-Duarte (2004), Jenny *et al.* (2004), Young *et al.* (2004), and Juergens and Heinrich (2005), and did not find information that would indicate that the population in Chihuahua has significantly expanded since its discovery in 1992. We found that there appears to be general agreement among the authors that the number of pairs has been fairly stable and that, in most years, productivity of the pairs has been low. Furthermore, we have no authority to improve conditions for the falcons in Mexico. Recolonization has not occurred in New Mexico since the birds were discovered in Chihuahua, and there is no indication that recolonization is occurring now, with only one known pair successfully reproducing one time in 2002 in New Mexico.

(24) *Comment:* All released falcons should be marked to ensure that dispersal of birds does not trigger additional regulations to public and private lands.

Our Response: In order to ascertain the success of the reintroduction effort, The Peregrine Fund will annually survey the area surrounding releases to locate surviving birds. Falcons will be located and identified and the number of territorial pairs will be recorded. If

nesting is documented, then nest success will be assessed and as many chicks will be banded as possible. All released falcons and their progeny will be banded to the extent possible. The Peregrine Fund will coordinate with the Service to develop a banding plan that complements banding efforts in Mexico and Texas. The NEP designation will cover any falcon in Arizona or New Mexico. Therefore, no additional regulations will be triggered whether a falcon is banded or unbanded. If a falcon should leave the NEP area, it would be considered fully endangered under the Act, unless it is found in a location where another designation exists or there is a Safe Harbor Agreement in place.

(25) *Comment:* The Service should describe that a mixed designation which includes both experimental and nonexperimental (*i.e.*, full protections under the Act) population areas for New Mexico and Arizona will be confusing and difficult to implement. A nonessential experimental population of falcons will assist in gaining support for the conservation of the falcon that might not exist otherwise.

Our Response: We agree and have incorporated these points into the ''Recovery Efforts'' section of the Background above.

(26) *Comment:* The Service should refrain from releases of captive-raised birds until there is a better understanding of the habitat requirements and genetics of the naturally occurring falcons. Any released falcons should be genetically appropriate for the Chihuahuan grassland population. The Service should conserve the native population of falcons, and not introduce individuals with a different genetic composition (*e.g.*, from Veracruz, Tabasco, Campeche, and Chiapas, Mexico, outside of the Chihuahua Desert) or behavioral differences that may reduce the fitness of these locally-adapted birds.

Our Response: Please refer to the discussion found in the ''Genetic Variation'' portion of the Management section. No new genetic information was provided to the Service during either of the two public comment periods for this proposal.

(27) *Comment:* Several commenters suggested that we develop a 10(j) population that would also allow for naturally occurring falcons (*i.e.*, experimental status individuals would only be recognized outside areas that overlap with naturally occurring individuals) (50 CFR 17.80).

Our Response: Please see our response to State comment 6.

(28) *Comment:* Please explain why the Service does not support the selection of the alternative that implements Safe Harbor Agreements for the falcon. This would achieve landowner cooperation, achieve species recovery, and continue habitat protections.

Our Response: Please refer to the discussion found in the ''Recovery Efforts'' portion of the Background section.

(29) *Comment:* Explain why the population of reintroduced falcons would not be essential to the continued existence of the species.

Our Response: The proposed experimental falcon population will be designated NEP because: (1) There are established populations in Mexico and a rapidly increasing population in south Texas; (2) reintroductions will continue in west Texas; (3) the Boise, Idaho, captive population is producing enough offspring to both maintain the captive flock and provide falcons for release; and (4) the possible failure of this action would not appreciably reduce the likelihood of survival of the subspecies in the wild. The NEP designation allows for regulatory flexibility for management that contributes to the conservation of falcons, which makes the reintroduction of falcons in New Mexico less controversial to land managers, and should result in a larger number of release sites and more widespread reintroductions. Therefore, we believe the use of the NEP should be the fastest way to successfully establish a falcon population in New Mexico and Arizona. We have concluded this reintroduced population to be nonessential to the continued existence of the species according to the provisions of section 10(j) of the Act for the following reasons:

(a) With at least three populations, one in eastern Mexico, a second in northern Chihuahua, Mexico, and a third becoming established in southern Texas, the experimental population is not essential to the continued existence of the species. The threat of extinction from a single catastrophic event has been reduced by a gradual increase of the southern Texas and captive populations. Thus, loss of the experimental population will not appreciably reduce the likelihood of falcon survival in the United States; and,

(b) Any birds lost during the reintroduction attempt can be replaced through captive breeding. Production from the extant captive flock is already sufficient to support the release of birds that would occur under this final rule, in addition to continued releases in west Texas.

(30) *Comment:* Nonessential experimental populations are usually considered where there is opposition from private landowners to an endangered species reintroduction. The majority of potential falcon habitat in New Mexico is managed by the Forest Service, BLM, and DOD. You have not demonstrated in the proposed rule or environmental assessment (EA) that there is opposition by private landowners or the general public to a reintroduction on the small amount of private lands. Even if there were, a reintroduction program could accomplish the same objectives by using Safe Harbor Agreements for the private landowners, as was accomplished in south Texas.

Our Response: Comments received during the public comment periods from public agencies, private citizens, and landowners demonstrated that there would be a great deal of opposition to reintroducing falcons in Arizona and New Mexico without the 10(j) designation. The 10(j) designation gives us regulatory flexibility, which is beneficial when trying to reintroduce a new population.

(31) *Comment:* Falcon recovery will have an impact on other species.

Our Response: Falcons historically occupied this desert habitat, and the plants and animals that exist there evolved with this predatory bird. Thus, through falcon recovery, we are aiding in restoration of this desert ecosystem. In addition, we do not expect any significant impact to any other listed or unlisted species to result from falcon recovery. As predators, falcons require large home ranges in order to have adequate amounts of available prey (Keddy-Hector 2000); therefore, they would not occupy suitable habitat in large numbers. They are anticipated to be widely distributed in low numbers over the suitable habitat in New Mexico and Arizona. Furthermore, falcons are generalists and will consume a wide variety of insects, small mammals, reptiles, and small to medium-sized birds. Therefore, falcon recovery is not anticipated to negatively affect other sympatric species.

(32) *Comment:* If DDT is still used in Mexico, then it does not seem logical to start a recovery process on the United States at the Mexico border only to fail because of the use of DDT in Mexico.

Our Response: We have no knowledge of widespread use of DDT in Mexico, as its use was banned in 2000. In addition, we have seen a significant decrease in the concentrations of DDT remaining in the United States since its use was banned in 1972, leading to delisting of the American peregrine falcon in 1999

(64 FR 46541), and the currently proposed delisting of the bald eagle (64 FR 36454; 71 FR 8238; 71 FR 28293). We anticipate that sufficient numbers of falcons will reside and hunt in suitable habitat in New Mexico and Arizona such that any residual DDT remaining in Mexico will not preclude falcon recovery in the United States.

(33) *Comment:* Habitat degradation was one of the primary threats to the species when it was listed as endangered. Recent information indicates that habitat and avian prey are important determinants of falcon habitat (*e.g.*, Macias-Duarte *et al.* 2004; Meyer and Williams 2005).

Our Response: The intense overgrazing that resulted in shrub encroachment in grasslands has moderated, with widespread implementation of improved range management techniques, including decreased stocking rates, stock rotation, and prescribed burning (Archer 1994; Heady 1994; Burnham *et al.* 2002). In addition, DDT use was banned in the United States in 1972 and in Mexico in 2000. Therefore, falcon reintroductions are considered appropriate because habitat threats are continuing to be reduced. In addition, as described in this final rule, reintroduction sites will be carefully selected to optimize habitat suitability, and falcons are known generalists and will not be dependent on the availability of any particular type of prey.

(34) *Comment:* Please explain how the reintroduction of falcons is compatible with existing land use practices (*e.g.*, livestock grazing, oil and gas development), yet the Service has a documented history of finding these same practices are threats to the species (Service 1990, 51 FR 6686).

Our Response: In the 1990 recovery plan (and the 1985 and 1986 listing rules) for the falcon, the causes of decline for the subspecies included brush encroachment and agricultural development that destroyed grassland habitat; channelization of desert streams that destroyed wetland communities that provided habitat for avian prey; and pesticide contamination, such as by DDT. On the other hand, livestock grazing that uses best management practices has been recognized as compatible with nesting falcons (Burnham *et al.* 2002), and oil and gas development was not mentioned as a threat in either the recovery plan or listing rules. Existing land use practices may be a threat to individuals of a species (*i.e.*, may result in ''take'' of individuals under previous regulations); however, we believe the existing land use practices are compatible with overall conservation efforts for the subspecies as a whole. This has been demonstrated by the successful recolonization of falcons reintroduced in Texas over the past two decades, where there has been only one reported conflict with existing land use practices during that period of time and it was resolved in the early 1990s (Burnham *et al.* 2002; Bond 2005; Jenny 2005; Robertson 2006).

(35) *Comment:* Initiating another reintroduction program in the Chihuahuan Desert is not prudent before the outcome of the program in west Texas is assessed. The Service should plan on conducting such an assessment.

Our Response: As we discussed previously in this final rule, we are designating the population of falcons in New Mexico and Arizona as experimental and will evaluate the success of our reintroduction program every 5 years. The releases in south Texas have demonstrated success toward the recovery of the falcon in the United States; and therefore, we do not believe it would be beneficial for falcon recovery to postpone this reintroduction effort to assess the success of the program in west Texas.

(36) *Comment:* The Service should not base the EA and proposed 10(j) population on an outdated recovery plan. The Service should establish a formal recovery team and update the falcon recovery plan prior to finalizing the 10(j) rule and releasing birds.

Our Response: A current recovery plan is not required in order to move forward with recovery actions, including any associated regulations. While we would like to update the recovery plan, we do not feel it is necessary to complete a revision prior to moving forward with this 10(j) rule. Falcon reintroductions such as these were recommended in the 1990 recovery plan, and we are implementing these recommendations. Furthermore, the recovery plan provides guidelines for the recovery process, and, in combination with the best available scientific information, we will continue to evaluate the application of these guidelines to the reintroduction process as needed in the future.

(37) *Comment:* We received comments about agreements or memoranda of understanding with land managers that ranged from: (1) The Service should have a signed memorandum of understanding with landowners prior to finalization of the 10(j) rule in order to ensure habitat guidelines are followed, to (2) agreements or memoranda of understanding with land managers should not be required as they create undue burden on land managers.

Our Response: We do not anticipate that there will be conflicts between falcon reintroduction and current land use practices. Therefore, at present, we do not feel that agreements or memoranda of understanding with landowners are necessary to provide suitable habitat for falcons. We will choose falcon reintroduction sites that meet the following criteria: (1) Within or in proximity to potentially suitable habitat, including open grassland habitats that have scattered trees/shrubs/yucca for nesting and perching; (2) supporting available prey for falcons (*e.g.*, insects, small to medium-sized birds, and rodents); (3) with minimal natural and artificial hazards (*e.g.*, predators, open-water tanks) and potential hazards that can be minimized where practical; (4) with access for logistical support; (5) with a large extent of potentially suitable habitat surrounding a release site and its proximity to other similar habitats; and (6) with a willing landowner or land manager. We will evaluate the success of these criteria through our 5-year review process, and if indicated, we will have the option of executing agreements or memoranda of understanding with willing landowners in the future.

(38) *Comment:* The EA and proposed rule do not consider that natural recolonization is already occurring and could be facilitated by focusing scarce funding on habitat restoration, rather than releasing captive birds. Enhancing habitat for falcons is a better use of funds for the long-term recovery of the species and establishment of a naturally occurring population.

Our Response: We believe there is ample suitable habitat to support falcons and that focusing on habitat enhancement is not the best use of funds. Because there is available habitat, but limited numbers of naturally occurring falcons, we believe reintroductions will serve a key role in the recovery of the falcon. Furthermore, the falcon reintroductions that result from this rule will have a large partnership component, which will help spread expenses among many entities. Under the 10(j) designation, section 7(a)(1) still applies and requires all Federal agencies to use their authorities to conserve listed species. Therefore, Federal agencies can still fund habitat enhancement projects for falcons in accordance with their 7(a)(1) responsibilities.

Issue 3: The Monitoring Plan

(39) *Comment:* The Service should establish a long-term monitoring

program that addresses nesting success, prey availability, vegetation, and causes of mortality. You should also develop an adaptive management process that includes stakeholders and a large-scale landscape conservation strategy.

Our Response: The short-term monitoring described in the monitoring plan includes the documentation of nesting, nesting success, vegetation, and other habitat attributes of nest sites and territories. Recommended long-term monitoring activities include documentation of other avian species, including other raptors and potential prey species of falcons. As information becomes available from these efforts, we will be able to design more refined long-term monitoring efforts. The monitoring plan provides for an adaptive management process through annual stakeholder meetings and evaluation reports to review project data to determine if refinements to the program are needed.

(40) *Comment:* The Service should provide a timeframe to implement and evaluate this approach to recovering the falcon.

Our Response: Annual stakeholder meetings will be conducted to review project data to determine if refinements to the program are needed. We will use the best scientific and commercial data available, including, but not limited to, results from the monitoring plan and stakeholder meetings to develop interim objectives to assist in measuring the success of the program and to prepare 5-year evaluations of the restoration program. As indicated in section 5 (''Reintroduction Procedures'') of the Background, we anticipate releasing falcons for 10 years or more. Although we have reason to expect success from this program, based on experiences in Texas, it is acknowledged to be a truly experimental effort involving uncertainties that preclude the identification of a more precise timeframe for implementation.

(41) *Comment:* The 10(j) designation should have a quantifiable number of falcons as a recovery target or a date set to end the program if this program is not successful.

Our Response: Section 10(j) and its implementing regulations do not have a requirement that we specify a population target or date, only that the release will further the conservation of the species. As stated in our response to comment 21, the best current estimate is that habitat in New Mexico is sufficient to support up to 200 pairs of falcons, and that Chihuahuan Desert habitat in Arizona may support additional individuals. We will evaluate the progress of the program through the annual meetings and reviews of the Peregrine Fund's annual reports, 2-year progress reports on agency Tier II monitoring efforts, and 5-year evaluations. Efforts under this 10(j) rule will cease when or if it is determined that the program no longer furthers the conservation of the falcon.

(42) *Comment:* There should be provisions for banding progeny of captive-reared birds to evaluate the reintroduction program.

Our Response: We acknowledge the value of banding the progeny of captive-reared birds to evaluating the program. The monitoring plan provides in the post-release procedures that as many chicks as possible from successfully nesting falcons will be banded.

(43) *Comment:* Habitat conditions, particularly grassland birds that provide prey, should also be monitored.

Our Response: As indicated in a response to an earlier comment, the monitoring plan includes assessments of habitat suitability and surveys, including surveys of other avian species that are potential prey for falcons.

(44) *Comment:* The Service has not ensured that monitoring native falcons will occur if non-mandatory surveys are subject to available funding.

Our Response: We note that conservation efforts by us and our conservation partners are always subject to funding support by Congress, State legislatures, or private individuals and organizations. Although we have no guarantees about funding in future years, we have a reasonable expectation that our partners will be able to carry out the monitoring activities that they have identified as appropriate.

(45) *Comment:* The Service should include criteria and define the term ''success'' in the monitoring plan.

Our Response: We will view the program as a success as long is it is furthering the conservation of the falcon. Although our best estimate is that habitat in New Mexico could potentially support up to 200 pairs of falcons, we anticipate that information gathered during the monitoring efforts will allow us refine our understanding of what is achievable in terms of conserving the falcon.

(46) *Comment:* Prey species are particularly important during the establishment of pair bonds and territories, which usually occur in late winter or very early spring. The breeding bird survey protocol should be used during this time of the year. Consider clarifying the methodology and timing for conducting prey base surveys.

Our Response: We have adopted this recommendation and have added it to the monitoring plan's discussion of surveys of avian species.

(47) *Comment:* The monitoring plan should include a discussion of what data should be collected in a given situation. For example, documenting stick nests would be especially important, but should be evaluated in light of other management goals/objectives and priorities.

Our Response: We believe that the information we specified is the most appropriate for beginning the monitoring effort. As information is gathered, special situations will be noted and appropriate modifications to our protocol will be adopted.

(48) *Comment:* The Service should evaluate key ecological factors to prioritize where management/recovery actions should be concentrated. These include variability of prey abundance, potential nest site availability, predator pressure, contaminant load, age and sex of dispersing falcons, and demography.

Our Response: We will be using available information on the falcon, including a recently finalized assessment of falcon habitat (Young *et al.* 2005), in the selection of release sites. The monitoring plan includes the gathering of information on habitat suitability and on the presence of avian predators and prey.

(49) *Comment:* The 10(j) rule should be removed once the population is ''self-sustaining,'' and standard ESA protections resume.

Our Response: The removal of a 10(j) listing of an NEP would first require a finding that the information on which the original ''nonessential'' determination was based had changed enough that the loss of the population would be likely to appreciably reduce the likelihood of survival of the species in the wild. We foresee little likelihood that success of reintroduction in the 10(j) area would occur while severe negative changes in the status of the falcon occurred elsewhere. Any change in the 10(j) listing would require us to engage in notice-and-comment rulemaking, including publishing a proposed rule in the **Federal Register** seeking public comment on that proposal (including, if requested, public hearings), and publishing a final determination in the **Federal Register**.

(50) *Comment:* The monitoring plan lacks sufficient performance measures.

Our Response: We have added a statement to the monitoring plan indicating that, based on information gathered as monitoring proceeds, we will develop interim objectives to assist in measuring the success of the program. Even with prior experience in reintroducing this species, progress in

the reintroduction effort cannot be predicted sufficiently to develop more detailed performance measures at this time. From our conservation efforts on this and other species, we know that it may take several years of effort before we can more clearly judge the likelihood of success of reintroduction. Information gathered as reintroduction proceeds will be used to evaluate progress on the program. Based on this information, we will consider more precise performance measures and adopt those that are likely to increase the likelihood of success of the program.

(51) *Comment:* How long will re-introduction efforts continue?

Our Response: We anticipate releasing falcons for 10 years or more.

(52) *Comment:* The 10(j) rule should remain in place until the species is delisted.

Our Response: Our intent is for the 10(j) rule to remain in place until the status of the species improves to a point where listing is no longer necessary, and the falcon can then be delisted.

(53) *Comment:* How will the delisting process proceed when the falcon population has reached a sufficient level?

Our Response: Once the threats to the falcon have been reduced, and populations are self-sustaining, the Service will publish a proposed rule to delist the falcon in the **Federal Register**. There would be opportunities for the public to comment and request public hearings. Information gathered during the public comment period would be incorporated into our evaluation of listing status. If we were to determine that listing is no longer appropriate, a final rule delisting the falcon would then be published in the **Federal Register**.

(54) *Comment:* Will those involved in monitoring efforts always seek landowner and manager permission prior to entering private lands?

Our Response: Yes. It is our policy that landowner approval will always be obtained either in writing or by record of telephone conversation prior to entering private lands. We also specify in our permits for work on listed species that the permit does not confer right to trespass, and that landowner permission must be obtained by the permittee. Our monitoring plan states that landowner consent either in writing or by record of telephone conversation is a prerequisite for data collection on private land.

(55) *Comment:* Falcons do not normally breed until they are 2 years old, not 3 years old as indicated on page 3 of the draft monitoring plan.

Our Response: This correction has been incorporated into the final monitoring plan.

(56) *Comment:* The short-term monitoring section of the draft monitoring plan states that BLM will supply remote-sensing data. Only BLM in New Mexico will be supplying these data.

Our Response: This correction has been incorporated into the final monitoring plan.

(57) *Comment:* A new version of the habitat assessment protocol, Attachment A of the monitoring plan, is available from the New Mexico Cooperative Fish and Wildlife Research Unit.

Our Response: We have replaced Attachment A with the newer version. We have also added a statement to the monitoring plan that the information from the protocol is intended to be used to improve site selection for releases.

Issue 5: Additional Comment

(58) *Comment:* The Service should support research, management, and outreach efforts on public and private lands for the falcon within its core breeding range in the Chihuahua desert grasslands, including adjacent Chihuahua, Mexico.

Our Response: We agree and, with our partners, will attempt to support and/or coordinate these activities to the extent that we are able.

Finding

We followed the procedures required by the Act, NEPA, and the Administrative Procedures Act during this Federal rulemaking process. Therefore, we solicited public and peer reviewer comment on the proposed NEP designation. As required by law, we have considered all comments received on the proposed rule, the draft EA, and the draft monitoring plan before making this final determination. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that creating a NEP of northern aplomado falcons and releasing them into the NEP area will further the conservation of the species.

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register**. We expect that up to 140 falcons could be available for release in 2006 in New Mexico and western Texas (Juergens and Heinrich 2005). In order for this group of falcons to have the optimal amount of time to successfully reach independence, they will need to be reintroduced into the wild beginning in late spring and summer 2006 (Juergens and Heinrich 2005). Careful timing of the age for reintroducing falcons is important to increase their chances for successfully fledging and reaching independence (Sherrod *et al.* 1987). A 30-day delay would be contrary to the public interest because it would result in delay of reintroductions until spring of 2007, as falcons are most successfully reintroduced when they are several weeks old and this age cohort only occurs in late spring and summer each year (Sherrod *et al.* 1987).

Required Determinations

Section 7 Consultation

A special rule under section 4(d) of the Act is included in this establishment of an experimental population under section 10(j) of the Act. A population designated as experimental is treated for the purposes of section 9 of the Act as threatened, regardless of the species' designation elsewhere in its range. The Service is not required to consult on this special 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.

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule to designate NEP status for northern aplomado falcon in Arizona and New Mexico is not a significant regulatory action subject to Office of Management and Budget review. As described below, this rule will not have an annual economic effect of $100 million or more on the economy and will not have an adverse effect on an economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit

and full economic analysis will not be required.

Following release, birds may use private or public lands adjacent to release areas. Because of the substantial regulatory relief provided by the NEP designation (no penalties for unintentional take or restrictions against land use), we do not believe the reintroduction of falcons will conflict with existing human activities or hinder public or private use of lands within the NEP area. Likewise, no governments, individuals, or corporations will be required to specifically manage for reintroduced falcons.

This final rule will not create inconsistencies with other agency's actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are the Bureau of Land Management and Department of Defense because they manage large areas of suitable falcon habitat within the NEP area. These agencies participated in the northern aplomado falcon working group and had the opportunity to participate in the development and review of the action finalized by this rulemaking and to ensure the action is consistent with their land management plans. Because of the substantial regulatory relief provided by the NEP designation, we believe that the reintroduction of northern aplomado falcons in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of the NEP area as a result of this rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This rule does not raise novel legal or policy issues. Since 1984, we have promulgated section 10(j) rules for many other species in various localities. Such rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 804(2)), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area affected by this rule includes the States of Arizona and New Mexico. We do not expect this rule to have any significant effect on recreational, agricultural, or development activities within the NEP area because the NEP designation provides no restrictions on most Federal (see next paragraph for National Wildlife Refuges and units of the National Park System) and all non-Federal actions that may affect falcons. In addition, the special rule authorizes unknowing or incidental take of falcons (*i.e.,* take that is incidental to an otherwise lawful activity). Direct take for research or educational purposes would require a section 10 recovery permit under the Act. Knowingly taking falcons (*e.g.,* shooting) will not be permitted. The action will not affect the establishment of future hunting seasons or conservation actions approved for migratory bird species. The principal activities on private property near the initial release areas are agriculture and recreation. We believe the presence of the falcon will not preclude use of lands for these purposes. Because there will be no new or additional economic or regulatory restrictions imposed upon States, Federal agencies, or members of the public due to the presence of the falcon, this rulemaking is not expected to have any significant adverse impacts to recreation, agriculture, or any development activities.

When NEPs are located outside a National Wildlife Refuge or unit of the National Park System, we treat the population as proposed for listing and only two provisions of section 7 would apply: section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires Federal agencies to use their authorities to further the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. When the NEP is located within a National Wildlife Refuge or National Park, we will treat the reintroduced falcons as threatened under the Act, and therefore the consultation requirements of section 7(a)(2) will apply on these Federal lands.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. On the basis of information contained in the ''Required Determinations'' section above, this rule will not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments will not be affected because the NEP designation will not place additional requirements on any city, county, or other local municipalities.

2. This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This NEP designation for the falcon will not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. We do not expect this rule to have a potential takings implication under Executive Order 12630 because it would exempt individuals or corporations from prosecution for take that is accidental and incidental to an otherwise lawful activity. Because of the substantial regulatory relief provided by the NEP designation, we do not believe the reintroduction of falcons would conflict with existing or proposed human activities or hinder public use of lands within the NEP area. Neither of the States within the NEP area will be required to specifically manage or reintroduce falcons.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive uses of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of a federally listed bird) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with the affected resource agencies in New Mexico and Arizona. Achieving the recovery goal for this species will contribute to its eventual delisting and its return to primary State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken in coordination with the States. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997); 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 requirement at 512 DM 2, we have notified the Native American Tribes within the NEP area about the proposed rule and this final rule. They have been advised through verbal and written contact, including informational mailings from the Service. Information was also presented at the Native American Fish and Wildlife Society meeting in New Mexico in 2003 (Murphy 2003). Furthermore, the potential reintroduction area for falcons in New Mexico does not overlap with any Tribal lands, and we do not expect falcons to move out of their preferred habitats. If future activities resulting from this rule may affect Tribal resources, the Service will communicate and consult on a Government-to-Government basis with any affected Native American Tribes in order to find a mutually agreeable solution.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal 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. OMB approval is required if information will be collected from 10 or more persons (5 CFR 1320.3). ''Ten or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent State, territorial, Tribal, or local entities and separately incorporated subsidiaries or affiliates. For the purposes of this definition, ''persons'' does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government when acting within the scope of their employment, but it does include former Federal employees. The Office of Management and Budget has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84(p)(6)) and assigned control number 1018–0095. The monitoring plan for reestablishment of the falcon contains a requirement for information collection; however, it does not affect 10 or more persons, as defined above. Therefore, OMB approval and a control number are not needed for the data collection forms appended to the monitoring plan. In the future, if it becomes necessary to collect this information from 10 or more respondents per year, we will first obtain approval from OMB.

National Environmental Policy Act

We have prepared an environmental assessment and Finding of No Significant Impact, as defined under the authority of the National Environmental Policy Act of 1969. These documents are available from the New Mexico Ecological Services Field Office (see **ADDRESSES** section) or from our Web site at *http://www.fws.gov/ifw2es/NewMexico/.*

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section) and from our Web site at *http://www.fws.gov/ifw2es/NewMexico/.*

Authors

The primary authors of this notice are the New Mexico Ecological Services Field Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Final 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. Amend § 17.11(h) by revising the existing entry for ''Falcon, northern aplomado'' under ''BIRDS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Falcon, northern aplomado.	*Falco femoralis septentrionalis.*	U.S.A. (AZ, NM, TX), Mexico, Guatemala.	Entire, except where listed as an experimental population.	E	216	NA	NA
Falcon, northern aplomado.	*Falco femoralis septentrionalis.*	U.S.A. (AZ, NM, TX), Mexico, Guatemala.	U.S.A. (AZ, NM)	XN	758	NA	17.84(p)
*	*	*	*	*	*		*

■ 3. Amend § 17.84 by adding paragraph (p) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(p) Northern aplomado falcon (*Falco femoralis septentrionalis*).

(1) The northern aplomado falcon (*Falco femoralis septentrionalis*) (falcon) population identified in paragraph (p)(9)(i) of this section is a nonessential experimental population (NEP).

(2) No person may take this species, except as provided in paragraphs (p)(3) through (5) and (p)(10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take falcons for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act (Act);

(4) A falcon may be taken within the NEP area, provided that such take is not willful, knowing, or due to negligence, or is incidental to and not the purpose of the carrying out of an otherwise lawful activity; and that such taking is reported within 24 hours, as provided under paragraph (p)(6) of this section.

(5) Any employee of the Service, New Mexico Department of Game and Fish, or Arizona Game and Fish Department, who is designated for such purpose, or any person with a valid permit issued by the Service under 50 CFR 17.32, may, when acting in the course of official duties, take a falcon if such action is necessary to:

(i) Aid a sick, injured, or orphaned specimen;

(ii) Dispose of a dead specimen, or salvage a dead specimen that may be useful for scientific study;

(iii) Move a bird within the NEP area for genetic purposes or to improve the health of the population;

(iv) Relocate falcons that have moved outside the NEP area, by returning the falcon to the NEP area or moving it to a captive breeding facility. All captures and relocations from outside the NEP area will be conducted with the permission of the landowner(s) or appropriate land management agencies; or

(v) Collect nesting data or band individuals.

(6) Any taking pursuant to paragraphs (p)(3) through (5) of this section must be reported within 24 hours by contacting the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113; (505) 346–2525. Upon contact, a determination will be made as to the disposition of any live or dead specimens.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (p)(2) and (p)(7) of this section.

(9)(i) The boundaries of the designated NEP area are based on county borders and include the entire States of New Mexico and Arizona. The reintroduction area is within the historical range of the species in New Mexico.

(ii) All falcons found in the wild within the boundaries of the NEP area after the first releases will be considered members of the NEP. A falcon occurring outside of the NEP area is considered endangered under the Act unless it is marked or otherwise known to be a member of the NEP.

(iii) The Service has designated the NEP area to accommodate the potential future movements of a wild population of falcons. All released birds and their progeny are expected to remain in the NEP area due to the geographic extent of the designation.

(10) The NEP will be monitored closely for the duration of the reintroduction program. Any bird that is determined to be sick, injured, or otherwise in need of special care will be recaptured to the extent possible by Service and/or State or permitted Tribal wildlife personnel and given appropriate care. Such birds will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive-breeding facility or they are euthanized if treatment would be unlikely to be effective.

(11) The Service plans to evaluate the status of the NEP every 5 years to determine future management status and needs, with the first evaluation expected to be not more than 5 years after the first release of birds into the NEP area. All reviews will take into account the reproductive success and movement patterns of individuals released, food habits, and overall health of the population. This evaluation will include a progress report.

* * * * *

Dated: July 7, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–6486 Filed 7–21–06; 3:06 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051128313–6029–02; I.D. 071906C]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia is transferring 125,000 lb (56,699 kg) of commercial bluefish quota to the State of New York from its 2006 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for New York and Virginia.

DATES: Effective July 21, 2006 through December 31, 2006, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state 1s described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia has agreed to transfer 125,000 lb (56,699 kg) of its 2006 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised bluefish quotas for calendar year 2006 are: New York, 900,526 lb (408,472 kg); and Virginia, 720,915 lb (327,002 kg).

Classification

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

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

Dated: July 20, 2006.

James P. Burgess,

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

[FR Doc. 06–6489 Filed 7–21–06; 1:04 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051104293–5344–02; I.D. 071306A]

Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2006 Winter II Quota

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS adjusts the 2006 Winter II commercial scup quota and possession limit. This action complies with Framework Adjustment 3 (Framework 3) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which established a process to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period.

DATES: This rule is effective November 1, 2006, through December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250), implementing a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period to be added to the quota for the Winter II period, and to allow adjustment of the commercial possession limits for the Winter II period commensurate with the amount of quota rolled over from the Winter I period. Table 4 of the final 2006 quota specifications for summer flounder, scup, and black sea bass (70 FR 77060, December 29, 2005) presented detailed information regarding Winter II possession limits, based on the amount of scup to be rolled over from Winter I to Winter II.

For 2006, the Winter II quota is 1,901,983 lb (862,725 kg), and the best available landings information indicates that 1,827,598 lb (828,985 kg) remain of the Winter I quota of 5,382,589 lb (2,441,501 kg). Consistent with the intent of Framework 3, the full amount of unused 2006 Winter I quota is transferred to Winter II, resulting in a revised 2006 Winter II quota of 3,729,581 lb (1,691,709 kg). In addition to the quota transfer, the 2006 Winter II possession limit is increased, consistent with the rollover specifications established in the 2006 final rule (70 FR 77060), to 6,500 lb (2,948 kg) per trip to provide an appropriate opportunity for fishing vessels to obtain the increased Winter II quota.

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: July 20, 2006.

James P. Burgess,

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

[FR Doc. E6–11940 Filed 7–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060503118–6169–02; I.D. 042606E]

RIN 0648–AT26

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 6

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 6 (Framework 6) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that will allow regional conservation equivalency in the summer

flounder recreational fishery. The intent is to provide flexibility and efficiency to the management of the summer flounder recreational fishery, specifically by expanding the suite of management tools available when conservation equivalency is implemented. In addition, this final rule includes three administrative modifications to the existing regulations for clarification purposes.

DATES: This rule is effective August 25, 2006.

ADDRESSES: Copies of Framework 6, which includes the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for summer flounder (*Paralichthys dentatus*), specified in the FMP, is defined as U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border.

The proposed rule for Framework 6 was published on May 15, 2006 (71 FR 27981). A complete discussion of the development of Framework 6, including explanation of the conservation equivalency recommendation process, appeared in the preamble of the proposed rule and is not repeated here.

Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the overall recreational harvest limit.

Framework 6 allows for the voluntary formation of multi-state regions by two or more adjacent states for the purpose of setting regional, conservation-equivalent recreational summer flounder fishing measures. Using guidelines approved by both the Council and the Commission, multi-state conservation equivalency regions could develop fishing measures (i.e., minimum fish size, possession limits, and fishing seasons) intended to maximize landings in the region, without resulting in overages of the regional targets (in number of fish). All states forming a region would be required to implement identical recreational fishery regulations.

If conservation equivalency is recommended, and following confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the Exclusive Economic Zone (EEZ) then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures. In addition, the Council and the Board must recommend precautionary default measures. The precautionary default measures would be assigned to any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that are determined not to achieve the required reduction. The precautionary default measures are defined as the set of measures that would achieve the greatest reduction in landings required for any state.

Under Framework 6, multi-state conservation equivalency measures for each region would be developed in the same manner (including the same procedures and timelines) as for state-specific conservation equivalency measures, as specified in Framework 2 to the FMP (Framework 2), which established summer flounder conservation equivalency.

The recreational harvest limit for a multi-state region would be the sum of the harvest limits for all of the states volunteering to form that region. The Summer Flounder Technical Committee would develop region-specific tables as necessary for use by a multi-state region in determining recreational management measures expected to constrain recreational landings to the regional harvest limit. Assuming that a state or region makes its plans for the current calendar year at the beginning of the calendar year, the prior year's recreational landings would be pooled among the inclusive states and then compared to the current year's region-specific recreational harvest limit to determine if any reduction in landings would be required of that region. Each multi-state region would then craft its regulations under the same guidelines used to develop state-specific conservation equivalency measures and under the same timeline identified in Framework 2.

There are two possible scenarios for how states could proceed based on whether a region decides to maintain its voluntary regional agreement or decides to dissolve the voluntary multi-state region and resume state-specific conservation equivalency during the year following the year for which the region was formed. First, in the event that a multi-state region maintains its voluntary conservation equivalency agreement, the region would again compare its regional recreational landings for the prior year to the current year's region-specific recreational harvest limit to determine if any necessary reductions in landings would be required of that region. The region would then adjust its regulations such that the region-specific harvest limit would be achieved. Second, in the event the region dissolves its agreement and opts for state-specific conservation equivalency, state-specific harvest limits would apply and individual states would compare their state-specific landings for the prior year to the state-specific harvest limits in the current year. Each state would then adjust its regulations such that the state-specific harvest limits would be achieved. As established for individual states in Framework 2, a multi-state region that does not exceed its regional harvest limit in a given year may be allowed to set less restrictive management measures for the following year, if the following year's regional harvest limit is greater than the current year's regional landings.

This final rule expands the scope of the regulations at § 648.100(e) to allow states and/or multi-state regions to implement conservation equivalent recreational fishing measures. The conservation equivalency regulations at § 648.107 continue to apply, i.e., references to ''state'' are not modified, since individual states are ultimately

responsible for implementation of the conservation equivalent regulations (including those approved for a multi-state region).

Need for Clarification/Correction

This final rule also makes three administrative changes to the summer flounder regulations, as set out in the proposed rule (71 FR 27981, May 15, 2006), to: (1) Clarify (at § 648.104(b)) that, although the minimum mesh size requirements specified for otter trawls would not apply for a vessel issued a summer flounder small-mesh exemption letter, other restrictions in part 648 may limit the area in which the exemption letter may be used; (2) correct the reference to net stowage requirements at § 648.104(b)(1) to read ''§ 648.104(e)'' rather than ''§ 648.100(e)'' as it was inadvertently published in a final rule that consolidated regulations governing multiple marine fisheries of the Northeast region into one new CFR part (61 FR 34966, July 3, 1996); and (3) modify the wording of the regulatory text at § 648.107(b) for clarification purposes.

Comments and Responses

One comment letter was received regarding the proposed rule (71 FR 27981, May 15, 2006), but it did not include comment on management of the recreational summer flounder fishery.

Comment: The commenter expressed concern about the impact of commercial fishing on fish stocks in general, and supports reduction of all quotas by 50 percent in 2006, and by an additional 10 percent each subsequent year.

Response: While NMFS acknowledges that consideration of total allowable landings and quota allocation are important, these general issues are outside the scope of this rulemaking.

Classification

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

The one comment letter received on the proposed rule did not address the potential economic impact of the rule. No changes to the proposed rule were required to be made as a result of the public comment. For a summary of the comments received, and the responses thereto, refer to the ''Comments and Responses'' section of this preamble.

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

In 2004, the most recent year for which complete permit data are available, 803 vessels possessed a Federal charter/party permit for summer flounder, scup, and/or black sea bass. Of these, 739 vessels held a permit to participate in the recreational fishery for summer flounder only, or in combination with scup and black sea bass. However, only 284 of these vessels landed summer flounder in 2004.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

This action is not expected to result in negative impacts to a significant number of small entities participating in the recreational summer flounder fishery, relative to the status quo. The coastwide recreational harvest limit for summer flounder would not be altered. Multi-state conservation equivalency regions will develop fishing measures that maximize the harvest of the region-specific limit, without resulting in overages. This is similar to what is currently done on a state-specific basis when conservation equivalency is implemented, but on a larger scale. It is expected that the conservation equivalent recreational management measures would allow each state or multi-state region to develop specific summer flounder recreational measures that allow the fishery to operate during critical fishing periods, while still achieving conservation goals and mitigating potential adverse economic effects in specific states.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' However, this rule does not make any changes that necessitate vessel compliance. This action allows for expansion of the existing conservation equivalency management option to a regional scope. Because the conservation equivalency regulations at § 648.107 would continue to apply, i.e., references to ''state'' would not be modified, and because the additional modifications to the summer flounder regulations are minor and administrative, there is no need for a small entity compliance guide. NMFS has updated the text for future summer flounder small-mesh exemption letters to reflect that other restrictions in part 648 may limit the area in which the exemption letter may be used. In addition, copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 20, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated 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: Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.100, paragraphs (e)(2) introductory text, (e)(2)(i), and (e)(2)(ii) are revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(e) * * *

(2) *Conservation equivalent measures.* Individual states or regions formed voluntarily by adjacent states (i.e., multi-state conservation equivalency regions) may implement different combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as

the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of Marine Recreational Fisheries Statistics Survey (MRFSS) landings estimates by mode or area for that state are less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** on or about March 1 to implement the overall percent adjustment in recreational landings required for the fishing year, the Council and Commission's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) During the public comment period on the proposed rule, the Commission will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The Commission will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

* * * * *

■ 3. In § 648.104, paragraphs (b) introductory text and (b)(1) introductory text are revised to read as follows:

§ 648.104 Gear restrictions.

* * * * *

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0′ W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.104(e), so that it is not ''available for immediate use'' outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the exemption season.

* * * * *

■ 4. In § 648.107, paragraph (b) is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season - January 1 through December 31; minimum size - 18 inches (45.7 cm); and possession limit - one fish.

[FR Doc. E6–11942 Filed 7–25–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 143
Wednesday, July 26, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2006–0040]

Importation of Fruit From Thailand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand. As a condition of entry, these fruits would have to be grown in production areas that are registered with and monitored by the national plant protection organization of Thailand, treated with irradiation in Thailand at a dose of 400 gray for plant pests of the class Insecta, except pupae and adults of the order Leipdoptera, and subject to inspection. The fruits would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been treated with irradiation in Thailand. In the case of litchi, the additional declaration would also state that the fruit had been inspected and found to be free of *Peronophythora litchii*, a fungal pest of litchi. This action would allow for the importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand into the United States while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: We will consider all comments that we receive on or before September 25, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0040 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0040.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Thailand has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand to be imported into the United States. As part of our evaluation of that request, we have prepared pest lists for each of the six fruits and a risk management document that recommends risk mitigation measures to prevent the plant pests associated with each fruit from being introduced into the United States. Copies of the risk management document can be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the risk management document, APHIS has determined that measures beyond port-of-entry inspection are required to mitigate the plant pest risks associated with these six fruits. The primary measure that we are proposing to require to mitigate those risks is that these six fruits be imported into the United States after being treated in Thailand with irradiation in accordance with the irradiation treatment requirements located in § 305.31 of our regulations in 7 CFR part 305, ''Phytosanitary Treatments.'' These six fruits would be irradiated with an irradiation dose of 400 gray, a dose that is approved under § 305.31(a) to treat all plant pests of the class Insecta, except pupae and adults of the order Lepidoptera.

The regulations in § 305.31 contain extensive requirements for performing irradiation treatment at a facility in a foreign country. These requirements include:

- The operator of the irradiation facility must sign a compliance agreement with the Administrator of APHIS and the NPPO of the exporting country.
- The facility must be certified by APHIS as capable of administering the treatment and separating treated and untreated articles.
- Treatments must be monitored by an inspector.
- A preclearance workplan must be entered into by APHIS and the NPPO of the exporting country. In the case of fruits imported from Thailand, this workplan would include provisions for inspection of articles, which APHIS would perform before or after the treatment.

• The operator of the irradiation facility must enter into a trust fund agreement with APHIS to pay for the costs of monitoring and preclearance.

All six fruits would also have to be accompanied by a phytosanitary certificate containing an additional declaration that the required irradiation treatment had been performed in Thailand.

We have not prepared a comprehensive pest risk analysis for this proposed rule, as we normally do when determining whether to allow the importation of fruits or vegetables under the regulations. When we prepare a comprehensive pest risk analysis for a commodity, one part of the analysis examines in detail the likelihood that the plant pests for which the commodity could serve as a host would be introduced into the United States via the importation of that commodity, the likelihood that those pests would become established if they were introduced, and the damage that could result from their introduction or establishment. This helps us to determine which plant pests pose a risk that makes mitigation measures beyond port-of-entry inspection necessary. However, since irradiation at the 400 gray dose is approved to neutralize all plant pests of the order Insecta, except pupae and adults of the family Lepidoptera, we did not consider it necessary to undertake a detailed analysis of the risks posed by any plant pests that fall into the category, since the risks for all these pests would be mitigated through the irradiation treatment. For the plant pests that we identified that are not approved for treatment with the 400 gray dose, we have analyzed what specific mitigations may be necessary given the risks they pose and the likelihood that these risks would be effectively mitigated by inspection.

The other general requirement we would place on the importation of these six fruits is that the imported fruits would have to be grown in a production area that is registered with and monitored by the NPPO of Thailand. Growing under controlled agricultural practices results in fruit with fewer pests and thus would maximize the effectiveness of the irradiation treatment. In addition, while the irradiation regulations provide for inspections to occur before or after treatment, all fruit imported into the United States is subject to inspection at the port of entry; therefore, fruit imported from Thailand could be inspected at the port of entry if an inspector determines that such inspection is necessary.

The effectiveness of the irradiation treatment with regard to mitigating the risk associated with the importation of each of the six fruits proposed for importation is discussed in detail below, along with mitigations for the risks posed by pests not approved for treatment with irradiation.

Litchi

APHIS has identified 11 potential quarantine pests that could be introduced into the United States via the importation of litchi from Thailand, including 10 insect pests and 1 fungal pest. The pests are listed below, with order and family name following their scientific names in parentheses.

Insect pests:

Bactrocera cucurbitae (Diptera: Tephritidae).
Bactrocera dorsalis (Diptera: Tephritidae).
Ceroplastes rubens (Hemiptera/Homoptera: Coccidae).
Coccus viridis (Hemiptera/Homoptera: Coccidae).
Dysmicoccus neobrevipes (Hemiptera/Homoptera: Pseudococcidae).
Planococcus lilacinus (Hemiptera/Homoptera: Pseudococcidae).
Planococcus minor (Hemiptera/Homoptera: Pseudococcidae).
Conopomorpha sinensis (Lepidoptera: Gracillariidae).
Cryptophlebia ombrodelta (Lepidoptera: Tortricidae).
Deudorix epijarbas (Lepidoptera: Lycaenidae).

Fungus:

Peronophythora litchii (Pythiales: Pythiaceae).

Three of the insect pests of concern, *Conopomorpha sinensis, Cryptophlebia ombrodelta,* and *Deudorix epijarbas,* belong to the order Lepidoptera, and the 400 gray dose is not approved to treat pupae and adults of the order Lepidoptera. However, the life stages of concern for these pests are the eggs and the larvae, because the eggs and larvae of these species are internal feeders and thus difficult to detect through inspection; the 400 gray dose is approved to treat those stages of the life cycle for Lepidoptera pests. The pupae and adults of these species are external feeders, and we are confident that inspection can detect them.

The 400 gray dose is also approved to treat all the other insect pests in the list. However, the 400 gray dose is not approved to treat the fungal pest, *Peronophythora litchii.* This pest can cause litchi fruit to drop prematurely from their trees; fungicidal field treatments are typically applied to reduce premature fruit drop in commercial litchi production areas where *Peronophythora litchii* is present. To address the risk posed by this pest, we are proposing to require that litchi from Thailand be inspected and found to be free of *Peronophythora litchii.* We would also require that the phytosanitary certificate accompanying litchi from Thailand include an additional declaration to that effect.

We believe that most litchi fruit that are infected with *Peronophythora litchii* would be culled prior to importation into the United States; trained harvesters, packinghouse personnel, and plant quarantine inspectors can easily detect the distinctive symptoms of the disease on fruit. Litchi that are infected with *Peronophythora litchii* but are not symptomatic may not be culled, but the likelihood that *Peronophythora litchii* would then be introduced into the United States via the few fruit that may escape detection is very low, because the spores are transmitted by water. This means that for *Peronophythora litchii* to be introduced into the United States via an infected litchi fruit, the fruit would have to be incompletely consumed and discarded in a place where the pest could be transmitted to a litchi production area through moving water. Additionally, there is no record of interception of this disease on litchi imported into the United States from other countries in regions where this pathogen is present. Therefore, we believe that the requirement that litchi from Thailand be inspected for *Peronophythora litchii,* along with the additional declaration that would be required on the phytosanitary certificate accompanying the fruit, would adequately mitigate the risk posed by this pest.

Longan

APHIS has identified 11 potential quarantine pests that could be introduced into the United States via the importation of longan from Thailand, all of which are insect pests. The pests are listed below, with order and family name following their scientific names in parentheses.

Bactrocera correcta (Diptera: Tephritidae).
Bactrocera dorsalis (Diptera: Tephritidae).
Ceroplastes rubens (Hemiptera/Homoptera: Coccidae).
Drepanococcus chiton (Hemiptera/Homoptera: Coccidae).
Dysmicoccus neobrevipes (Hemiptera/Homoptera: Pseudococcidae).
Maconellicoccus hirsutus (Hemiptera/Homoptera: Pseudococcidae).
Planococcus lilacinus (Hemiptera/Homoptera: Pseudococcidae).

Planococcus minor (Hemiptera/Homoptera: Pseudococcidae).
Conopomorpha sinensis (Lepidoptera: Gracillariidae).
Cryptophlebia ombrodelta (Lepidoptera: Tortricidae).
Deudorix epijarbas (Lepidoptera: Lycaenidae).

Three of the insect pests of concern, *Conopomorpha sinensis, Cryptophlebia ombrodelta,* and *Deudorix epijarbas,* belong to the order Lepidoptera, and irradiation with a 400 gray dose is not approved to treat pupae and adults of the order Lepidoptera. However, as discussed earlier in this document with respect to litchi, the life stages of concern for these pests are the eggs and the larvae, and the 400 gray dose is approved to treat those stages of the life cycle for Lepidoptera pests.

The 400 gray dose is also approved to treat all the other insect pests in the list.

Mango

APHIS has identified 21 potential quarantine pests that could be introduced into the United States via the importation of mango from Thailand, including 20 insect pests and one fungal pest. The pests are listed below, with order and family name following their scientific names in parentheses.

Insect pests:
Sternochetus frigidus (Coleoptera: Curculionidae).
Sternochetus mangiferae (Coleoptera: Curculionidae).
Sternochetus olivieri (Coleoptera: Curculionidae).
Bactrocera carambolae (Diptera: Tephritidae).
Bactrocera correcta (Diptera: Tephritidae).
Bactrocera cucurbitae (Diptera: Tephritidae).
Bactrocera dorsalis (Diptera: Tephritidae).
Bactrocera papayae (Diptera: Tephritidae).
Bactrocera tuberculata (Diptera: Tephritidae).
Bactrocera zonata (Diptera: Tephritidae).
Cereoplastes rubens (Hemiptera/Homoptera: Coccidae).
Coccus viridis (Hemiptera/Homoptera: Coccidae).
Aulacaspis tubercularis (Hemiptera/Homoptera: Diaspididae).
Pseudaonidia trilobitiformis (Hemiptera/Homoptera: Diaspididae).
Dysmicoccus neobrevipes (Hemiptera/Homoptera: Pseudococcidae).
Maconellicoccus hirsutus (Hemiptera/Homoptera: Pseudococcidae).
Nipaecoccus viridis (Hemiptera/Homoptera: Pseudococcidae).
Planococcus lilacinus (Hemiptera/Homoptera: Pseudococcidae).
Planacoccus minor (Hemiptera/Homoptera: Pseudococcidae).
Rastrococcus spinosus (Hemiptera/Homoptera: Pseudococcidae).

Fungus:
Phomopsis mangiferae.

Irradiation with a 400 gray dose is approved to treat all of the insect pests, but not the fungal plant pest *Phomopsis mangiferae.* We are not proposing to require any mitigation other than inspection for *Phomopsis mangiferae.* The symptoms of *Phomopsis mangiferae* on mangoes are likely to be detected at harvest and during packing and inspection; mangoes showing these symptoms would be culled as part of normal production practices. In some cases, latent infections may evade detection, and storing the fruit after the harvest in dark, cool, dry areas, which slows the expression of symptoms, may lead to increased numbers of infected fruit not being detected.

However, we believe that *Phomopsis mangiferae* is unlikely to be introduced into the United States via the importation of mangoes for consumption. The pest is specific to mangoes and is spread only via the seed of the mango. For the pest to spread, fungal spores from the seed must be dispersed at a time when susceptible tissue is available; thus, dispersal only occurs when infected seed is used in mango production. If infected fruit is consumed and the seed is discarded as waste, the infected fruit does not serve as a pathway for introduction. Discarded fruit could create a possible source of inoculum that could provide the means for introduction, but the likelihood that infected mangoes will reach these habitats is low because (1) the host range is limited to mango; (2) the portion of the total number of mango shipments from Thailand that is expected to be transported to mango-producing areas in California, Florida, Hawaii, or Texas is small; and (3) the likelihood of fruit being discarded in mango orchards at an appropriate time is likewise very low. For these reasons, we are not proposing any measures beyond inspection to mitigate the risk associated with this plant pest. This decision is consistent with the recommendations contained in pest risk analyses examining the importation of mangoes from Australia, India, and Pakistan, countries where *Phomopsis mangiferae* is also present.

Mangosteen

APHIS has identified 11 potential quarantine pests that could be introduced into the United States via the importation of mangosteen from Thailand, all of which are insect pests. The pests are listed below, with order and family name following their scientific names in parentheses.

Bactrocera carambola (Diptera: Tephritidae).
Bactrocera dorsalis (Diptera: Tephritidae).
Bactrocera papayae (Diptera: Tephritidae).
Coccus viridis (Hemiptera/Homoptera: Coccidae).
Pseudaonidia trilobitiformis (Hemiptera/Homoptera: Diaspididae).
Cataenococcus hispidus (Hemiptera/Homoptera: Pseudococcidae).
Dysmicoccus neobrevipes (Hemiptera/Homoptera: Pseudococcidae).
Paracoccus interceptus (Hemiptera/Homoptera: Pseudococcidae).
Planococcus lilacinus (Hemiptera/Homoptera: Pseudococcidae).
Planococcus minor (Hemiptera/Homoptera: Pseudococcidae).
Pseudococcus cryptus (Hemiptera/Homoptera: Pseudococcidae).

Irradiation with a 400 gray dose is approved as a treatment for all of these pests.

Pineapple

APHIS has identified four potential quarantine pests that could be introduced into the United States via the importation of pineapple from Thailand, all of which are insect pests. The pests are listed below, with order and family name following their scientific names in parentheses.

Coccus viridis (Hemiptera/Homoptera: Coccidae).
Dysmicoccus neobrevipes (Hemiptera/Homoptera: Pseudococcidae).
Planococcus minor (Hemiptera/Homoptera: Pseudococcidae).
Frankliniella schultzei (Thysanoptera: Thripidae).

Irradiation with a 400 gray dose is approved as a treatment for all of these pests.

Rambutan

APHIS has identified 10 potential quarantine pests that could be introduced into the United States via the importation of rambutan from Thailand, all of which are insect pests. The pests are listed below, with order and family name following their scientific names in parentheses.

Bactrocera dorsalis (Diptera:

Tephritidae).
Bactrocera papayae (Diptera: Tephritidae).
Ceroplastes rubens (Hemiptera/Homoptera: Coccidae).
Cataenococcus hispidus (Hemiptera/Homoptera: Pseudococcidae).
Dysmicoccus neobrevipes (Hemiptera/Homoptera: Pseudococcidae).
Maconellicoccus hirsutus (Hemiptera/Homoptera: Pseudococcidae).
Paracoccus interceptus (Hemiptera/Homoptera: Pseudococcidae).
Planococcus lilacinus (Hemiptera/Homoptera: Pseudococcidae).
Planococcus minor (Hemiptera/Homoptera: Pseudococcidae).
Conopomorpha cramerella (Lepidoptera: Gracillariidae).

One of the insect pests of concern, *Conopomorpha cramerella,* belongs to the order Lepidoptera, and the 400 gray dose is not approved to treat pupae and adults of the order Lepidoptera. However, the life stages of concern for this pest are the eggs and the larvae, because the eggs and larvae of this species are internal feeders and thus difficult to detect through inspection; the 400 gray dose is approved to treat those stages of the life cycle for Lepidoptera pests. The pupae and adults of this species are external feeders, and we are confident that inspection can detect them.

The 400 gray dose is also approved to treat all the other insect pests in the list.

We are proposing to add a new § 319.56–2ss governing the conditions of entry of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand into the United States that would contain the growing, treatment, and phytosanitary certification requirements discussed in this proposal. We would also add an entry to the chart of commodities enterable from foreign localities in § 305.2(h)(2)(i) for each of the six fruits. These entries would indicate that irradiation for plant pests of the class Insecta, other than pupae and adults of the order Lepidoptera, is an approved treatment for each of the six fruits.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the degree to which imported fruits from Thailand would be expected to displace fruits imported from other countries or fruits produced domestically.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation of plants, plant products, and other articles if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of plant pests and noxious weeds into the United States.

The proposed rule would amend the fruits and vegetables regulations to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand. As a condition of entry, these fruits would have to be grown in production areas that are registered with and monitored by the NPPO of Thailand, treated with irradiation in Thailand at a dose of 400 gray for plant pests of the class Insecta, except pupae and adults of the order Leipdoptera, and subject to inspection. The fruits would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been treated with irradiation in Thailand and, in the case of litchi, that the fruit had been inspected and found to be free of *Peronophythora litchii,* a fungal pest of litchi. This action would allow for the importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand into the United States while continuing to provide protection against the introduction of quarantine pests.

Although this is the first request APHIS has received concerning the importation of irradiated fruit, this change is not expected to have any significant effect on APHIS program operations since the relevant commodities are currently allowed to be imported into the United States from various other regions subject to different treatments. Additionally, current regulations already allow inspectors to order the treatment, destruction, or re-exportation of a consignment of fruit if, on inspection at the port of arrival, any actionable pest or pathogen is found and identified. The use of irradiation as a pest mitigation measure will provide an alternative to other mitigations such as methyl bromide fumigation.

U.S. Production and Imports

Historically, the continental United States has not produced the fruits covered in this proposed rule in any quantity, with the exception of mangoes and pineapples. Mangoes were produced in some quantity in Florida, but production has not been recorded since 1997. Mangoes are still produced in non-commercial quantities in South Florida along with approximately two dozen other minor tropical fruits. However, these fruits, including litchi, longan, and mango, are primarily destined for the local fresh market.

A record of the Hawaiian production of most of these fruits is kept by the Hawaii Field Office of the National Agricultural Statistics Service. The ''Hawaii Tropical Specialty Fruits'' report published by this office shows that Hawaii produces all of the fruits covered by the proposed rule; however, mangosteen production is included in the category ''Other'' to avoid disclosure of individual operations.[1] Production and price data for the Hawaiian fruit may be found in table 1. This table shows only production destined for the fresh market. Although Hawaii's production of pineapples for the fresh market has remained relatively stable over the last two decades, production intended for the processed market is merely 19 percent of what it was 20 years ago. Production of longan, litchi, mango, and rambutan is a fraction of pineapple production in Hawaii and is directed to local markets.

[1] This report can be accessed on the Internet at *http://www.nass.usda.gov/hi/fruit/tropfrt.pdf.*

TABLE 1.—PRODUCTION AND FARM PRICES OF TROPICAL FRUIT PRODUCED IN HAWAII FOR THE FRESH MARKET, 2000–2004 [1]

Year	Longan		Litchi		Mango		Rambutan		Pineapple	
	Production (1,000 lb)	Farm price ($ per 1b)	Production (1,000 lb)	Farm price ($ per lb)	Production (1,000 lb)	Farm price ($ per lb)	Production (1,000 lb)	Farm price ($ per lb)	Production (1,000 lb)	Farm price ($ per lb)
2000	24	4.02	(2)	(2)	207	0.93	220	2.98	244,000	0.29
2001	37	3.05	(2)	(2)	242	0.86	205	3.01	220,000	0.31
2002	46	3.20	77	2.64	377	0.92	257	3.01	234,000	0.31
2003	114	3.33	88	2.84	481	0.86	306	2.73	260,000	0.30
2004	125	3.40	94	2.45	380	0.92	275	2.57	198,000	0.32

[1] Mangosteen production is included in a residual category to avoid disclosure of individual operations.
[2] Data not shown separately to avoid disclosure of individual operations.
Source: USDA, National Agricultural Statistics Service (NASS), Hawaii Field Office, ''Hawaii Tropical Specialty Fruits,'' October 19, 2005.

Based on available data, imports of mangoes and pineapples far exceed domestic production (table 2). Furthermore, it appears that imports do not compete with domestic production. In the case of litchis, longans, mangoes, mangosteens, and rambutans, it appears that domestic production is sold mainly in the local fresh market. However, it is difficult to draw conclusions regarding competition from litchi, longan, and rambutan imports due to lack of available data. Pineapples, on the other hand, seem more widely distributed, but their production has remained fairly consistent over the years despite increased imports from abroad. This information would indicate a lack of competition between domestic production and foreign imports.

TABLE 2.—U.S. IMPORTS OF MANGO, MANGOSTEEN, AND PINEAPPLE, 2000–2004

	Mango	Mangosteen [1]	Pineapple
	1,000 lb		
2000	528,868	40	[2] 711,292
2001	541,329	226	[2] 715,651
2002	[3] 587,048	137	894,446
2003	613,816	136	1,050,855
2004	609,237	104	1,126,672

[1] Statistics include guavas and mangosteens. Source: Global Trade Atlas.
[2] Includes fresh and frozen. Source: ERS Fruit and Tree Nut Yearbook.
[3] Statistics include guavas and mangos. Source: Economic Research Service (ERS) Fruit and Tree Nut Yearbook.

Thai Production and Exports

Thailand is the leading producer of pineapple in the world. Much of its production is geared toward international markets, although the majority of this is not fresh production. Over the 5-year period 2000–2004, only 0.27 percent of the country's fresh production was exported, as seen in table 3. Similarly, during that same period, Thailand produced a significant amount of mangoes, but only 0.82 percent of that mango production was exported for the fresh market.

TABLE 3.—THAI PRODUCTION AND EXPORTS OF MANGO AND PINEAPPLE, 2000–2004

	Mango			Pineapple		
	Production	Exports	Exports as percentage of production	Production	Exports	Exports as percentage of production
	(metric tons)			(metric tons)		
2000	1,633,479	8,755	0.54	2,248,375	4,995	0.22
2001	1,700,000	10,829	0.64	2,078,286	6,471	0.31
2002	1,700,000	8,736	0.51	1,738,833	4,561	0.26
2003	1,700,000	8,098	0.48	1,899,424	4,874	0.26
2004	1,700,000	33,097	1.95	1,997,000	5,736	0.29

Source: FAOSTAT data, 2006.

Thailand also produces longan, litchi, mangosteen, and rambutan. Production data for each of these come from Thailand's Office of Agriculture Economics (OAE). Table 4 shows that production of rambutan far exceeded that of longan and mangosteen. Farm prices, on the other hand, were much higher for longan and mangosteen. In economic terms, this result is not surprising since higher levels of supply foster lower prices. Production and price data on litchis were not available.

TABLE 4.—THAI PRODUCTION AND PRICE OF LONGAN, MANGOSTEEN, AND RAMBUTAN, 2000–2004

	Longan		Mangosteen		Rambutan	
	Production (metric tons)	Farm price ($ per kg)	Production (metric tons)	Farm price ($ per kg)	Production (metric tons)	Farm price ($ per kg)
1999	63,900	0.76	160,800	0.66	601,000	0.41
2000	417,300	0.65	168,200	0.60	618,000	0.33
2001	250,100	0.63	197,200	0.51	617,000	0.25
2002	420,300	0.28	244,900	0.44	619,000	0.15
2003	396,700	0.38	203,800	0.65	651,000	0.19

Source: OAE, 2006.

According to a press release of the Thai Minister of Agriculture and Cooperatives posted on the Web site of the National Bureau of Agricultural Commodity and Food Standards in Thailand, that country is capable of producing approximately 5 million metric tons (MT) of the fruits that this proposed rule would allow to be imported into the United States. This production may be divided as follows: 80,000 MT of litchi, 200,000 MT of mangosteen, 500,000 MT of rambutan, 500,000 to 700,000 MT of longan, 1.8 million MT of mango, and 2 million MT of pineapple. Given the production data reported by the OAE, these production values seem reasonable. However, only a fraction of this is likely to be exported to the United States, given historical export data as well as the fact that the existing irradiation facility would not be able to accommodate these estimated volumes of fruit. Since a new facility would not be constructed until regulations were in place, it is not likely that Thailand would be able to treat and ship volumes of this magnitude over the next few years.

Effects on Small Entities

The proposed rule may affect domestic producers of the six tropical fruits, as well as firms that import these commodities. It is likely that the entities affected would be small according to Small Business Administration (SBA) guidelines. A discussion of these impacts follows.

Affected U.S. tropical fruit producers are expected to be small based on 2002 Census of Agriculture data and SBA guidelines for entities in the farm category ''Other Noncitrus Fruit Farming'' (North American Industry Classification System [NAICS] code 111339). The SBA classifies producers in this farm category with total annual sales of not more than $750,000 as small entities. APHIS does not have information on the size distribution of the relevant producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States in 2002.[2] Of this number, approximately 97 percent had annual sales in 2002 of less than $500,000, which is well below the SBA's small entity threshold of $750,000 for commodity farms.[3] This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 623 mango and 34 pineapple farms[4] that may be affected by this rule would also qualify as small. In the case of fresh fruit and vegetable wholesalers, establishments in the category ''Fresh Fruit and Vegetable Merchant Wholesalers'' (NAICS 424480) with not more than 100 employees are considered small by SBA standards. In 2002, there were a total of 5,397 fresh fruit and vegetable wholesale trade firms in the United States.[5] Of these firms, 4,644 firms operated for the entire year. Of those firms that were in operation the entire year, 4,436 or 95.5 percent employed fewer than 100 employees and were, therefore, considered small by SBA standards. Thus, domestic producers and importers that may be affected by the proposed rule are predominantly small entities.

Based on the data available to APHIS, it does not appear that domestic production of litchi, longan, mango, mangosteen, pineapple, and rambutan competes with imports of these fruits. Domestic production is generally destined for the local fresh market. Thus, the imports from Thailand are unlikely to substantially affect these markets. Additionally, imports from Thailand are not likely to increase the overall level of imports. It is more reasonable to assume that they would substitute for imports from other countries, given that demand for these specialty fruits is likely satiated at current levels. APHIS welcomes public comment on these potential effects.

Domestic import firms may benefit from more open trade with Thailand, with more import opportunities available to them because of the additional source of these tropical specialty fruit. In any case, it is not likely that the effects of importing litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand would have large repercussions for either domestic producers or importers of these tropical fruit.

Significant Alternatives to Rule

In June 2005, officials from Thailand and the United States met in Bangkok to consider mitigations on the six Thai commodities. Several options were considered at that meeting. Cold treatment was recognized as a potential treatment for litchi and longan, but additional research would have to be conducted to ensure this treatment would be effective in killing all Lepidoptera of concern. Vapor heat treatment was also considered. This could be used for treating mangosteen, pineapple, and rambutan. However, this treatment affects the quality of commodities and was thus dismissed as a viable alternative. The use of a systems approach was also mentioned. This may be a potential alternative for mangosteen and pineapple. However, the Thai Department of Agriculture did not have a formal proposal on the use of a systems approach. Irradiation was the fourth alternative considered. A generic dose of 400 gray would work for all six commodities. Additionally, irradiation was the only option identified to be effective for mango due to the presence of mango seed and flesh weevils. Thus, irradiation was chosen as the most effective option.

This proposed rule contains certain reporting and recordkeeping requirements (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule would allow litchi, longan, mango, mangosteen,

[2] This number represents the total number of farms in the United States, including farms producing litchi, longan, mango, mangosteen, pineapple, and rambutan.

[3] Source: SBA and *2002 Census of Agriculture.*

[4] There are no data available on the number of litchi, longan, mangosteen, or rambutan farms in operation.

[5] Source: SBA and *2002 Economic Census.*

pineapple, and rambutan to be imported into the United States from Thailand. If this proposed rule is adopted, State and local laws and regulations regarding litchi, longan, mango, mangosteen, pineapple, and rambutan imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2006–0040. Please send a copy of your comments to: (1) Docket No. APHIS–2006–0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The proposed rule would allow the importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand. This change would necessitate the use of certain information collection activities, including the completion of phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.159375 hours per response.

Respondents: Importers of Thai fruit and national plant protection organizations.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 32.

Estimated annual number of responses: 320.

Estimated total annual burden on respondents: 51 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 305.2, the table in paragraph (h)(2)(i) would be amended by adding, under Thailand, new entries for litchi, longan, mango, mangosteen, pineapple, and rambutan to read as follows:

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
* * *	*	* * *	*
Thailand			
* * *	*	* * *	*
	Litchi	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR
	Longan	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR
	Mango	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR
	Mangosteen	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR
	Pineapple	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR
	Rambutan	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR
* * *	*	* * *	*

* * * * *

PART 319—OREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. A new § 319.56–2ss would be added as follows:

§ 319.56–2ss Administrative instructions: Conditions governing the entry of certain fruits from Thailand.

Litchi (*Litchi chinensis*), longan (*Dimocarpus longan*), mango (*Mangifera indica*), mangosteen (*Garcinia mangoestana* L.), pineapple (*Ananas comosus*) and rambutan (*Nephelium lappaceum* L.) may be imported into the United States from Thailand only under the following conditions:

(a) *Growing conditions.* Litchi, longan, mango, mangosteen, pineapple, and rambutan must be grown in a production area that is registered with and monitored by the national plant protection organization of Thailand.

(b) *Treatment.* Litchi, longan, mango, mangosteen, pineapple, and rambutan must be treated for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, with irradiation in accordance with § 305.31 of this chapter. Treatment must be conducted in Thailand prior to importation of the fruits into the United States.

(c) *Phytosanitary certificates.* (1) Litchi must be accompanied by a phytosanitary certificate with an additional declaration stating that the litchi were treated with irradiation as described in paragraph (b) of this section and that the litchi have been inspected and found to be free of *Peronophythora litchi.*

(2) Longan, mango, mangosteen, pineapple, and rambutan must be accompanied by a phytosanitary certificate with an additional declaration stating that the longan, mango, mangosteen, pineapple, or rambutan were treated with irradiation as described in paragraph (b) of this section.

Done in Washington, DC, this 20th day of July 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–11941 Filed 7–25–06; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

RIN 3133–AD27

Permissible Investments for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NCUA is proposing to amend its investment rules to allow federal credit unions to enter into investment repurchase transactions in which the instrument consists of first-lien mortgage notes. The proposed amendment establishes a credit concentration limit, minimum credit rating, requirement for an independent assessment of market value, a maximum term, and custodial requirements for the transactions.

DATES: Comments must be received on or before September 25, 2006.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Parts 703 and 704 Permissible Investments for Federal Credit Unions'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6540 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

Technical Information: Jeremy Taylor, Senior Investments Officer, Office of Capital Markets and Planning, at the above address or telephone: (703) 518–6620.

Legal Information: Moisette Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

NCUA is proposing to amend its investment rules in Part 703 to permit federal credit unions (FCUs) to engage in investment repurchase transactions where the instruments purchased under an agreement to resell are mortgage notes, evidenced by participation certificates or trust receipts. Investment repurchase transactions are permissible investment activities for FCUs so long as any securities an FCU receives are permissible investments. 12 CFR 703.13(c)(1). Part 703, however, specifically excludes the purchase of real estate secured loans from its coverage, stating these purchases are governed by the eligible obligations rule. 12 CFR 701.23, 703.1(b)(2).

The Federal Credit Union Act (Act) authorizes FCUs to invest in certain mortgage-backed and mortgage-related securities. 12 U.S.C. 1757(15). For purposes of this rule, mortgage notes are transactions involving offers or sales of promissory notes secured by a first lien on a single parcel of improved real estate and participation interests in those notes originated by a financial institution that is examined and supervised by a federal or state authority or a mortgagee approved by the Department of Housing and Urban Development (HUD). 12 U.S.C. 1757(15)(A); 15 U.S.C. 77d(5). NCUA recognizes that FCU authority under § 107(15) of the Act is not limited to member notes, but has limited the exercise of this authority by regulation. *See* 12 CFR 701.23; 53 FR 4843 (February 18, 1988).

The Secondary Mortgage Market Enhancement Act of 1984 (SMMEA) amended the powers of federally chartered financial institutions and preempted state law to authorize investments in mortgage-backed securities. Public Law 98–440, 98 Stat. 1689 (1984). In 1984, Congress was concerned that traditional mortgage lenders were less willing or able to hold long-term, fixed rate mortgages in an environment of inflationary and interest rate pressures and failing thrifts. S. Rep. 98–293 (1983). Federal and state statutes, however, restricted financial institutions from trading and investing in private mortgage-related securities. For that reason, Congress liberalized those statutory restrictions, except for limitations imposed by federal regulators, to increase the flow of funds for housing by facilitating the private sector's participation in the secondary market for mortgages. S. Rep. 98–293 (1983); H. Rep. 98–994 (1983).

SMMEA amended the Act to permit FCUs to invest in certain mortgages and privately issued mortgage-related securities. Specifically, SMMEA added § 107(15)(A) to the Act, permitting FCUs to invest in securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933.[1] 12 U.S.C. 1757(15); 15 U.S.C. 77d(5).

FCU authority under § 107(15) is not specifically limited to member notes, but NCUA has continuing concerns about the breadth of the authority. An interpretation that is not limited to member loans would materially alter the nature of FCU asset powers and could authorize loans to nonmembers. Accordingly, the Board has limited the authority in § 107(15)(A) by regulation. Under the eligible obligations rule, an FCU may purchase only the mortgage notes of its members or those needed to complete a pool of loans to be sold on the secondary market. 12 CFR 701.23. NCUA is proposing to expand its policy by permitting FCUs to purchase mortgage notes, pursuant to § 107(15)(A) of the Act, which will be sold back to the seller for settlement within 30 days.

II. The Proposed Rule

NCUA is proposing to permit the purchase of mortgage notes including those involving non-members, but only when the purchases are a part of an investment repurchase transaction. The Board recognizes the proposed amendment alters its earlier approach limiting the purchase of nonmember loans to those needed to complete a pool for sale on the secondary market. When NCUA implemented SMMEA in 1988, investment repurchase transactions were not prevalent in the home loan market. As the way housing is financed has evolved and the demand for housing increased, new methods to provide housing credit have developed. The Board believes broadening FCU authority to invest in mortgage notes furthers the secondary market and purposes of SMMEA.

Investment repurchase transactions using mortgage loans typically involve mortgages that are in the process of securitization, and NCUA believes permitting FCUs to engage in these transactions furthers the purposes of SMMEA by funding third party mortgage warehouses. By mortgage warehouse, NCUA means the process of holding mortgage loans for a short time from origination to securitization before sale of the loans on the secondary market. Mortgage note repurchase transactions involve, first, the purchase of a mortgage note or pool of notes. The mortgage loans underlying the note are not limited to loans made to credit union members. The second step in the transaction is the resale of the mortgage note or notes back to the counterparty. The mortgage note will take the form either of a trust receipt[2] or a participation certificate.[3] The Board believes this second sale addresses the concern that the investment circumvents field of membership restrictions by requiring, as part of the transaction, that FCUs sell the mortgage note within a reasonably short period and will not continue to hold the underlying loans. This approach is substantially analogous to the current regulatory approach in the eligible obligations rule that permits FCUs to purchase nonmember mortgage loans to complete a pool for sale to the secondary market. 12 CFR 701.23(b)(1)(iv).

This proposal to amend § 703.14 to permit investment repurchase transactions using mortgage notes has six conditions. The six conditions address NCUA's safety and soundness concerns and include a credit concentration limit, minimum credit rating, independent assessment of market value, maximum term of the repurchase transaction, custodial requirements for the transactions, and undivided interests in mortgage notes. The proposed rule would limit aggregate

[1] Securities under section 4(5) of the Securities Act of 1933 are transactions involving offers or sales of promissory notes secured by a first lien on a single parcel of improved real estate and participation interests in those notes originated by a financial institution that is examined and supervised by a federal or state authority or a mortgagee approved by the Department of Housing and Urban Development (HUD). 12 U.S.C. 77d(5)(A). Transactions involving securities originated by federal or state-regulated financial institutions must be offered and sold at a minimum aggregate sales price per purchaser not less than $250,000, paid in cash within 60 days of the sale, and bought for the purchaser's account only. Transactions between federal or state-regulated financial institutions or HUD-approved mortgagees must also meet these conditions of sale.

[2] A ''trust receipt'' is a receipt issued by a custodian bank to the Seller, evidencing that the Seller is the registered owner of a 100% undivided participation ownership interest in certain mortgage loans with attached endorsement issued in blank executed by the Seller.

[3] A ''participation certificate'' is a certificate issued to the Seller, evidencing that the Seller is the registered owner of a 100% undivided participation ownership interest in certain mortgage loans with attached assignment in blank executed by the Seller.

investments in mortgage note repurchase transactions to 25% of an FCU's net worth with any one counterparty and to 100% of its net worth with all counterparties.[4] The counterparty in a mortgage note repurchase transaction could not have any outstanding debt with a long-term rating lower than A− or its equivalent or a short-term rating lower than A−1 or its equivalent at the time of a repurchase transaction. An FCU would have to use an independent, qualified agent to obtain an assessment of market value when complying with the requirement to receive a daily assessment of the market value of the repurchase securities. The maximum term of a mortgage note repurchase transaction would be limited to 30 days. Additionally, mortgage note repurchase transactions would be conducted using tri-party custodial agreements. Undivided interests in mortgage notes would be required.

The proposed amendment to § 703.14, permissible investments, would operate in conjunction with § 703.13(c), permissible investment activities. The amendment to § 703.14 creates additional requirements for investment repurchase transactions when mortgage notes are the underlying instruments. For instance, an FCU must obtain the daily assessment required under § 703.13(c)(1) from an ''independent qualified agent,'' defined as an agent independent of an investment repurchase counterparty that does not receive a transaction fee from the counterparty and has at least two years experience assessing the value of loans.

Additionally, all the requirements of § 703.13(c) would apply to the amendments to § 703.14. In other words, FCUs investing in mortgage note repurchase transactions must maintain adequate margins that reflect a risk assessment of the mortgage notes and the term of the transactions pursuant to § 703.13(c)(1). Further, under § 703.3, federal credit unions must establish an investment policy that includes the characteristics of investments the FCU may make, a risk management plan, a description of who has investment authority and the extent of that authority, and other investment management information. FCUs must ensure those with investment authority are qualified by education or experience to assess the risk characteristics of investments and investment transactions.

NCUA requests comments on the conditions for FCU participation in the market for mortgage note repurchase transactions. NCUA also requests commenters address the specific questions below:

1. By what means can the party investing in mortgage note repurchase agreements easily identify the underlying loans, and is it necessary to require more than a tri-party custodial arrangement to accomplish this? If so what additional requirements should be identified?

2. What minimum underwriting criteria, if any, should the rule address?

3. What requirements, if any, should the rule address regarding the quality of the mortgage notes and their monitoring?

4. The proposed minimum long-term credit rating for the counterparty is higher than has been previously included in Part 703 for municipal securities. Given that the mortgage note repurchase transactions are typically short term, should the agency consider excluding long-term credit requirements for counterparties in mortgage note repurchase transactions?

By permitting FCUs to invest in mortgage loans as a part of a repurchase transaction, NCUA is not permitting FCUs to purchase first lien mortgage loans to nonmembers. Mortgage note repurchase transactions involve loans granted and serviced by a third party that agrees to repurchase the securities at a set price at the end of a specific term. NCUA continues to believe that permitting FCUs to buy nonmember mortgage notes outright is inconsistent with the purposes of the Act. Additionally, the purchase of nonmember mortgage loans presents a greater credit risk as an investment because mortgage notes do not need to be rated, and NCUA could not set standards to manage the risks of these investments effectively. NCUA believes, however, FCUs can safely manage repurchase transactions. Requirements are presented in the rule to address safety and soundness concerns relating to mortgage note repurchase transactions. NCUA requests comments on the effect permitting investment repurchase transactions using mortgage notes may have on the safety and soundness of FCUs, the feasibility of the proposed standards for risk management, and the ability of FCUs to manage these investments safely.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities, those credit unions with less than ten million dollars in assets. The proposed rule involves the permissibility of certain investment repurchase transactions for FCUs and is grounded in NCUA concerns about the safety and soundness of the transactions and their potential effects on FCUs and the National Credit Union Share Insurance Fund. Accordingly, the Board has determined and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

[4] The proposed 25% concentration limit is similar to the limit governing a national bank's investment in a mortgate note repurchase transaction. A national bank's mortgage note repurchase transaction is treated as a loan and is limited to 15% of capital, unless the bank can demonstrate the mortgage note is readily marketable collateral, in which case an additional extension is permitted, limited to 10% of capital. See 12 U.S.C. 84(a)(2), (c)(4); 12 CFR 32.2(k)(1)(iii), (n), and 32.3. An FCU's lending limit to one member is 10% of shares plus post-closing, undivided earnings. 12 U.S.C. 1757(5)(A)(x); 12 CFR 700.2(j), 701.21(c)(5). The proposed 25% concentration limit is modeled after the limit governing a national bank's investment in asset-backed securities, which is 25% of a bank's capital and surplus. 12 CFR 1.3(f).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 20, 2006.

Mary F. Rupp,

Secretary of the Board.

For the reasons set forth in the preamble, the Board amends 12 CFR part 703 as set forth below:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 is continues to read:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

2. Amend § 703.1 by revising paragraph (b)(2) to read as follows:

§ 703.1 Purpose and scope.

* * * * *

(b) * * *

(2) The purchase of real estate-secured loans pursuant to Section 107(15)(A) of the Act, which is governed by § 701.23 of this chapter, except those real estate-secured loans purchased as a part of an investment repurchase transaction, which is governed by §§ 703.13 and 703.14 of this chapter;

* * * * *

3. Amend § 703.2 by adding the definition of ''independent qualified agent'' alphabetically between the definitions of ''immediate family member'' and ''industry-recognized information provider'' to read as follows:

§ 703.2 Definitions.

* * * * *

Independent qualified agent means an agent independent of an investment repurchase counterparty that does not receive a transaction fee from the counterparty and has at least two years experience assessing the value of loans.

* * * * *

4. Amend § 703.14 by adding new paragraph (h) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(h) *Mortgage note repurchase transactions.* A federal credit union may invest in securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), only as a part of an investment repurchase agreement under § 703.13(c), subject to the following conditions:

(1) The aggregate of the investments with any one counterparty is limited to 25 percent of the credit union's net worth and 100 percent of its net worth with all counterparties;

(2) At the time a federal credit union purchases the securities, the counterparty cannot have debt with a long-term rating lower than A − or its equivalent, or a short-term rating lower than A − 1 or its equivalent;

(3) The federal credit union must obtain a daily assessment of the market value of the securities under § 703.13(c)(1) using an independent qualified agent;

(4) The mortgage note repurchase transaction is limited to a maximum term of 30 days;

(5) All mortgage note repurchase transactions will be conducted under tri-party custodial agreements; and

(6) A federal credit union must obtain an undivided interest in the securities.

[FR Doc. E6–11908 Filed 7–25–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Notice No. 62]

RIN 1513–AB08

Major Food Allergen Labeling for Wines, Distilled Spirits and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; solicitation of comments.

SUMMARY: In this notice, the Alcohol and Tobacco Tax and Trade Bureau proposes the adoption of mandatory labeling standards for major food allergens used in the production of alcohol beverages subject to the labeling requirements of the Federal Alcohol Administration Act. The proposed regulations set forth in this document also provide procedures for petitioning for an exemption from allergen labeling. The proposed regulations parallel the recent amendments to the Federal Food, Drug and Cosmetic Act contained in the Food Allergen Labeling and Consumer Protection Act of 2004. Under the proposed regulations, producers, bottlers, and importers of wines, distilled spirits, and malt beverages must declare the presence of milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as ingredients that contain protein derived from these foods, on a product label unless an exemption applies to the product in question.

DATES: Comments must be received on or before September 25, 2006.

ADDRESSES: You may send comments to any of the following addresses—

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 62, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov.* Federal e-rulemaking portal; follow instructions for submitting comments.

You may view copies of any comments we receive about this notice by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of this notice and any comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290–1460.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, the presence of food allergens in foods has become a matter of public concern. In response, Congress passed the Food Allergen Labeling and Consumer Protection Act of 2004 to require the declaration in labeling of eight major food allergens in plain, common language on the food and beverage products regulated under the Federal Food, Drug and Cosmetic Act. A House of Representatives committee report also noted that the committee expected the Alcohol and Tobacco Tax and Trade Bureau (TTB) to issue regulations on allergen labeling for alcohol beverage products under TTB's existing authority to regulate alcohol beverage labeling, working in cooperation with the Food and Drug Administration (FDA). In addition, TTB had earlier received a petition concerning ingredient and allergen labeling for alcohol beverages.

A. FAA Act

TTB is responsible for the administration of the Federal Alcohol Administration Act, 27 U.S.C. 201 *et seq.*, (FAA Act), which governs, among other things, the labeling of wines containing at least 7 percent alcohol by volume, distilled spirits, and malt beverages in interstate and foreign commerce. These products are generically referred to as ''alcohol beverages'' or ''alcohol beverage products'' throughout this document.

In particular, section 105(e) of the FAA Act (27 U.S.C. 205(e)) gives the Secretary of the Treasury authority to issue regulations regarding the labeling of alcohol beverages to provide the consumer with adequate information concerning the identity and quality of such products, to prevent deception of the consumer, and to prohibit false or misleading statements. Section 105(e) also makes it unlawful for industry members ''to sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity'' with regulations prescribed by the Secretary. Regulations setting forth mandatory labeling information requirements for wine, distilled spirits, and malt beverages are contained, respectively, in parts 4, 5, and 7 of the TTB regulations (27 CFR parts 4, 5, and 7).

Most of the mandatory labeling requirements found in parts 4, 5, and 7 flow directly from the stated purpose of section 105(e) of the FAA Act, that is, to ''provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof * * *, the net contents of the package, and the manufacturer or bottler or importer of the product.'' Currently, the TTB labeling regulations contained in parts 4, 5, and 7 require the following information to appear on alcohol beverage labels: Brand name; product identity (class or type); the name and address of the bottler, packer, or importer; the net contents; and the alcohol content of distilled spirits, certain flavored malt beverage products, and wines over 14 percent alcohol by volume. Labels for wines with 14 percent alcohol by volume or less may contain either an alcohol content statement or the type designation ''table'' wine or ''light'' wine (*see* 27 CFR 4.36(a)). In addition, labels must note the presence of sulfites, FD&C Yellow No. 5, and in the case of malt beverages, aspartame. A health warning statement applicable to all alcohol beverages containing 0.5 percent or more alcohol by volume, is required by the Alcoholic Beverage Labeling Act of 1988, codified at 27 U.S.C. 213–219 and 219a and implemented in the TTB regulations at 27 CFR part 16.

B. Current Health-Risk Ingredient Disclosure on Alcohol Beverage Labels

Our predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), proposed on several occasions to adopt mandatory ingredient disclosure requirements for alcohol beverages. In each case, ATF ultimately decided not to adopt full ingredient labeling requirements. (*See* Notice No. 41, 70 FR 22274, April 29, 2005, for a more complete history of those ingredient labeling regulatory initiatives.)

These rulemaking actions included publication of T.D. ATF–150 (48 FR 45549, October 6, 1983), which rescinded the ingredient disclosure regulations that had been published in T.D. ATF–66 (45 FR 40538, June 13, 1980), but never implemented. T.D. ATF–150 did, however, mandate the disclosure of one ingredient, FD&C Yellow No. 5, on alcohol beverage labels. In the preamble to T.D. ATF–150, ATF stated:

> * * * there is no clear evidence in the record that any other ingredient besides FD&C Yellow No. 5 poses any special health problem. The Department will look at the necessity of mandatory labeling of other ingredients on a case-by-case basis through its own rulemaking initiative, or on the basis of petitions for rulemaking under 5 U.S.C. 553(e) and 27 CFR 71.41(c).

In conformity with that case-by-case review policy, ATF subsequently issued regulations requiring the disclosure on labels of sulfites in alcohol beverages (T.D. ATF–236, 51 FR 34706, September 30, 1986) because it was determined that the presence of undeclared sulfites in alcohol beverages posed a recognized health problem to sulfite-sensitive individuals.

In 1987, ATF entered into a Memorandum of Understanding (MOU) with FDA. See 52 FR 45502 (November 30, 1987). In the MOU, ATF made a commitment to consult with FDA regarding the necessity of requiring labeling statements for ingredients in alcohol beverages that pose a recognized public health problem and to initiate rulemaking proceedings to require disclosure of such ingredients where appropriate. The pertinent portion of the MOU states:

> ATF will be responsible for the promulgation and enforcement of regulations with respect to the labeling of distilled spirits, wine, and malt beverages pursuant to the FAA Act. When FDA has determined that the presence of an ingredient in food products, including alcoholic beverages, poses a recognized public health problem, and that the ingredient or substance must be identified on a food product label, ATF will initiate rulemaking proceedings to promulgate labeling regulations for alcoholic beverages consistent with ATF's health policy with respect to alcoholic beverages. ATF and FDA will consult on a regular basis concerning the propriety of promulgating regulations concerning the labeling of other ingredients and substances for alcoholic beverages.

Pursuant to the policies set forth in the MOU, ATF subsequently issued regulations requiring a declaration on labels when aspartame is used in the production of malt beverages (T.D. ATF–347, 58 FR 44131, August 19, 1993). It should be noted that FD&C Yellow No. 5, sulfites, and aspartame are not considered food allergens because they do not cause IgE (Immunoglobulin E)-mediated responses, but they may cause health problems in certain individuals.

C. Petition From Dr. Christine Rogers

On April 10, 2004, Christine A. Rogers, PhD., a senior research scientist in the Exposure, Epidemiology and Risk Program at the Harvard School of Public Health, petitioned TTB to change the regulations to require labeling of all ingredients and substances used in the production of alcohol beverages.

Dr. Rogers stated that she is allergic to egg protein and that she has had allergic reactions to egg in wine. For that reason, she expressed particular concern with the labeling of allergenic substances in alcohol beverage products. Dr. Rogers noted that allergic symptoms in consumers can include tingling or itching in the mouth, salivation, swelling of tissues, hives, abdominal cramps, vomiting, diarrhea, rapid loss of blood pressure, and death. She explained that allergic reactions to food vary based upon an individual's sensitivity to a particular allergen. The most sensitive allergic individuals are required to carry epinephrine with them for emergency use in the case of exposure to an offending allergen.

D. Enactment of FALCPA

On August 2, 2004, the President signed into law the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (see title II of Pub. L. 108–282, 118 Stat. 905). FALCPA amends portions of the Federal Food, Drug and Cosmetic Act (FD&C Act, 21 U.S.C. 301 *et seq.*) to require a food that is, or contains an ingredient that bears or contains, a major food allergen to list

this information on its label using plain, common language. For example, instead of merely listing ''semolina,'' the label must also list ''wheat'', and instead of merely listing ''sodium casein,'' the label must also list ''milk.'' The FALCPA amendments define ''major food allergens'' as milk, egg, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as most ingredients containing proteins derived from these foods.

The effect of the FALCPA amendments is to add additional allergen information to the food label. The FALCPA amendments provide two ways for a manufacturer to disclose major food allergens on the label:

- The label can show the name of the food source from which the major food allergen is derived within parentheses in the ingredient list, for example, ''Ingredients: Water, wheat, whey (milk), albumen (eggs), and peanuts''; or
- The label can list the name of the food source from which the allergen is derived in summary form after, or adjacent to, an ingredient list, for example: ''Ingredients: Water, sugar, whey, and albumen. Contains: Milk and egg.''

Section 202 of FALCPA contains a number of congressional findings regarding the health risk posed by allergens. Congress found that approximately 2 percent of adults and 5 percent of infants and young children in the United States suffer from food allergies. Each year, roughly 30,000 individuals require emergency room treatment and 150 individuals die because of allergic reactions to food.

Congress found that the eight foods or food groups identified in FALCPA account for 90 percent of all food allergies. Since there is currently no cure for food allergies, a food-allergic consumer must avoid the food to which he or she is allergic. Congress further found that many consumers may not realize that a labeled food ingredient is derived from, or contains, a major food allergen. The FALCPA amendments fill this gap by ensuring that the food source from which a major food allergen is derived is clearly labeled in plain language.

FALCPA amends food and beverage labeling requirements in the FD&C Act. Pursuant to authority delegated to it by the Secretary of Health and Human Services, FDA is responsible for promoting and protecting the public health through enforcement of the FD&C Act and for ensuring that the nation's food supply is properly labeled. FDA's responsibility for proper labeling of food applies to most domestic and imported food and beverage products. However, it is TTB's responsibility to issue regulations with respect to the labeling of wine, distilled spirits, and malt beverages under the FAA Act. See the 1987 ATF–FDA MOU and *Brown-Forman Distillers Corp.* v. *Mathews,* 435 F. Supp. 5 (W.D. Ky. 1976).

The allergen labeling requirements in FALCPA apply to any food, as that term is defined in section 201(f) of the FD&C Act, other than raw agricultural commodities. As reflected in the 1987 MOU with FDA, TTB is responsible for the promulgation and enforcement of regulations with respect to the labeling of distilled spirits, wines, and malt beverages pursuant to the FAA Act. The House of Representatives Committee on Energy and Commerce called for TTB to work with FDA to promulgate appropriate allergen labeling regulations for alcohol beverages labeled under the FAA Act and TTB regulations, consistent with the 1987 MOU with FDA. The committee report accompanying FALCPA stated:

> The Committee expects, consistent with the November 30, 1987 Memorandum of Understanding, that the Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of Treasury will pursuant to the Federal Alcohol Administration Act determine how, as appropriate, to apply allergen labeling of beverage alcohol products and the labeling requirements for those products. The Committee expects that the TTB and the FDA will work together in promulgation of allergen regulations, with respect to those products. (H.R. Rep. No. 608, 108th Cong., 2d Sess., at 3 (2004); hereafter ''House committee report.'')

Congress thus recognized TTB's longstanding policy of consulting with FDA in determining what ingredients in alcohol beverages should be disclosed on labels, and called on TTB to work with FDA to promulgate appropriate allergen labeling regulations for alcohol beverages. The clear intent reflected in the House committee report is that TTB issue regulations similar to the FALCPA standards, pursuant to the policies expressed in the MOU with FDA and the authority of the FAA Act.

Under the MOU, the two agencies have over the years collaborated on many food safety issues and continue to exchange a wide variety of information, including relevant consumer complaints concerning the adulteration of alcohol beverages. The agencies consult regularly concerning the use and labeling of potentially harmful ingredients and substances in alcohol beverages. The laboratories of FDA and TTB regularly exchange information concerning methodologies and techniques for testing alcohol beverages.

Consistent with the expectations expressed in the House committee report, TTB consulted with FDA prior to issuing this proposed rule. However, it should be emphasized that while we have proposed this rule in response to, among other things, the expectations set out in the legislative history of FALCPA, TTB's legal authority to issue regulations on allergen labeling of alcohol beverages is based on the FAA Act.

FDA is the agency authorized to implement FALCPA with regard to foods. The House committee has set forth its expectation that TTB will implement allergen labeling for alcohol beverages, as appropriate, and will work with FDA in this effort. While TTB has generally strived to be consistent with FDA's interpretation of FALCPA, the implementation of regulations regarding major food allergen labeling for alcohol beverages under the FAA Act will necessarily differ in some respects from the requirements of FALCPA.

Accordingly, this proposed rule reflects TTB's interpretation of its authority under the FAA Act, as guided by the language in the committee report. The proposed regulations do not necessarily represent the views of FDA with regard to allergen labeling or the requirements of FALCPA.

II. Rulemaking History and Discussion of Comments

On April 29, 2005, TTB published in the **Federal Register** (70 FR 22274) Notice No. 41, an advance notice of proposed rulemaking (the ANPRM). The notice was entitled ''Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Request for Public Comment.'' We provided a 60-day period for comments from consumers, interest groups, trade associations, industry, and other members of the public on several alcohol beverage labeling issues, including calorie and carbohydrate claims on labels, ''serving facts'' labeling, ''alcohol facts'' labeling, ingredient labeling, allergen labeling, and composite label approaches.

In the ANPRM, we invited comments on specific issues related to allergen labeling, including: Whether our regulations should require allergen labeling to be part of or adjacent to a list of ingredients, similar to the FALCPA requirements; whether an allergen must be labeled in an allergen statement even when the allergen name already appears in the product name; how processing or fining agents should be labeled; whether we should consider threshold levels in allergen labeling; what costs industry may incur from new labeling requirements; and how consumers might benefit from allergen labeling. We also invited submission of any other

relevant information on the subject of allergen labeling.

During the 60-day comment period, we received several requests from alcohol beverage industry representatives and organizations to extend the comment period for an additional 60 to 90 days beyond the original June 28, 2005, closing date. In support of the extension requests, industry members noted that some of the questions posed in the notice were broad and far reaching from a policy standpoint while others were very technical, requiring research and coordination within the affected industries. In response to these requests, we extended the comment period for an additional 90 days. See Notice No. 48, 70 FR 36359, June 23, 2005. The extended comment period for the ANRPM closed on September 26, 2005.

We received more than 18,000 comments in response to the ANPRM, approximately 50 of which specifically addressed the subject of allergen labeling. Based on the clearly expressed congressional interest in allergen labeling, the particular risks that allergens pose to human health, FALCPA's effective date of January 1, 2006, and the relatively small number of comments submitted on allergen issues, we have decided to separate the allergen labeling rulemaking from the other issues discussed in the ANPRM. We will review the comments submitted on the other ANPRM issues, with a view to determining whether to proceed with future rulemaking action in those areas, separately from our action on allergen labeling. Accordingly, this document only addresses allergen issues, including the approximately 50 comments on allergens submitted in response to the ANPRM.

We note that of the comments we received on allergens, the vast majority favored mandatory labeling of the major food allergens. Industry members as well as consumer and public health advocates commented in support of major food allergen labeling.

The major trade associations representing the alcohol beverage industry expressed their support for mandatory labeling of major food allergens. The Beer Institute, the Brewers Association, the Distilled Spirits Council of the United States (DISCUS), the National Association of Beverage Importers (NABI), the Presidents' Forum, Spirits Canada, Wine America, and the Wine Institute submitted a consolidated comment (hereafter referred to as ''the trade associations' consolidated comment''), in which they stated that they fully supported the purpose and objectives of FALCPA and stood ready to work with TTB in the implementation of allergen labeling. In a separate comment, the Brewers Association stated that ''mandatory rules regarding the disclosure of major allergens are necessary because certain types of allergens, or at least when present above scientifically determined harmful levels, can pose a significant threat to consumer health.''

Consumer and public health interest groups also submitted comments in support of mandatory labeling of major food allergens. The National Consumers League (NCL) submitted a comment supported by several groups, including the American Public Health Association and the American School Health Association. This comment urged TTB to adopt a uniform, mandatory labeling regime for all alcohol beverages that includes, among other things, an ingredient declaration listing each ingredient by its common or usual name and identifying any major food allergens present in the product. The Center for Science in the Public Interest (CSPI), a nonprofit health education and advocacy organization, submitted a comment in support of the adoption of a mandatory allergen disclosure policy for alcohol beverages consistent with the FALCPA requirements for food and the FDA policies implementing FALCPA.

We also received comments in support of allergen labeling from the American Medical Association, the American Academy of Allergy, Asthma and Immunology, the American College of Allergy, Asthma and Immunology; the Food Allergy and Anaphylaxis Network; the American Council on Science and Health; the American Society of Addiction Medicine; the American Dietetic Association; the American Nurses Association; Shape Up America; and several other public health organizations and health professionals.

Only a few comments questioned the usefulness of requiring allergen information on alcohol beverage labels. Furthermore, there were some disagreements among the commenters about the allergen labeling implementation issues that we raised in the ANPRM.

The comments we received in response to Notice No. 41 on allergen issues are discussed in more detail below.

A. Comments on Industry Costs Versus Consumer Benefits

In the ANPRM we asked for comments on the issue of what costs mandatory allergen labeling would impose on the industry and, ultimately, the consumer. We also solicited comments on how consumers might benefit from allergen labeling.

Costs

Only a few comments specifically addressed the issue of costs and benefits. Some commenters assumed that any costs associated with mandatory labeling arise from the enactment of FALCPA and the expression of congressional intent regarding allergen labeling of alcohol beverages and that the cost issue was therefore not open for discussion. For example, the trade associations' consolidated comment responded to our solicitation of comments on the cost issue by stating that ''[m]andatory allergen labeling requirements pursuant to the Food Allergen Labeling and Consumer Protection Act were signed into law by the President in August 2004.'' The consolidated comment did not include any estimates of the costs associated with the relabeling of alcohol beverages or with the potential reformulation of such products to avoid allergen labeling.

A few commenters raised general concerns about the costs of allergen labeling, based on their assumption that small wineries would be required to conduct expensive laboratory analyses to determine allergen content. For example, Grove Winery commented in opposition to any additional mandatory labeling requirements, including allergen labeling. The winery stated that the ''laboratory work required for each lot would be a prohibitive cost for small lots and for small family wineries, making it even more difficult to compete with the large wine conglomerates and low cost imports.'' We received three other comments raising similar concerns about the costs of testing wines for allergens, and the potential impact of such costs on small wineries.

On the other hand, Dr. Rogers suggested that the least costly approach for the manufacturer, and the safest for the allergic consumer, would be for the producer to list all allergens used in production. She suggested that this approach would preclude the need for testing, and the disclosure of the presence of an allergen would allow the allergic consumer to make an informed decision.

CSPI and one individual commenter referenced a past cost assessment done by FDA that evaluated relabeling costs for a final rule adding trans fatty acid labeling requirements to foods (see 68 FR 41434, 41477, July 11, 2003). In the study, FDA estimated that the average

low relabeling cost per ''stock keeping unit'' (SKU) would be about $1,100 and the average high relabeling cost per SKU would be $2,600. An SKU is a specific product sold in a specific size.

CSPI and the individual commenter applied these FDA relabeling cost estimates to the alcohol beverage labeling changes aired for comment in the ANPRM. Applying the estimates to a winery selling 5 types of wine, they computed the average total cost of relabeling to be between $5,500 and $13,000 for the winery. They then applied the estimates to a particular brand of wine, stating that if the winery produced 320,000 9-liter cases (3,840,000 750 ml bottles), ''[e]ach of those bottles would incur a cost of $0.000677—less than 7/100ths of a penny—if the cost were $2,600 per sku.''

The Brewers Association did a survey of its members to find out what costs brewers might incur from the new labeling proposals at issue in the ANPRM. The comment stated that the aggregate average costs for respondents by size ranged from $35,530 per brewer for smaller brewers to $1.5 million per brewer for larger brewers. However, it is noteworthy that these estimates were used to support the Brewers Association's opposition to various proposals for new mandatory labeling requirements in the advance notice, including ingredient labeling, nutritional labeling, and ''Alcohol Facts'' panels. Moreover, while the Brewers Association opposed most of the new mandatory labeling requirements aired for comment in the ANPRM and requested exemptions for small brewers from most new labeling requirements, the association's comment supported mandatory allergen labeling, where allergens are present at levels proven to be harmful to certain consumers, and did not request that small brewers be exempted from mandatory allergen labeling.

One commenter who identified himself as a consumer stated that the costs of mandatory labeling would far outweigh any consumer benefits. He suggested that TTB set guidelines for voluntary allergen labeling, rather than mandatory requirements.

Consumer Benefits

We received several comments that addressed the potential benefits to consumers if TTB required mandatory allergen labeling on alcohol beverages. For example, in her comment, Dr. Rogers described the costs associated with the health risks that the major food allergens pose. She stated, ''Currently, a substantial cost is incurred by the allergic public who suffer 4–6 hours of debilitating illness as a result of allergic reactions from hidden or unknown ingredients. There are also economic costs as a result of medications and emergency room visits associated with these incidents.'' Many other commenters agreed that allergen labeling requirements provide distinct benefits to consumers, including providing critical information for consumers with potentially deadly food allergies.

Several commenters noted that mandatory labeling requirements for major food allergens allow consumers to make informed decisions. Dr. Rogers, for example, stated:

> Currently, besides abstinence, the only way to determine if allergens are present in alcoholic beverages is to either contact the brewer/distiller directly for each bottle consumed, or to engage in the more usual high-risk behavior of ''trial and error.'' The latter approach is complicated by the fact that the onset of an allergic reaction can be similar to or be obscured by the effects of alcohol ([for example], generalized flushing, lightheadedness).

A consumer explained that some beverages have caused her to break out in a mild rash, and she feels that knowing what ingredients are present in these beverages would help her know what drinks to avoid. A Canadian consumer commented that she has an anaphylactic allergy to eggs, and she stated that she considers it very dangerous to drink alcohol beverages at all due to the fact that no allergen information is currently identified on alcohol beverages.

A comment from the American Academy of Allergy, Asthma and Immunology, the American College of Allergy, Asthma and Immunology, and the Food Allergy and Anaphylaxis Network explained the risks of food allergy anaphylaxis as follows:

> As you may know, food allergy is an increasing public health and food safety issue. A fish and shellfish prevalence study showed approximately 6.6 million Americans reporting an allergy to these foods. Combined with a previous study of the prevalence of peanut and tree nut allergy, we now estimate that approximately 11.4 million Americans, or 4% of the population, have a food allergy. This represents a significant increase from estimates just 10 years ago, when scientists believed that food allergy affected less than 1% of the population.
>
> Food-allergic reactions continue to be the leading cause of anaphylaxis (a severe, potentially life-threatening allergic reaction) outside the hospital setting, accounting for an estimated 30,000 emergency room visits, 2,000 hospitalizations, and 150–200 deaths each year in the U.S. alone. (Footnotes omitted.)

This comment also stated that there was currently one research study in the medical literature showing an anaphylactic reaction caused by a major food allergen in an alcohol beverage (wheat beer), and that there were anecdotal reports of reactions from other allergens (such as eggs) in alcohol beverages.

TTB Response

The majority of the commenters who addressed this issue agreed with the congressional findings on the importance of providing consumers with clear information about the presence of major food allergens in foods and beverages. We agree with those commenters who stated that mandatory labeling of the major food allergens provides critical information for individuals with potentially deadly food allergies, allowing those consumers to make informed decisions.

In response to the concerns expressed by some wineries that they would be required to conduct extensive and expensive laboratory analysis to determine allergen content, we note that mandatory allergen labeling does not necessarily require producers to conduct any chemical analyses of their products. Producers are aware of and usually keep extensive records of what materials, including major food allergens, go into the production of an alcohol beverage. The producers therefore would already know when the presence of a major food allergen ought to be declared. Thus, the adoption of mandatory labeling requirements for major food allergens in alcohol beverages would not require expensive laboratory tests of those alcohol beverages.

Because small producers would not have to engage in laboratory testing of their products in order to comply with mandatory allergen labeling requirements, we do not believe that small businesses would be adversely impacted by such requirements. In any event, we believe that exempting small producers from allergen labeling requirements would be inconsistent with our statutory mandate under the FAA Act to protect the consumer and ensure that alcohol beverage labels provide the consumer with adequate information about the identity of the product. Furthermore, the House committee report that directed TTB to work with FDA to implement allergen labeling for alcohol beverages stated that ''[s]ince there is currently no cure for food allergies, consumers need to be empowered to know whether or not food allergies are present in the food they consume.'' This clear congressional

concern would not be addressed by a rule that allowed for exemptions for small producers.

In this notice, we are soliciting comments directed specifically to the costs and benefits of mandatory labeling of major food allergens and on ways to reduce the costs to industry, in particular small businesses. We note that the regulatory texts in this proposed rule do not specifically require laboratory tests. Nevertheless, any business that believes it would be adversely impacted by the proposed rule should provide us with specific cost figures. We also are soliciting comments on any alternative approach that would meet the intent of FALCPA while minimizing the costs imposed on industry members. We are also seeking comments on how much time industry requires to comply with such labeling requirements. These issues will be carefully considered in the formulation of a final rule on allergen labeling.

B. Comments on Requiring a Full List of Ingredients

In the ANPRM we asked whether TTB should require that major food allergen labeling on alcohol beverage containers be part of, or adjacent to, a larger list of all ingredients found in the product, similar to the requirements of the FD&C Act as amended by FALCPA.

Several commenters expressed support for mandatory ingredient labeling that would include allergenic ingredients. Dr. Rogers, for example, noted that the major food allergens do not account for all allergic reactions, and she suggested that complete ingredient labeling was important for the following reason:

> Although milk, egg, fish, shellfish, tree nuts, peanuts, wheat and soy account for most of the food allergy reactions, there are still a significant number of reactions to other proteins not in this list. Therefore a comprehensive ingredient listing would provide the most useful information to allergic individuals regardless of the particular allergen.

The NCL also supported requiring a full list of ingredients, stating that such a requirement would create labeling consistency between those alcohol beverage products regulated by TTB and wines that are under 7 percent alcohol by volume, the labeling of which is regulated by FDA. The NCL further asserted that Americans with food allergies are accustomed to looking at a product's ingredient declarations to see whether the product contains the allergen they must avoid.

Many industry commenters, on the other hand, suggested that while major food allergen labeling provides important information to a consumer, a full ingredient disclosure has the potential to mislead consumers. For example, the trade associations' consolidated comment stated that a substantial transformation of the raw materials takes place during the fermentation and distillation process in the production of alcohol beverages. The comment asserted that this transformation means that there is little, if any, relationship between the initial ingredients and the contents of the finished product, which undermines the usefulness of ingredient labeling.

TTB Response

As noted above, ATF explored the issue of requiring a full list of ingredients on several occasions in the past and found it to be a very controversial and complex issue. Based on our preliminary review of all comments received in response to the ANPRM, we recognize that the issue of ingredient labeling remains a controversial subject. In contrast, most of the comments we received in response to the issue of allergen labeling, including those of industry members, favored allergen labeling. In view of the controversy and complexity surrounding the complete ingredient labeling issue, we have determined that broader ingredient labeling should not be included with our rulemaking on major food allergen labeling. We are deferring consideration of broader ingredient labeling for a later, additional rulemaking.

C. Comments on Labeling When the Allergen Appears as Part of a Brand Name

In the ANPRM, we posed the following question:

> If the product name appearing on the label of an alcohol beverage container indicates that an allergen is present in the product, is it helpful to the consumer to have the allergen labeled again in a standardized allergen statement elsewhere on the container? To illustrate: if a product is called ''Wheat Beer,'' should it also have a label elsewhere on the container that reads: ''Allergens: wheat''? Why or why not?

We received several comments on this issue. Many commenters stated that it is unnecessary to label a product with a second allergen label if the allergen is listed elsewhere on the label, for example, if it is included in the brand name or product name. The European Spirits Organisation argued that we should be consistent with the European Union approach to this problem, where a separate allergen labeling declaration is not required if the allergen present in the final product is identified in the product name or elsewhere on the label. They suggested that it should be sufficient for the allergen to appear in the product name.

On the other hand, the Ketel One Vodka company commented that regardless of whether the product name indicates that an allergen is present, the label should properly disclose any major food allergen in a standardized form. Dr. Rogers also suggested that one section of the labeling should be the reliable source of ingredient and allergen information.

TTB Response

We think that some measure of standardization is necessary, and therefore it would be inappropriate to allow an allergen to be listed only in an alcohol beverage product's brand or product name. We believe it is reasonable to assume that consumers would grow accustomed to seeing allergen information in one format on alcohol beverage labels and would look for that format.

Moreover, we think that a consumer could be misled if a brand name contains the allergen name, but does not also list the allergen in the same standard format as is required for an alcohol beverage that does not mention the allergen in its brand name. We also can foresee a situation where the brand name of a product includes a major food allergen, but the major food allergen is not present in the final product. To illustrate, consider two hypothetical products:

1. A beer made by Wheat Creek Brewery called ''Wheat Creek Lager,'' which does not contain wheat; and
2. A wheat beer called ''Creek's Wheat Beer,'' which does contain wheat protein.

While ''wheat beer'' is in fact brewed in part from wheat, the use of the term ''wheat'' in the above examples does not necessarily signify the presence of wheat in the product. Therefore, if we adopted a rule that did not require disclosure of allergens where the allergen was included in the brand name of the product, consumers could not be sure when the brand name is in fact imparting information about the presence of an allergen. The consumer should not have to guess in the above situations whether the product does in fact contain wheat or protein derived from wheat. Instead, consumers should be able to look at the label and determine right away whether the product contains any of the major food allergens, and if so, which ones.

To avoid any potential confusion as to what allergen proteins the product may or may not contain, we believe that the

best policy is to require disclosure of major food allergens in one standard format, whether or not the brand name or any other part of a product label includes the name of the allergen.

D. Comments Regarding the Labeling of Processing and Fining Agents

In the ANPRM, we posed a number of questions regarding the labeling of processing or fining aids containing allergens.

In response to these questions, a few commenters expressed opposition to required labeling of allergenic processing or fining agents, arguing that there is a lack of clinical evidence that the trace amounts of allergenic fining agents in wine are harmful. For example, Kendall-Jackson Wine Estates asserted that the fining agents used in wine (such as egg whites and isinglass) are substantially altered during the production process. This comment stated that the tertiary structure of the molecule is changed and precipitated out, making it virtually impossible for an adverse reaction to occur.

An individual who commented as both a parent and a wine chemist stated that he agreed with listing allergens that are added to the wine as part of the formula, but stated that processing aids, such as sodium casein, should not be required to be listed unless evidence establishes that they remain in the wine. He also noted that wine makers use different processing aids every year depending on the wines, and asked whether such wineries would be able to list the processing aid on a label as, for example, ''sodium casein may have been used in clarifying this wine.''

In contrast, many other commenters suggested that it was important to label fining and processing agents. For example, CSPI commented that if not subject to an exemption, consumers will expect fining, processing, and filtering agents to be labeled in the same way as any other major food allergen is labeled under FALCPA. CSPI further noted that under exemption procedures in FALCPA, the burden is on the manufacturer to present scientific evidence that justifies a labeling exemption for a major food allergen that is present in very small amounts. CSPI suggested that we should adopt the same exemption procedures in our regulations and that, unless such fining or processing agents are officially exempted, labeling of these agents should be required.

Dr. Elizabeth TePas, a medical researcher at Massachusetts General Hospital, also stressed the importance of the labeling of fining and processing agents. She stated, ''While most food allergic individuals are not going to react to the minute amounts of allergen found in some alcoholic beverages, those who are extremely sensitive can have life-threatening reactions.'' She suggested that until thresholds are scientifically established and affordable and reliable testing is available, both allergens used as primary ingredients and allergens used as fining and processing agents should be disclosed on the label.

Several other commenters also supported the assertion that individuals can possibly have an adverse reaction to mere traces of an allergen. For example, a comment from the American Academy of Allergy, Asthma & Immunology, the American College of Allergy, Asthma & Immunology, and the Food Allergy & Anaphylaxis Network stated that ingestion of even small amounts of an allergen can elicit adverse reactions.

While a few industry members commented that fining and processing agents are not present in finished products, other industry commenters acknowledged that wine treated with fining and processing agents may contain trace amounts of those fining agents in the final product. For example, the Winemakers Federation of Australia advised that most processing aids, if used and removed according to good manufacturing practice, will leave negligible residual in the final product. This comment also stated that in Australia, processing aids must be labeled unless they cannot be detected in the final product. The California Association of Winegrape Growers also noted in its comment that wine may contain trace amounts of some fining and filtering aids that were used in production, although the comment opposed a requirement to label such trace amounts in the absence of threshold level guidance from FDA.

Dr. Rogers and Dr. TePas both supported the labeling of fining agents. However, they both commented that it would be helpful for consumers of alcohol beverages to have a way to differentiate between those allergens used as primary ingredients (and therefore present at higher concentrations in the finished product) and those allergens used as fining or processing aids (and therefore present at lower concentrations in the finished product).

However, Dr. Rogers, the European Spirits Organisation, and the trade associations' consolidated comment noted that it is important for consumers to trust that the allergen labeling information on labels is reliable. Dr. Rogers, for example, stated, ''An indication that a particular beverage 'may contain egg protein' potentially complicates the issue. It leaves the question open as to whether the allergen is or is not in the beverage.'' She further indicated that such statements may be ignored by consumers based upon prior experience consuming the food product in question without incident. The trade associations' consolidated comment similarly stated: ''Consumers need to trust that the allergen labeling information is reliable and not be subjected to precautionary statements where the statement will be ignored based upon, for example, prior experience consuming the food product in question.''

TTB Response

FALCPA amends the FD&C Act to require that, notwithstanding any other provision of law, a flavoring, coloring, or incidental additive that is or bears or contains a major food allergen must conform to FALCPA's labeling requirements. See 21 U.S.C. 343(w)(4). The FDA regulations define the term ''incidental additive'' to include, among other things, processing aids. See 21 CFR 101.100(a)(3). Accordingly, the proposed rule treats major food allergens used as fining or processing agents in the same way as any other major food allergen used in the production of the alcohol beverage.

In response to one commenter's assertion that fining agents are substantially altered during the production process, making it virtually impossible for an adverse reaction to occur, we have seen no scientific or clinical evidence that supports the assertion that an adverse reaction is ''virtually impossible.'' We welcome the submission of any such evidence as part of this rulemaking.

In response to the comments on different labeling for fining and processing aids, we are proposing that fining and processing aids be labeled in the same way as any other major food allergens used in the production of an alcohol beverage. However, we are specifically soliciting comments on whether fining and processing aids should be labeled with a different statement, for example, ''processed with'' instead of ''contains.''

One commenter asked whether TTB would allow a winery to use a ''may contain'' label for processing aids, given the fact that a winery may use different processing aids every year for different wines. We believe using a ''may contain'' statement for fining or processing aids that were intentionally added to a product would be unclear and misleading. Instead, the label should clearly indicate what processing

aids containing major food allergens were actually used in production of the alcohol beverage. It is the producer's obligation to know what processing aids were used for particular products.

E. Comments Regarding the Setting of Thresholds for Each Major Food Allergen

In the ANPRM, we asked several questions regarding the setting of threshold levels for each of the major food allergens.

Several industry commenters suggested that additional study is required to establish threshold levels before TTB requires the labeling of major food allergens, particularly allergens used as fining agents or other processing aids. For example, Ketel One Vodka argued that additional study is required to ascertain how the various levels of major food allergens may affect alcohol beverage consumers, and only once threshold levels are established should producers of alcohol beverages be required to disclose the presence of major food allergens. The California Association of Winegrape Growers also commented that it would be premature for TTB to take any action on allergen labeling until FDA establishes thresholds or provides guidance for the labeling of processing aids based on scientifically meaningful data.

CSPI, however, noted in its comment that in enacting FALCPA, Congress recognized that thresholds for the eight major food allergens had not yet been established by the scientific community. CSPI noted that Congress also rejected an automatic exemption for allergens that may be present in very small amounts. See House committee report at 17 and the Senate Committee on Health, Education, Labor, and Pensions report on FALCPA, S. Rep. No. 226, 108th Cong., 2d Sess., at 7 (2004) (hereafter the Senate committee report).

Two medical researchers also noted the lack of threshold data for the major food allergens. Dr. TePas explained in her comments that ''while there is some data available on the lowest observed adverse effect level (LOAEL) for the major food allergens, data on non-observed adverse effect levels (NOAEL) is scant to absent.'' Dr. Rogers also noted that no scientific consensus on ''safe'' threshold levels currently exists. Her comment suggested that it is not possible to define a minimum threshold that would assure the most sensitive individuals that a reaction would not occur.

Additionally, Dr. TePas suggested that alcohol may lower the threshold for having a reaction when an allergic individual is exposed to an allergen to which they are sensitized, which could impact the NOAEL and LOAEL. Dr. Rogers also stated that some components of alcohol beverages can heighten the allergic response.

TTB Response

FALCPA amends the FD&C Act to require that, notwithstanding any other provision of law, all flavoring, coloring, or incidental additives that bear or contain a major food allergen must be labeled. See 21 U.S.C. 343(w)(4), as amended. The FALCPA amendments, which took effect for foods labeled on or after January 1, 2006, require allergen labeling for foods regulated by FDA without the establishment of any threshold levels for labeling. Furthermore, pursuant to our authority under the FAA Act to ensure that labels provide consumers with adequate information about the identity and quality of alcohol beverage products, the proposed regulations provide that all major food allergens and proteins derived from the major food allergens used in production must be declared on the beverage label, unless the product or class of products is covered by an approved petition for exemption. Accordingly, TTB is not proposing to set thresholds in this notice of proposed rulemaking.

TTB believes that this position will ensure that consumers have adequate information about the potential presence of even trace amounts of major food allergens in alcohol beverage products. As more accurate scientific data become available in the future, we may revisit the threshold issue as appropriate.

F. Comments on Harmonization With Foreign Government Requirements and With Other Federal Agency Requirements

In addition to the specific questions on allergen labeling in the ANPRM, we asked broad questions related to all labeling changes at issue. One of those questions was whether TTB should harmonize its labeling requirements with those of other major producing nations such as the Member States of the European Union (EU), Australia, and Canada, and with the regulatory schemes of other Federal agencies such as FDA. We also asked how such harmonization would be best achieved.

In response to this question, most commenters who addressed this issue, including industry members and consumer advocates, suggested that we should be consistent with FDA on allergen labeling requirements and decisions related to those requirements.

The trade associations' consolidated comment urged us to work in tandem with FDA to implement allergen labeling requirements for alcohol beverages in a manner that meets the objectives of Congress. The consolidated comment also encouraged TTB to pay ''due regard to the actions taken by the [EU] regarding what products do or do not require labeling under the EU Allergen Directive (2003/89/EC).''

On November 25, 2003, the European Commission amended the rules regarding labeling of foodstuffs (including alcohol beverages) to require the mandatory labeling of specified food allergens. The allergens subject to this directive are cereals containing gluten, Crustacean shellfish, eggs, fish, peanuts, soybeans, milk, tree nuts, celery, mustard, sesame seeds, and sulphites at concentrations of more than 10 mg/kg. See Directive 2003/89/EC, amending Directive 2000/13/EC.

In the amendments, the Commission provided an avenue for provisional exclusion of particular ingredients and substances derived from allergens to allow manufacturers or their associations to conduct scientific studies to establish that those ingredients or products are not likely, under specific circumstances, to trigger adverse reactions. The Commission, after receiving notice of several scientific studies and after consultation with the European Food Safety Authority, provisionally excluded eight uses of major food allergens in alcohol beverages until November 25, 2007. See Commission Directive 2005/26/EC. These eight uses are:

1. Distillates made from cereals containing gluten;
2. Distillates made from whey (milk);
3. Distillates made from nuts;
4. Lysozyme (egg) used in wine;
5. Albumen (egg white) used as a fining agent in wine and cider;
6. Fish gelatin or Isinglass used as a fining agent in beer, cider, or wine;
7. Milk (casein) products used as fining agents in cider and wines; and
8. Nuts used as flavor in spirits.

In their consolidated comment, the major U.S. alcohol beverage industry trade associations urged TTB to ''follow the approach taken by the EU that excludes categories of products that are produced and/or processed in a similar manner, *i.e.* the exclusions from the allergen labeling requirement are linked to the specific methods of manufacture and/or uses identified in the documentation supporting the exclusions.''

TTB Response

The proposed rule is generally consistent with the requirements of FALCPA, although, as noted in this document, there are certain areas in which we have proposed to provide for different rules applicable to the labeling of major food allergens used in the production of alcohol beverages. TTB is not proposing a provisional exclusion for any ingredients or substances at this time. We do, however, agree that any exemptions from allergen labeling should apply to categories of products that are produced in an identical manner, and the proposed regulations so provide.

III. Proposed Regulatory Changes

After careful consideration of the comments received on allergen issues in response to the ANPRM, TTB has determined that it should propose rules for the mandatory labeling of major food allergens used in the production of alcohol beverages. Consistent with the guidance expressed in the House committee report and with our statutory mandate under the FAA Act to promulgate regulations ensuring that consumers receive adequate information about the identity and quality of alcohol beverages, we believe that alcohol beverage labels should provide consumers with sufficient information about the use of major food allergens in the production of alcohol beverages so that allergic consumers may make an informed decision as to whether consumption of a particular beverage may pose a risk of an allergic reaction.

The proposed regulatory changes set forth in this document would amend parts 4, 5, and 7 of the TTB regulations to set forth requirements for mandatory labeling of major food allergens. These changes include the addition of a new paragraph (d) in § 4.32, a new paragraph (b)(6) in § 5.32, and a new paragraph (b)(5) in § 7.22. These sections list mandatory label information for alcohol beverage products, and the added texts in each case direct the reader to a new section added to part 4, 5, or 7. These new sections, §§ 4.32a, 5.32a, and 7.22a, set forth specific, detailed requirements for major food allergen labeling of wines, distilled spirits, and malt beverages, respectively. Finally, we propose to add three new sections, §§ 4.32b, 5.32b, and 7.22b, to set forth procedures for the submission and approval of petitions for exemption from the new major food allergen labeling requirements. A detailed discussion of the specific proposed regulatory amendments follows.

A. Labeling of Major Food Allergens

1. Definitions

Consistent with the FALCPA amendments, the proposed regulations provide that when allergen labeling is required on an alcohol beverage product, the product must be labeled ''Contains:'' followed by the name of the food source from which each major food allergen is derived, as set forth in the definition of ''major food allergen.''

The definition of the term ''major food allergen'' is consistent with the statutory definition in FALCPA. The proposed regulations define the term ''major food allergen'' as any of the following: ''Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans.'' The term as defined also includes any food ingredient that contains protein derived from one of these eight foods or food groups, subject to certain exceptions explained below.

It should be noted that, consistent with guidance provided by FDA to the food industry, the proposed regulations allow the terms ''soybean,'' ''soy,'' and ''soya'' as synonyms for the term ''soybeans,'' as used in the statute. Furthermore, also consistent with FDA guidance, the singular term ''peanut'' may be substituted for the plural term ''peanuts,'' and singular terms (for example, almond, pecan, or walnut) may be used in place of plural terms to describe the different types of tree nuts.

2. Labeling of Fish Species

FALCPA provides that in the case of tree nuts, the label must list the common name of the specific type of nut (for example, almonds, pecans, or walnuts). In the case of Crustacean shellfish, the label must list the name of the species of shellfish (for example, crab, lobster, or shrimp). Finally, in the case of fish, the FALCPA amendments provide that the name of the species of fish (for example, bass, flounder, or cod) must appear on the label.

The proposed regulations are consistent with the FALCPA amendments with respect to the labeling of tree nuts and Crustacean shellfish. However, for the reasons explained below, the proposed regulations set forth in this document would not require labeling of the specific fish species. The proposed regulations would instead require simply listing ''fish'' when any type of finfish protein is used in the production of an alcohol beverage.

Isinglass and fish gelatin are often used to clarify wines and beers. Isinglass is a substance obtained from the swim bladders of sturgeon and other fish. Fish gelatin is obtained from the skin of a fish. Fish gelatin most often is made from cod skins but can be made from any species of fish.

Vintners and brewers, when purchasing isinglass or fish gelatin from a manufacturer for fining purposes, often do not know, and have no way of easily finding out, which particular species of fish was used to make the product. Moreover, it may be difficult for industry members to determine by chemical analysis which particular fish species was the source of the isinglass or fish gelatin.

On August 1, 2005, the Flavor and Extract Manufacturers Association of the United States (FEMA) submitted a request to FDA for guidance concerning the labeling of fish species under the FALCPA amendments. In its request for guidance, FEMA asked FDA to allow for use of the term ''fish'' for labeling ''non-nutritive fish ingredients'' used in flavors. FEMA cited clinical and scientific evidence in support of its argument that many fish-allergic individuals will react adversely to more than one species of fish.

TTB recognizes that the FALCPA amendments require the labeling of the particular species of fish used as an ingredient in a food product. However, it is our responsibility to implement allergen labeling regulations that are appropriate for alcohol beverages. It is likely that declarations of the use of fish in the production of alcohol beverages will generally involve the use of isinglass or fish gelatin as a processing aid. Because of the particular difficulty faced by the producer in determining the specific species of fish used in producing the isinglass or fish gelatin, and because at least some consumers may be allergic to more than one species of fish, TTB is persuaded that requiring labeling with the name of the specific type of fish would impose a difficult fact-finding burden on the alcohol beverage industry without offering consumers who may be allergic to more than one species of fish any significant additional information to help them avoid the risk of an allergic reaction. Accordingly, we believe that the goal of the FALCPA amendments with respect to alcohol beverages is adequately met if alcohol beverages produced using finfish protein are labeled merely with ''fish,'' rather than with the name of the fish species.

We would note that the data on this matter are not conclusive, and we are specifically inviting comments on this issue.

3. Processing and Fining Agents

FALCPA amends the FD&C Act to require that, notwithstanding any other provision of law, a flavoring, coloring, or incidental additive that is or bears or contains a major food allergen must conform to FALCPA's labeling requirements. See 21 U.S.C. 343(w)(4). As previously explained, the FDA regulations define the term ''incidental additive'' to include, among other things, processing aids. See 21 CFR 101.100(a)(3). Therefore, the proposed regulations treat major food allergens used as fining or processing agents in the same way as any other major food allergen used in the production of an alcohol beverage.

4. Threshold Levels

The FALCPA amendments, which took effect for foods labeled on or after January 1, 2006, require allergen labeling for foods regulated by FDA without the establishment of any threshold levels for labeling. Furthermore, pursuant to our authority under the FAA Act to ensure that labels provide consumers with adequate information about the identity and quality of alcohol beverage products, the proposed rule provides that all major food allergens and proteins derived from the major food allergens used in production must be declared on the beverage label, unless the product or class of products is covered by an approved petition for exemption. Accordingly, TTB is not proposing to set thresholds.

TTB believes that this position will ensure that consumers have adequate information about the potential presence of even trace amounts of major food allergens in alcohol beverage products. As more accurate scientific data become available in the future, we may revisit the threshold issue as appropriate.

B. Exceptions From Allergen Labeling Requirements

The proposed regulations contain three exceptions from major food allergen labeling. Two of these exceptions are provided within the definition of ''major food allergen,'' and the third is an exemption through a TTB petition process.

1. Highly Refined Oil

The FALCPA amendments exclude from the definition of ''major food allergen'' any highly refined oil derived from one of the eight foods or food groups listed in that definition and any ingredient derived from such highly refined oil. The Senate committee report at page 7 indicates that the exception for highly refined oils was intended to apply to refined, bleached, deodorized (RBD) oils. Both the House committee report at page 16 and the Senate committee report at page 7 specifically identify peanut oil as one of the highly refined oils covered by the exception. We believe this exception from labeling for highly refined oils is also appropriate in the case of alcohol beverages, and we therefore have included this as an exception from the definition of a major food allergen in the proposed regulatory texts.

2. Exemptions Under the FD&C Act

FALCPA added two processes to the FD&C Act at 21 U.S.C. 343(w)(6) and (7) by which any person may obtain an exemption from the allergen labeling requirements imposed by the statute.

Subsection (w)(6) allows any person to petition the Secretary of Health and Human Services to exempt a food ingredient from the allergen labeling requirements. Under its delegated authority, FDA performs the function of the Secretary in this area. In this situation, the burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the food ingredient, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health. FDA must approve or deny any such petition within 180 days of receipt or the petition will be deemed denied, unless an extension is mutually agreed upon by FDA and the petitioner.

Subsection (w)(7) allows any person to file a notification containing scientific evidence demonstrating that an ingredient ''does not contain allergenic protein.'' The scientific evidence must include the analytical method used to produce the evidence that the ingredient, as derived by the method specified in the notification, does not contain allergenic protein. Alternatively, the notification may contain a determination from FDA under a premarket approval or notification program provided for in section 409 of the FD&C Act (21 U.S.C. 348) that the ingredient does not cause an allergic response that poses a risk to human health. FDA has 90 days to object to a notification. Absent an objection, the food ingredient is exempt from the FDA labeling requirements for major food allergens.

Many ingredients and food additives used in the production of foods regulated by FDA are also used in the production of alcohol beverages regulated by TTB. Under the two exemption processes described above, certain ingredients and food additives may be exempted from the allergen labeling requirements of the FD&C Act. We believe it is appropriate to allow alcohol beverage industry members to rely on the exemptions from major food allergen labeling requirements allowed under the FD&C Act and FDA procedures. We have therefore included in the proposed definition of ''major food allergen'' an exception for uses of food ingredients that are exempt pursuant to 21 U.S.C. 343(w)(6) or (7).

It is important to note in this regard that alcohol beverage industry members would have to consider two issues when determining whether an ingredient exempted under the FD&C Act is also not subject to TTB allergen labeling requirements under TTB's proposed regulations. First, the ingredient they used or intend to use in a product must be the same ingredient that is exempt under the FD&C Act. Second, the proposed use must be consistent with any conditions of use in the FD&C Act exemption for the ingredient.

3. Petitions for Exemption From TTB Regulations

We also recognize that major food allergens are used in alcohol beverage production in ways that may differ from the way they are used in the production of foods regulated by FDA. For this reason, proposed sections 4.32a, 5.32a, and 7.22a refer in each case to an exception for a product covered by a petition for exemption approved under new section 4.32b, 5.32b, or 7.22b. A petition may pertain to the use of a major food allergen in the production of one specific alcohol beverage product or it may pertain to a class of products using a particular process involving a major food allergen.

As stated above, TTB's jurisdiction extends to the labeling of wines, distilled spirits, and malt beverages. Accordingly, under the proposed regulations, we only will accept a petition seeking an exemption from the labeling of a major food allergen when the material in question is used in the production of an alcohol beverage product regulated by TTB. If an exemption from the FD&C Act allergen labeling requirements is also desired, the interested party would have to submit a petition or notification to FDA under 21 U.S.C. 343(w)(6) or (7), rather than submit a petition under the applicable TTB regulation.

The use of the TTB petition process under the proposed regulations is similar to that of the petition and notification processes provided for at 21 U.S.C. 343(w)(6) and (7), except that the TTB petition procedure focuses on

products instead of ingredients. The TTB petition process could be used:

- When it is asserted that the product or class of products, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health; or
- When it is asserted that the product or class of products, as derived by the method specified in the petition, does not contain allergenic protein, even though a major food allergen was used in production.

The proposed TTB regulations provide for only a petition procedure, rather than both the petition procedure and the notification procedure provided for in the FALCPA amendments to the FD&C Act. We believe that having one petition procedure, rather than separate petition and notification procedures, will simplify the process for industry, and will allow our personnel adequate time to review the evidence presented in each request for an exemption. TTB is not in a position to administer a 90-day notice procedure similar to the notification procedure in subsection (w)(7) of the statute. The proposed regulation petition procedure is therefore similar to the petition procedure in subsection (w)(6) of the statute in that the regulation places the burden on the petitioner to provide evidence in support of the exemption and gives TTB 180 days to respond.

The proposed regulations provide that a petition for exemption from major food allergen labeling must be submitted to the appropriate TTB officer. The appropriate TTB officer to whom petitions would be submitted, if the regulations are adopted, is the Assistant Administrator, Headquarters Operations. Petitions should be sent to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20220 and should bear the notation: ''Attention: Petition for Exemption from Major Food Allergen Labeling'' to ensure prompt processing.

In addition, the proposed regulations provide that if TTB does not approve or deny the petition for exemption within 180 days of receipt, the petition is deemed denied, unless an extension of time is mutually agreed upon by TTB and the petitioner. The regulations also provide that a determination under this section constitutes a final agency action and that even though a petition is deemed denied because no action was taken within the 180-day period, the petitioner may resubmit the petition at any time. A resubmitted petition will be treated as a new petition.

As a result of FDA's implementation of FALCPA and our proposal of mandatory allergen labeling regulations, TTB and FDA will both be regulating allergen labeling, with TTB overseeing labeling for alcohol beverages and FDA the labeling for all other products that are foods under the FD&C Act. As noted, TTB and FDA are parties to an MOU signed in 1987. That MOU provides that FDA and TTB will exchange information generally about appropriate labeling for, and the adulteration of, alcohol beverages, including information about methodologies and techniques for testing such beverages. Consistent with these general MOU provisions and both agencies' recognition that, generally, the regulation of allergen labeling should be consistent for alcohol beverages and all other foods, TTB intends to confer with FDA, as appropriate and as FDA resources permit, on petitions submitted under the proposed rule.

Consistent with FALCPA, the proposed rule places the burden on the petitioner to provide adequate evidence in its initial petition submission to justify an exemption from labeling. TTB may require the subsequent submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition.

FALCPA provides that FDA shall promptly post to a public site all petitions within 14 days of receipt and shall promptly post the Government's response to each. Our proposed regulations are consistent with FALCPA's requirement to make petitions and responses available to the public, but may go beyond the requirements of FALCPA in some respects. The proposed regulations provide that petitions submitted to TTB, and TTB's response to those petitions, will be posted to the TTB Web site (*http://www.ttb.gov*). However, TTB will not post lengthy materials submitted in support of a petition on its Web site; we will, instead, make such materials available to the public in accordance with the procedures set forth in the Freedom of Information Act, 5 U.S.C. 552.

A person who provides trade secrets or other confidential commercial or financial information in either a petition for exemption or in any supporting documentation submitted in connection with such a petition would be able to request that TTB give confidential treatment to that information. The proposed regulations set forth the standards for making such a request. A failure to request confidential treatment at the time the information in question is submitted to TTB would constitute a waiver of confidential treatment.

C. Effective Date and Compliance With the Proposed Regulations

We note that in response to the ANPRM, some commenters urged TTB to require labeling of major food allergens for products labeled on or after January 1, 2006, which is the effective date of the FALCPA amendments. One commenter suggested that consumers will expect to see allergen information on alcohol beverage products at the same time that such information begins appearing on food labels under FALCPA, and that they may be misled by the absence of such information on labels of products that in fact contain major food allergens. Other commenters, recognizing that it may take some time before a final rule is issued, suggested that TTB allow voluntary labeling of major food allergens pending the completion of rulemaking.

Given that the TTB regulations must be amended in order to implement allergen labeling, we believe it is appropriate to allow the public, including affected industry members, the opportunity to comment on allergen labeling standards before making them mandatory. Accordingly, we are issuing this notice in order to solicit comments on our proposed rules regarding mandatory allergen labeling of alcohol beverage products.

However, we have issued interim regulations to govern the voluntary labeling of major food allergens in alcohol beverage products and procedures for petitioning for an exemption from the standards imposed on those alcohol beverage producers who wish to make voluntary allergen statements on their product labels. These interim regulations, which are effective immediately, are published in the Rules and Regulations section of this **Federal Register**.

Several industry commenters suggested that we follow the compliance date approach taken in the sulfite labeling rulemaking. See T.D. ATF–236 (September 30, 1986, 51 FR 34706), in which ATF applied the dates for compliance in a three-step fashion over a one year period. However, for labeling of major food allergens, we believe a three-step compliance standard modeled after the sulfite rulemaking is not necessary. We believe that providing one delayed date for compliance, rather than three dates, would be easier to administer and would facilitate industry compliance. However, we are soliciting specific comments on what period of

time industry needs to comply with allergen labeling requirements.

Although the proposed regulatory texts do not specifically address this issue, we anticipate that TTB would not require an industry member to apply for a new COLA for a product before adding major food allergen declarations to the label. We believe this policy would foster compliance and ease administrative burdens. Under such a policy, a COLA valid at the time the final rule went into effect would not become invalid because of the new regulatory texts. However, industry members may apply for new COLAs if they wish. They also would have an opportunity to obtain guidance from TTB on how to add these additional allergen statements to their labels.

IV. Public Participation

Comments Sought

We request comments from anyone interested in the proposed mandatory allergen labeling regulations set forth in this document. All comments must reference Notice No. 62 and include your name and mailing address. They must be legible and written in language acceptable for public disclosure. Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We regard all comments as originals.

We are specifically soliciting comments on the following issues:

1. What would be the costs associated with mandatory allergen labeling to the industry and, ultimately, the consumer?

2. Does the proposed rule adversely impact small businesses? If so, explain how. If you are a small business and you expect that the proposed rule would have an adverse impact on you, please provide us with specific data on the expected adverse impact.

3. Are there ways in which the proposed regulations can be modified to reduce the regulatory burdens and associated costs imposed on the industry?

4. The proposed rule allows industry members a great deal of flexibility in the placement of mandatory allergen labeling statements. Does this flexibility reduce the costs of compliance? Would this flexibility interfere with the consumer's ability to locate the allergen declaration? Alternatively, should TTB mandate specific placement, type size, and presentation requirements for these labeling statements in addition to the requirements already applicable to all mandatory information on alcohol beverage labels? For example, should the required allergen disclosure statement be set off by a box? Should the statement of major food allergens be combined with existing required disclosures of FD&C Yellow No. 5, sulfites, and aspartame?

5. Do the proposed rules provide adequate information to consumers about the use of fining or processing agents? Should processing or fining agents be subject to a different labeling requirement, for example, a ''processed with'' labeling statement instead of a ''contains'' labeling statement? Would requiring a distinction between primary ingredients and fining and processing agents be informative to the consumer or would it mislead consumers? Would distinct labeling for processing and fining agents allow industry members to impart more specific information about the use of processing and fining aids?

6. Should mandatory allergen labeling statements for alcohol beverages disclose the specific species of fish, or is it sufficient to merely label the allergen as ''fish,'' as TTB proposes?

7. How much time does industry require to comply with mandatory food allergen labeling requirements? What delayed effective date would reduce the regulatory burdens on affected industry members and at the same time ensure the protection of consumers?

Confidentiality

All comments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Submitting Comments

You may submit comments in any of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section of this document.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5- by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be no more than five pages long. This limitation ensures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—
  (1) Contain your e-mail address;
  (2) Reference Notice No. 62 on the subject line; and
  (3) Be legible when printed on 8.5- by 11-inch paper.
- *Online form:* We provide a comment form with the online copy of this document on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under Notice No. 62.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

V. Public Disclosure

You may view copies of this proposed rule document and any comments we receive by appointment at the TTB Information Resource Center at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments.

We will post this document and any comments we receive on the TTB Web site. All name and address information submitted with comments, including e-mail addresses, will be posted. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Information Resource Center. To access the online copy of this document and the submitted comments, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this document's number and title to view the posted comments.

VI. Regulatory Analysis and Notices

A. Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

B. Regulatory Flexibility Act

We certify under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposed rule will not have a significant economic impact on a substantial number of small entities. Based on the comments we received in response to the advance notice of proposed rulemaking, we believe that the proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposed rule is not expected to have significant

secondary or incidental effects on a substantial number of small entities.

We specifically solicit comments on the number of small producers, bottlers, and importers of alcohol beverages that may be affected by this proposed rule and the impact of this rule on those small businesses. We ask any small business that believes that it would be significantly affected by this proposed rule to let us know and to tell us how the rule would affect it.

C. Paperwork Reduction Act

This proposed rule includes a new collection of information involving the mandatory declaration of major food allergens on a front or back label and the voluntary submission of petitions for exemption from allergen rulemaking.

This collection of information has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 pending receipt and evaluation of public comments. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information is in §§ 4.32, 4.32a, 4.32b, 5.32, 5.32a, 5.32b, 7.22, 7.22a, and 7.22b. The likely respondents are individuals and business or other for-profit institutions, including partnerships, associations, and corporations.

- Estimated total annual reporting and/or recordkeeping burden: 3,700 hours.
- Estimated average annual burden per respondent/recordkeeper: 0.74 hours.
- Estimated number of respondents and/or recordkeepers: 5,000.
- Estimated annual number of responses: 5,020.

Comments on this collection of information may be sent by e-mail to OMB at *Alexander_T._Hunt@omb.eop.gov*, or by paper mail to Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to TTB by any of the methods previously described. Comments should be submitted within the time frame that comments are due regarding the substance of the regulation.

Comments are invited on: (a) Whether the collections of information are 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 information collection burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimate of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information.

VII. Drafting Information

The principal author of this document was Jessica M. Bungard, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau. However, other personnel participated in its development.

List of Subjects

27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Administrative practice and procedure, Advertising, Customs duties and inspection, Distilled spirits, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Malt Beverages, Reporting and recordkeeping requirements, Trade practices.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 4, 5, and 7 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

2. In § 4.32, paragraph (d), which is currently reserved, is added to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(d) If a major food allergen as defined in § 4.32a is used in the production of a wine, there shall be included on a label affixed to the container a statement as required by that section.

* * * * *

3. Section 4.32a is revised to read as follows:

§ 4.32a Major food allergens.

(a) *Definitions.* For purposes of this section the following terms have the meanings indicated.

(1) *Major food allergen. Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived. Name of the food source from which each major food allergen is derived* means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts,'' as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the term ''soy'', ''soybean'', or ''soya'' may be used instead of ''soybeans''.

(b) *Labeling requirements.* All major food allergens (defined in paragraph (a)(1) of this section) used in the production of a wine, including major food allergens used as fining or processing agents, must be declared on a label affixed to the container, except when subject to an approved petition for exemption described in § 4.32b. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food

allergen is derived (for example, ''Contains: egg'').

(c) *Cross reference.* For labeling requirements applicable to wines containing FD&C Yellow No. 5 and sulfites, see §§ 4.32(c) and (e).

4. Section 4.32b is revised to read as follows:

§ 4.32b Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 4.32a. The burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 4.32a(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of the petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition for purposes of the time frames for decision set forth in paragraph (b) of this section.

(d) *Availability of information.* (1) *General.* TTB will promptly post to its public Web site, *http://www.ttb.gov*, all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

2. In § 5.32, paragraph (b)(6), which is currently reserved, is added to read as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(6) If a major food allergen as defined in § 5.32a is used in the production of a distilled spirits product, a statement as required by that section.

* * * * *

3. Section 5.32a is revised to read as follows:

§ 5.32a Major food allergens.

(a) *Definitions.*

(1) *Major food allergen. Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived. Name of the food source from which each major food allergen is derived* means the name of the food, as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts,'' as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the term ''soy'', ''soybean'', or ''soya'' may be used instead of ''soybeans''.

(b) *Labeling requirements.* All major food allergens (defined in paragraph (a)(1) of this section) used in the production of a distilled spirits product, including major food allergens used as fining or processing agents, must be declared on a label affixed to the container, except when subject to an approved petition for exemption described in § 5.32b. The declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food

allergen is derived (for example, ''Contains: Egg'').

(c) *Cross reference.* For labeling requirements applicable to distilled spirits products containing FD&C Yellow No. 5 and sulfites, see §§ 5.32(b)(5) and (b)(7).

4. Section 5.32b is revised to read as follows:

§ 5.32b Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 5.32a. The burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 5.32a(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of the petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition for purposes of the time frames for decision set forth in paragraph (b) of this section.

(d) *Availability of information.* (1) *General.* TTB will promptly post to its public Web site, *http://www.ttb.gov,* all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5. U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

1. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

2. In § 7.22, paragraph (b)(5), which is currently reserved, is added to read as follows:

§ 7.22 Mandatory Label Information.

* * * * *

(b) * * *

(5) If a major food allergen as defined in § 7.22a is used in the production of a malt beverage, a statement as required by that section.

* * * * *

3. Section 7.22a is revised to read as follows:

§ 7.22a Major food allergens.

(a) *Definitions.* For purposes of this section the following terms have the meanings indicated.

(1) *Major food allergen. Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived. Name of the food source from which each major food allergen is derived* means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts,'' as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the term ''soy'', ''soybean'', or ''soya'' may be used instead of ''soybeans''.

(b) *Labeling requirements.* All major food allergens (defined in paragraph (a)(1) of this section) used in the production of a malt beverage product, including major food allergens used as fining or processing agents, must be declared on a label affixed to the container, except when subject to an approved petition for exemption described in § 7.22b. The declaration must consist of the word ''Contains''

followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

(c) *Cross reference.* For labeling requirements applicable to malt beverage products containing FD&C Yellow No. 5, sulfites, and aspartame, see §§ 7.22(b)(4), (b)(6), and (b)(7).

4. Section 7.22b is revised to read as follows:

§ 7.22b Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 7.22a. The burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 7.22a(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of the petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition for purposes of the time frames for decision set forth in paragraph (b) of this section.

(d) *Availability of information.* (1) *General.* TTB will promptly post to its public Web site, *http://www.ttb.gov,* all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5. U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

Signed: February 16, 2006.

John J. Manfreda,

Administrator.

Approved: March 16, 2006.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 06–6467 Filed 7–25–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2006–012; Docket 2006–0020; Sequence 4]

RIN: 9000–AK51

Federal Acquisition Regulation; FAR Case 2006–012; Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to update the required contract clauses that implement provisions of law or executive orders for acquisitions of commercial items.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before September 25, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–012 by any of the following methods:

•Federal eRulemaking Portal: *http://acquisition.gov.* Follow the instructions for submitting comments.

• Agency Web site: *http://acquisition.gov/far/ProposedRules/proposed.htm.* Click on the FAR case number to submit comments.

• E-mail: *farcase.2006–012@gsa.gov.* Include FAR case 2006–012 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–012 in all correspondence related to this case. All comments received will be posted without change to *http://acquisition.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAR case 2006–012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with Section 8002 of Public Law 103–355 (41 U.S.C. 264, note), contract clauses applicable to acquisitions of commercial items are limited, to the maximum extent practicable, to clauses that are—

(1)Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2)Determined to be consistent with customary commercial practice.

The clause at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders —Commercial Items, incorporates, by reference, the contract clauses that the contracting officer may select to implement provisions of law or executive orders for acquisitions of commercial items. The clause at FAR 52.219–16, Liquidated Damages—Subcontracting Plan, is a contract clause that is required to implement 15 U.S.C. 637(d)(4)(F)(i). However, the clause at FAR 52.219–16 is not included in the list of clauses for commercial contracts in FAR 52.212–5. This proposed rule will incorporate the clause at FAR 52.219–16 in the list of clauses for commercial contracts that the contracting officer may select.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing language and does not change existing policy. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR clause at 52.212–5 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite FAR case 2006–012.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: July 19, 2006.

Ralph De Stefano

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR Part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.212–5 by redesignating paragraphs (b)(10) through (b)(35) as (b)(11) through (b)(36), respectively, and adding a new (b)(10) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statues or Executive Orders—Commercial Items.

* * * * *

(b) * * *

* * * * *

(10) 52.219–16, Liquidated Damages–Subcontracting Plan [Date](15 U.S.C. 637(d)(4)(F)(i)).

[FR Doc. 06–6471 Filed 7–25–06; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register

Vol. 71, No. 143

Wednesday, July 26, 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

Privacy Act of 1974: Report of a New System of Records

AGENCY: Office of the Chief Information Officer, USDA.

ACTION: Notice of proposed new system of records; request for comments.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposed to create a new Privacy Act system of records, entitled ''USDA eAuthentication Service.'' The system is owned, administered, and secured by the Office of the Chief Information Officer (OCIO), a USDA staff office. The primary purpose of the eAuthentication Service is to provide verification of customer identity, authorization, and electronic signatures for USDA application and service transactions.

DATES: *Effective Date:* This notice will be adopted without further publication on August 25, 2006, unless modified by a subsequent notice to incorporate comments received from the public. USDA invites comments on all portions of this notice. Comments must be received by the contact listed on or before August 25, 2006.

FOR FURTHER INFORMATION CONTACT: Owen Unangst, Program Manager, Office of the Chief Information Officer, United States Department of Agriculture, NRCS Information Technology Center, 2150 Centre Avenue Building A, Fort Collins, CO 80526–1891 or via e-mail at *owen.unangst@ftc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act (5 U.S.C. 552a(e)(4) requires the Department to publish in the **Federal Register** this notice or new or revised system of records managed by the Department. Pursuant to the Government Paperwork Elimination Act (GPEA, Pub. L. 105–277), the Freedom to E-File Act (Pub. L. 106–222), the Electronic Signature in Global and National Commerce Act (E–SIGN, Pub. L. 102–229), and the eGovernment Act of 2002 (H.R. 2458), USDA is creating a new system of records entitled ''USDA eAuthentication Service'' to be managed by the USDA Office of the Chief Information Officer (OCIO).

GPEA requires that Federal agencies provide citizens with secure electronic options for forms, filing, and other transactions needed to conduct official business with the government. The eAuthentication Service provides a trusted and secure infrastructure, which is primary to the delivery of eGovernment services in a GPEA compliant manner. eAuthentication support citizens' capabilities to conduct transactions with USDA by providing single sign-on capability to access USDA applications and services via the Internet, management of user credential, and verifications of identity, authorization, and electronic signature with USDA, its agencies, and partners. Benefits to citizens and USDA include a secure, consistent method of electronic authentication, a reduction in the cost to maintain redundant registration information, and reduced authentication system development and acquisition costs.

USDA eAuthentication collects information from citizens in order to provide accounts that facilitate the electronic authentication and authorization. The credentials and permissions associated with an account are what authenticates and authorizes a user to access a requested USDA resource. USDA obtains customer information through an electronic self-registration process provided through the eAuthentication Web site. The collected information will be secured in two ways: Appropriate technical security will be in place both during storage and transit; the physical security of the system will be provided by the hosting facility which restricts access to authorized personnel.

USDA customers can self-register for a Level 1 or Level 2 Access account. A Level 1 Access account provides users with limited access to USDA Web site portals and applications that have minimal security requirements. A Level 2 Access account enables users to conflict official electronic business transactions via the Internet, enter into a contract with USDA, and submit information electronically via the Internet to USDA Agencies. Due to the increased customer access associated with a Level 2 Access account, customers must be authenticated in person at a USDA Office by a local registration authority, in addition to an electronic self-registration. Once an account is activated, customers may use the associated user ID and password that they created to access USDA resources that are protected by the eAuthentication Service.

System of Records

SYSTEM NAME:

USDA eAuthentication Service.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USDA–NRCS Information Technology Center, 2150 Centre Avenue Building A, Fort Collins, CO 80526–1891; USDA-Rural Development, 1520 Market Street, St. Louis, MO 63103.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who can access USDA application and services that are protected by eAuthentication. This includes members of the public and USDA employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who can access USDA applications and services that are protected by eAuthentication. This includes members of the public and USDA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The eAuthentication system will collect the following information from individuals when transacting electronically with USDA: name, address, country of residence, telephone, e-mail address, date of birth, and mother's maiden name. The system will also require users to create a user ID and password.

AUTHORITY FOR MAINTENANCE ON THE SYSTEM:

Government Paperwork Elimination Act (GPEA, Pub. L. 105–277) of 1998; Freedom to E-File Act (Pub. L. 106–222)

of 2000; Electronic Signatures in Global and National Commerce Act (E–SIGN, Pub. L. 106–229) of 2000; eGovernment Act of 2002 (H.R. 2458).

PURPOSE(S):

The records in this system are used to electronically authenticate and authorize users accessing protected USDA applications and services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure to USDA applications protected by eAuthentication, as a user requests access to individual applications.

2. Disclosure to external Web applications integrated with the government's federated architecture for authentication. Under this architecture, the user will request access to an external application with their USDA credential prior to any disclosure of information. All external applications will have undergone rigorous testing before joining the architecture.

3. Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature.

4. Disclosure to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system that constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that USDA determines that the records sought are relevant to the proceeding.

5. Disclosure to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of that individual.

6. Disclosure at the individual's request to any Federal department, State or local agency, or USDA partner utilizing or interfacing with eAuthentication to provide electronic authentication for electronic transactions. The disclosure of this information is required to securely provide, monitor, and analyze the requested program, service, registration, or other transaction.

7. Disclosure to USDA employees or contractors, partner agency employees or contractors, or private industry employed to identify patterns, trends, and anomalies indicative of fraud, waste, or abuse.

8. Disclosure to determine compliance with program requirements.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored and maintained electronically on USDA owned and operated systems in St. Louis, MO, and Ft. Collins, CO.

RETRIEVABLY:

Records can be retrieved by name, username, or system ID.

SAFEGUARD:

Records are accessible only to authorized personnel. Protection of the records is ensured by appropriate technical controls. The physical security of the system is provided by restricted building access. In addition, increased security is provided by encryption of data when transmitted. The system has undergone a Certification and Accreditation.

RETENTION AND DISPOSAL:

Since records are maintained electronically, they will be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Owen Unangst, NRCS Information Technology Center, 2150 Centre Avenue Building A, Fort Collins, CO 80526–1891.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Fort Collins office. The request for information should contain the individual's name, username, address, and email address. Before information of any record is released, the system manager may require the individual to provide proof of identify or require the requester to furnish authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system, which pertains to such individual, by submitting a request to the Privacy Act Officer, 1400 Independence Avenue, SW., South Building, Washington, DC 20250–3700. The envelope and letters should be marked ''Privacy Act Request.'' A request for information should contain name, address, username, name of system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Procedures for contesting records are the same as procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information from the system will be submitted by the user. When a user wishes to transact with USDA or its partner organizations electronically, the user must enter name, address, country of residence, telephone, date of birth, mother's maiden name, username, and password. As the USDA eAuthentication Service is integrated with other government or private sector authentication systems, data may be obtained from those systems to facilitate single-sign on capabilities.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

Dated: July 12, 2006.

Mike Johanns,

Secretary.

Privacy Act System USDA/OCIO–2 Narrative Statement

The purpose of this system of records for the eAuthentication Service is to identify how the user information collected is protected, used, and verified. Through a self-registration process USDA customers and employees are able to obtain accounts as authorized users that will enable them to access USDA Web applications and services. Additionally, users of the eAuthentication system are able to securely and confidently conduct business transactions with the USDA electronically via the Internet.

The information collected will be used to create eAuthentication accounts that are used to authenticate users to USDA Web applications. In addition, customer and employee account information is provided to USDA applications that the user chooses to access, in order to facilitate authorization and business transactions.

The authority for maintaining this system of records lies within the Government Paperwork Elimination Action (Sections 1702, 1703, 1705), the Freedom to E-File Act (Section 3 [7 U.S.C. 7032], Section 5 [7 U.S.C. 7034], and Section 6 [7 U.S.C. 7035], the Electronic Signatures in Global and National Commerce Act [15 U.S. 7001],

and the E-Government Act (Title III: FISMA of 2002 Section 301).

Within USDA, access to system data is granted on a limited basis to USDA customers, employees, administrators, help desk individuals, and other Federal agencies to facilitate electronic user authentication and authorization. Users can use their account's user ID and password to access to modify basic personal data such as address and email. Users do not have access to modify sensitive data such as level of access of permissions associated with an account. Only system administrators have access to update sensitive fields, and only do so when a ticket is escalated from the help desk.

System administrators have access to user information on a limited basis allowing them to only perform their specific job function. Access is limited to administrators on a least privileged basis utilizing separation of duties. Administrators and help desk persons have eAuthentication accounts with the appropriate level of access and permissions that allow them to access and modify user data. These permissions are granted by a limited number of management personnel.

Information obtained by the eAuthentication Service is stored and maintained electronically on secure USDA-owned and operated systems in St. Louis, MO and Fort Collins, CO. In addition, information stored electronically will be available only to authorized personnel, whose identity will be authenticated by eAuthentication Service.

The system provides for eight types of routine user releases, as follows:

Routine use 1 permits disclosure to USDA applications protected by eAuthentication, as a user requests access to individual applications.

Routine use 2 permits disclosure to external Web applications integrated with the government's federated architecture for authentication. Under this architecture, the user will request access to an external application with their USDA credential prior to any disclosure of information. All external applications will have undergone rigorous testing before joining the architecture.

Routine use 3 permits referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature.

Routine use 4 permits disclosure to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system that constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that USDA determines that the records sought are relevant to the proceeding.

Routine use 5 permits disclosure to a congressional office from the record of an individual response to any inquiry from the congressional office made at the request of that individual.

Routine use 6 permits disclosure at the individuals' request to any Federal department, State or local agency, or USDA partner utilizing or interfacing with eAuthentication to provide electronic authentication for electronic transactions. The disclosure of this information is required to securely provide, monitor, and analyze the requested program, service, registration, or other transaction.

Routine use 7 permits disclosure to USDA employees or contractors, partner agency employees or contractors, or private industry employed to identify patterns, trends, and anomalies indicative of fraud, waste, or abuse.

Routine use 8 permits disclosure to determine compliance with program requirements.

A copy of the forms developed to collection information is attached to this report. These proposed information collections are at OMB for review and clearance in conjunction with the Paperwork Reduction Act.

The system of records will not be exempt from any provisions of the Privacy Act.

eAuthentication Forms for Collection for SORN Narrative Statement

Main Page: *http://www.eauth.egov.usda.gov/index.html*.

Select *Create an Account* from *Left Navigation Bar*. From the first sentence on this page, select the *USDA Employee Create an Account* link. Select the ''Continue'' button at the bottom right of the screen to move through the account creation process. Select the ''Continue'' button at the bottom right of the screen again, which opens the *Employee Account Creation, Step 1 of 6: Employee Information* page. Follows steps.

[FR Doc. 06–6396 Filed 7–25–06; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0015]

Availability of an Addendum to Environmental Assessment and Finding of No Significant Impact for Field Release of Genetically Engineered Pink Bollworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have supplemented with an addendum the environmental assessment for a proposed field trial of pink bollworm genetically engineered to express green fluorescence as a marker. The Animal and Plant Health Inspection Service (APHIS) proposes to use this marked strain to assess the effectiveness of lower doses of radiation to create sterile insects for its pink bollworm sterile insect program. This program, using sterile insect technique, has been conducted by APHIS, with State and grower cooperation, since 1968. Data gained from this field experiment will be used to improve the current program. APHIS has supplemented its environmental assessment in order to evaluate a new location and new conditions for the field test and has concluded that this field test will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, APHIS has determined that an environmental impact statement need not be prepared for this field test.

DATES: *Effective Date:* July 26, 2006.

ADDRESSES: You may read the environmental assessment (EA), the supplement, the finding of no significant impact (FONSI), and any comments that we received on Docket No. APHIS–2006–0015 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. The supplemented EA and FONSI are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/05_09801r_ea.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Robyn Rose, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0489. To obtain copies of the EA,

FONSI, and response to comments, contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On April 8, 2005, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 05–098–01r) from APHIS' Plant Protection and Quarantine (PPQ) Center for Plant Health Science and Technology (CPHST) Decision Support and Pest Management Systems Laboratory in Phoenix, AZ, for a field trial using the pink bollworm (PBW), *Pectinophora gossypiella* (Lepidoptera: Gelechiidae), that has been genetically engineered to express an enhanced green fluorescent protein (EGFP) derived from the jellyfish *Aequora victoria.* A piggyBac transposable element derived from the plant pest cabbage looper (*Trichoplusia ni*) was used to transform the subject PBW, and expression of the EGFP is controlled through use of a *Bombyx mori* cytoplasmic actin promoter.

On February 13, 2006, APHIS published a notice [1] in the **Federal Register** (70 FR 7503–7504, Docket No. APHIS–2006–0015) announcing the availability of an environmental assessment (EA) for the proposed field trial. During the 30-day comment period, APHIS received two comments. The two comments were not site-specific in nature.

On April 19, 2006, APHIS published a notice in the **Federal Register** (71 FR 20068–20069, Docket No. APHIS–2006–0015) announcing the availability of a final EA and a finding of no significant impact (FONSI) to issue this permit. The two comments we received in response to our February 2006 notice were also addressed in this notice. The FONSI was signed on April 10, 2006. On April 12, 2006, APHIS received a request to amend this permit application. The amendment includes a change of location from Pima County, AZ, to Yuma County, AZ. This change is necessary because the Southwest Pink Bollworm Eradication Program has moved into Phase 2, which includes Pima County. The program and the field trial must be spatially isolated to ensure that the data collected in the field trial is not influenced by the eradication program. The changes also included new field conditions, including releasing fewer insects over a smaller area. These changes have resulted from factors associated with moving the field trial. None of these changes raised new plant pest issues.

To inform the public of the changes described above, APHIS published a notice of availability for an addendum to the EA in the **Federal Register** on June 20, 2006 (71 FR 35408–35409, Docket No. APHIS–2006–0015). The notice provided for a 14-day comment period, which ended on July 5, 2006. APHIS received no comments by that date.

The subject transgenic PBW is considered a regulated article under the regulations in 7 CFR part 340 because the recipient organism is a plant pest. The proposed field test will evaluate the mating efficiency and competitiveness of the transgenic insects in the field. The transgenic PBW will be reared in the Phoenix PBW genetic rearing facility and treated with radiation levels suitable to induce F1 sterility. The irradiated insects will be released into a 4.6 acre field site in the middle of a 40 to 80 acre field of cotton expressing the Bt toxin, which is toxic to PBW. This release is part of the research to support and improve CPHST's PBW sterile insect program. Information resulting from this research will be used in support of APHIS' efforts to eradicate the PBW in the United States.

Additional information on the PBW eradication plan for the United States may be found at *http://www.aphis.usda.gov/ppq/pdmp/cotton/pinkbollworm/eradication/eradication.pdf.* An EA prepared for the Southwest Pink Bollworm Eradication Program may be found at *http://www.aphis.usda.gov/ppd/es/pdf%20files/swpbwea.pdf.*

Pursuant to its regulations (7 CFR 340) promulgated under the Plant Protection Act, APHIS has determined that this field trial will not pose a risk of the introduction or dissemination of a plant pest for the following reasons:

EGFP transgenic insects will not persist in the environment. They will be sterilized by irradiation (Tothova and Merec, 2001). The EGFP PBW line to be released has significantly lower fecundity than wild-type PBW. Redundant mitigation measures are incorporated into the experimental procedures to ensure that genetically modified EGFP PBW will not become established in the environment. These measures are as follows:

- The cotton in the proposed release site expresses Bacillus thuringiensis (Bt) toxin that kills PBW larvae.
- There are no sexually compatible relatives of the PBW in the United States, so the transgene cannot spread via hybridization with other species.
- The piggyBac-derived transposable element used to make the transforming construct has no functional transposase gene, thereby eliminating its ability to mobilize itself.
- The release area will be monitored intensively with pheromone traps that attract and collect PBW male moths. Traps will be set up to 5 miles away from the site.
- If adverse persistence is observed, unwanted bollworms will be killed with insecticides. Larvae from eggs oviposited on Bt cotton will not survive.
- PBW populations can be suppressed by flooding the area with a high ratio of sterilized bollworms to field insects.
- All moths will be securely managed and contained in production and transport using standard operating procedures with extremely high reliability developed for a long-running sterile insect technique program.
- All living bollworms reared for this field trial that are not used as part of the environmental release will be killed.

Based on the factors described above and the analysis contained in the EA, APHIS has determined that the proposed field trial will not have a significant impact on the quality of the human environment.

The EA, the addendum to the EA, and the FONSI were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations

[1] To view the notice, EA, and the comments we received, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0015, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of July 2006 .

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–11939 Filed 7–25–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Collection of Public Information With the Use of a Survey

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request clearance for continuation of information collection to measure the quality of loan servicing provided by the RHS, Centralized Servicing Center (CSC) in St. Louis, MO.

DATES: Comments on this notice must be received by September 25, 2006, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Terrie Barton, Customer Service Branch Chief, Centralized Servicing Center, 1520 Market Street, Room 3622, St. Louis, Missouri 63103, phone (314) 206–2108, e-mail: *Terrie.barton@stl.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rural Development—Customer Satisfaction Survey.

Type of Request: Extension of a currently approved information collection.

Abstract: RHS, provides insured loans to low- and moderate-income applicants located in rural geographic areas to assist them in obtaining decent, sanitary and safe dwellings. RHS currently processes loan originations through approximately 700 Field Offices. The CSC provides support to the Field Offices and is responsible for loan servicing functions for RHS program borrowers. The CSC was established to achieve a high level of customer service and operating efficiency. The CSC has established a fully integrated call center and is able to provide borrowers with convenient access to their loan account information.

To facilitate CSC's mission and in an effort to continuously improve its services, a survey has been developed that will measure the change in quality of service that borrower's receive when they contact the CSC. Two previous surveys have been completed under prior authorization. Respondents will only need to report information on a one-time basis.

The results of the survey will provide a general satisfaction level among borrowers throughout the nation. The data analysis will provide comparisons to prior surveys and reveal areas of increased satisfaction as well as areas in need of improvement. CSC's goal is to continuously improve program delivery, accessibility and overall customer service satisfaction. A follow up survey will be conducted in 18–24 months, but may or may not be sent to the same initial respondents. Additionally, in accordance with Government Performance and Results Act (GPRA), the survey will enable CSC to measure the results and overall effectiveness of customer services provided as well as implement action plans and measure improvements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Borrowers who have a Rural Housing Program services loan.

Estimated Number of Respondents: 6,000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 6,000.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments: 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 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 Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. 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: July 20, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E6–11946 Filed 7–25–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: BIS Program Evaluation.

Agency Form Number: N/A.

OMB Approval Number: 0694–0125.

Type of Request: Renewal of an existing collection.

Burden: 500 hours.

Average Time per Response: 10 minutes per response.

Number of Respondents: 3,000 respondents.

Needs and Uses: This survey capability is needed by BIS seminar instructors for seminar programs conducted throughout the year. Seminar participants will be asked to evaluate seminar content and to provide input for future programs. Their responses will provide useful and practical information that BIS can use to determine whether or not it is providing a quality program and gives BIS information useful to making recommended improvements.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–

0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov*, or fax number, (202) 395–7285.

Dated: July 20, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–11906 Filed 7–25–06; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 00724217–6195–12]

Solicitation of Applications for the Minority Business Enterprise Center (MBEC) (Formerly Minority Business Development Center (MBDC))

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. Section 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate a Minority Business Enterprise Center (MBEC) (formerly Minority Business Development Center). This is not a grant program to help start a business. Applications submitted must be to operate a Minority Business Enterprise Center and to provide business consultation to eligible minority clients. Applications that do not meet these requirements will be rejected. The MBEC will provide services in the outlined geographic areas (refer to **SUPPLEMENTARY INFORMATION** section of this Notice).

The MBEC Program requires MBEC staff to provide standardized business assistance services (as outlined in the Federal Funding Opportunity Announcement) to minority firms with $500,000 or more in annual revenues and/or ''rapid growth-potential'' minority businesses (''Strategic Growth Initiative'' or ''SGI'' firms) directly; to develop a network of strategic partnerships; and to provide strategic business consulting. This is a fee for service program, therefore, the MBEC is required to charge client fees.

These requirements will be used to generate increased results with respect to financing and contracts awarded to minority-owned firms and thus, are a key component of this program.

The MBEC Program will concentrate on serving SGI firms capable of generating significant employment and long-term economic growth. The MBEC Program shall leverage telecommunications technology, including the Internet, and a variety of online computer-based resources to dramatically increase the level of service that the MBEC can provide to minority-owned firms.

DATES: The closing date for receipt of applications is September 20, 2006. Completed applications must be received by MBDA no later than 5 p.m. Eastern Daylight Savings Time at the address below for paper submission or at *http://www.Grants.gov* for electronic submission. The due date and time is the same for electronic submissions as it is for paper submissions. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing is one hundred fifty (150) days from the date of publication of this Announcement. MBDA anticipates that awards for the MBEC program will be made with a start date of January 1, 2007.

Pre-Application Conference: A pre-application teleconference will be held on August 17, 2006, in connection with this solicitation Announcement. The pre-application conference will be available on MBDA's Portal (MBDA Portal) at *http://www.mbda.gov*. Interested parties to the pre-application conference must register at MBDA's Portal at least 24 hours in advance of the event.

ADDRESSES:

(1)(a) Paper Submission—If Mailed: If the application is mailed/shipped overnight by the applicant or its representative, one (1) signed original plus two (2) copies of the application must be submitted. Completed application packages must be mailed to: Office of Business Development—MBEC Program, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. U.S. Department of Commerce delivery policies for Federal Express, UPS, and DHL overnight services require the packages to be sent to the address above.

(1)(b) Paper Submission—If Hand-Delivered: If the application is hand-delivered by the applicant or his/her representative, one (1) signed original plus two (2) copies of the application must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—MBEC Program (extension 1940), HCHB, Room 1874, Entrance #10, 15th Street, NW., Washington, DC (Between Pennsylvania and Constitution Avenues). U.S. Department of Commerce ''hand-delivery'' policies state that Federal Express, UPS, and DHL overnight services submitted to the address listed above (Entrance #10) cannot be accepted. These policies should be taken into consideration when utilizing their services. MBDA will not accept applications that are submitted by the deadline but rejected due to Departmental hand-delivery policies. The applicant must adhere to these policies in order for his/her application to receive consideration for award.

(2) Electronic Submission: Applicants are encouraged to submit their proposal electronically at *http://www.Grants.gov.* Electronic submissions should be made in accordance with the instructions available at Grants.gov (see *http://www.grants.gov/ForApplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For further information, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov.* Paper applications and Standard Forms may be obtained by contacting the MBDA National Enterprise Center (NEC) for the area where the Applicant is located (See Agency Contacts section) or visiting MBDA's Portal at *http://www.mbda.gov.* Standard Forms 424, 424A, 424B, and SF–LLL can also be obtained at *http://www.whitehouse.gov/omb/grants,* or *http://www.Grants.gov.* Forms CD–511 and CD–346 may be obtained at *http://www.doc.gov/forms.*

Responsibility for ensuring that applications are complete and received BY MBDA on time is the sole responsibility of the Applicant.

Agency Contacts:

1. Office of Business Development, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230. Contact: Efrain Gonzalez, Program Manager at 202–482–1940.

2. San Francisco National Enterprise Center (SFNEC) is located at 221 Main Street, Suite 1280, San Francisco, CA 94105. This region covers the states of Arizona, Nevada, Idaho, Oregon, California, Washington, Alaska and Hawaii. Contact: Linda Marmolejo, Regional Director, SFNEC at 415–744–3001.

3. Dallas National Enterprise Center (DNEC) is located at 1100 Commerce Street, Suite 7B–23, Dallas, TX 75242. This region covers the states of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. Contact: John Iglehart, Regional Director, Dallas NEC at 214–767–8001.

4. Atlanta National Enterprise Center (ANEC) is located at 401 W. Peachtree Street, NW., Suite 1715, Atlanta, GA 30308–3516. This region covers the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and Tennessee. Contact John Iglehart Acting Regional Director, ANEC at 404–730–3300.

5. Chicago National Enterprise Center (CNEC) is located at 55 E. Monroe Street Suite 1406, Chicago, IL 60603. This region covers the states of Ohio, Illinois, Minnesota, Iowa, Michigan, Indiana, and Missouri. Contact Eric Dobyne, Regional Director, CNEC at 312–353–0182.

6. New York National Enterprise Center (NYNEC) is located at 26 Federal Plaza Room 3720, New York, NY 10278. This region covers the states of Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, New York, Pennsylvania, New Jersey, Connecticut, Delaware, Maryland, Virginia, West Virginia and District of Columbia. Contact Heyward Davenport, Regional Director, NYNEC at 212–264–3262.

SUPPLEMENTARY INFORMATION:

Geographic Service Areas

The MBEC will provide services in the following geographic areas:

MBEC name	Location of MBEC	Geographic service area
Arizona MBEC	Phoenix, AZ	State of Arizona.
Inland Empire MBEC	Riverside, CA	California Counties of: Orange, Riverside, Inland Empire, San Diego and San Bernardino.
Nevada MBEC	Las Vegas, NV	State of Nevada.
Los Angeles MBEC	Los Angeles Metro	California Counties of: Los Angeles and Ventura.
Northern California MBEC	San Jose, CA	California Counties of: Santa Clara, Alameda, San Francisco, San Mateo, San Benito, Monterey, Santa Cruz, Sonoma, Napa, Solano, Contra Costa, Mendocino, San Joaquin, Sacramento, and Marin.
Washington MBEC	Seattle, WA	State of Washington.
Dallas MBEC	Dallas, TX	Dallas/Fort Worth/Arlington MSA.*
El Paso MBEC	El Paso, TX	El Paso MSA.*
Houston MBEC	Houston, TX	Houston/Sugar Land/Baytown MSA.*
New Mexico MBEC	Albuquerque, NM	State of New Mexico.
Louisiana MBEC	New Orleans, LA	State of Louisiana.
San Antonio MBEC	San Antonio, TX	San Antonio MSA.*
Georgia MBEC	Atlanta, GA	State of Georgia.
North Carolina MBEC	Durham, NC	State of North Carolina.
South Carolina MBEC	Columbia, SC	State of South Carolina.
Alabama/Mississippi MBEC	Biloxi, MS	States of Alabama & Mississippi.
Chicago MBEC	Chicago, IL	State of Illinois.
Detroit MBEC	Detroit, MI	State of Michigan.
Cleveland MBEC	Cleveland, OH	State of Ohio.
Indianapolis MBEC	Indianapolis, IN	State of Indiana.
St. Louis MBEC	St. Louis, MO	State of Missouri.
Manhattan MBEC	New York, NY	New York Counties of: New York, Bronx and Westchester.
Williamsburg MBEC	Brooklyn, NY	New York Counties of: Kings and Richmond.
Queens MBEC	Jamaica, NY	New York Counties of: Queens, Nassau and Suffolk.
Pennsylvania MBEC	Philadelphia, PA	State of Pennsylvania.
New Jersey MBEC	Newark, NJ	State of New Jersey.
DC Metro MBEC	Washington, DC	Washington, DC/Arlington/Alexandria MSA.*
Puerto Rico MBEC	San Juan, PR	Puerto Rico Islandwide.

* Metropolitan Statistical Area, please see OMB Bulletin No. 06–01, Update of Statistical Area Definitions and Guidance on their Uses (December 5, 2005) (as corrected May 26, 2006) at *http://www.whitehouse.gov/omb/bulletins.*

Electronic Access: A link to the full text of the Federal Funding Opportunity (FFO) Announcement for the MBOC Program can be found at *http://www.Grants.gov* or by downloading at *http://www.mbda.gov* or by contacting the appropriate MBDA representative identified above. The FFO contains a full and complete description of the MBEC program requirements. In order to receive proper consideration, applicants must comply with all information and requirements contained in the FFO. Applicants will be able to access, download and submit electronic grant applications for the MBEC Program in this announcement at *Grants.gov.* MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered.

Funding Priorities: Preference may be given to applications during the selection process which address the following MBDA funding priorities:

(a) Applicants who submit proposals that include work activities that exceed the minimum work requirements in this Announcement.

(b) Applicants who submit proposals that include performance goals that

exceed the minimum performance goal requirements in this Announcement.

(c) Applicants who demonstrate an exceptional ability to identify and work towards the elimination of barriers, which limit the access of minority businesses to markets and capital.

(d) Applicants who demonstrate an exceptional ability to identify and work with minority businesses seeking to obtain large-scale contracts and/or insertion into supply chains with institutional customers.

(e) Applicants that utilize fee for service models and those that demonstrate an exceptional ability to charge and collect fees from clients.

Funding Availability: The total award period is three years. The Federal funding share in each program year (2007–2009) (January 1–December 31 respectively) is $7.49M. MBDA funding availability is subject to Fiscal Year appropriations. MBDA anticipates funding twenty-eight (28) MBECs from this competitive Announcement.

MBDA requires each award recipient to provide a minimum of twenty percent (20%) non-federal cost share. Applicants must submit project plans and budgets for each of the three funding periods. Projects will be funded for no more than one year at a time. Project proposals accepted for funding will not compete for funding in the subsequent second and third budget periods. Second and third year funding will depend upon satisfactory performance, availability of funds to support continuation of the project, and consistency with Department of Commerce and MBDA priorities. Second and third year funding will be granted at the sole discretion of MBDA and the Department of Commerce.

MBDA is soliciting competitive applications from organizations to operate a MBEC in the designated geographic areas. The maximum Federal Funding Amounts for each year are shown below.

Project name	January 1, 2007 through December 31, 2007			January 1, 2008 through December 31, 2008			January 1, 2009 through December 31, 2009		
	Total cost ($)	Federal share ($)	Non-federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-federal share ($) (20% min.)
Arizona MBEC	343,900	275,000	68,900	343,900	275,000	68,900	343,900	275,000	68,900
Inland Empire MBEC	406,500	325,000	81,500	406,500	325,000	81,500	406,500	325,000	81,500
Los Angeles MBEC	437,500	350,000	87,500	437,500	350,000	87,500	437,500	350,000	87,500
Nevada MBEC	281,300	225,000	56,300	281,300	225,000	56,300	281,300	225,000	56,300
Northern California MBEC	375,000	300,000	75,000	375,000	300,000	75,000	375,000	300,000	75,000
Washington MBEC	312,500	250,000	62,500	312,500	250,000	62,500	312,500	250,000	62,500
Dallas MBEC	390,839	312,639	78,200	390,839	312,639	78,200	390,839	312,639	78,200
El Paso MBEC	262,500	210,000	52,500	262,500	210,000	52,500	262,500	210,000	52,500
Houston MBEC	375,000	300,000	75,000	375,000	300,000	75,000	375,000	300,000	75,000
New Mexico MBEC	312,500	250,000	62,500	312,500	250,000	62,500	312,500	250,000	62,500
Louisiana MBEC	375,000	300,000	75,000	375,000	300,000	75,000	375,000	300,000	75,000
San Antonio MBEC	320,639	256,639	64,000	320,639	256,639	64,000	320,639	256,639	64,000
Georgia MBEC	300,799	240,599	60,200	300,799	240,599	60,200	300,799	240,599	60,200
North Carolina MBEC	300,799	240,599	60,200	300,799	240,599	60,200	300,799	240,599	60,200
Alabama/Mississippi MBEC	300,799	240,599	60,200	300,799	240,599	60,200	300,799	240,599	60,200
South Carolina MBEC	300,799	240,599	60,200	300,799	240,599	60,200	300,799	240,599	60,200
Chicago MBEC	375,000	300,000	75,000	375,000	300,000	75,000	375,000	300,000	75,000
Detroit MBEC	349,800	280,000	69,800	349,800	280,000	69,800	349,800	280,000	69,800
Indianapolis MBEC	250,000	200,000	50,000	250,000	200,000	50,000	250,000	200,000	50,000
St. Louis MBEC	300,000	240,000	60,000	300,000	240,000	60,000	300,000	240,000	60,000
Cleveland MBEC	300,000	240,000	60,000	300,000	240,000	60,000	300,000	240,000	60,000
Manhattan MBEC	343,900	275,000	68,900	343,900	275,000	68,900	343,900	275,000	68,900
New Jersey MBEC	343,900	275,000	68,900	343,900	275,000	68,900	343,900	275,000	68,900
Pennsylvania MBEC	343,900	275,000	68,900	343,900	275,000	68,900	343,900	275,000	68,900
Queens MBEC	343,900	275,000	68,900	343,900	275,000	68,900	343,900	275,000	68,900
Puerto Rico MBEC	300,799	240,599	60,200	300,799	240,599	60,200	300,799	240,599	60,200
Washington Metro MBEC	343,900	275,000	68,900	343,900	275,000	68,900	343,900	275,000	68,900
Williamsburg MBEC	375,000	300,000	75,000	375,000	300,000	75,000	375,000	300,000	75,000

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.800 Minority Business Enterprise Center Program (formerly Minority Business Development Center (MBDC) Program).

Eligibility: For-profit entities (including sole-proprietorships, partnerships, and corporations), and non-profit organizations, state and local government entities, American Indian tribes, and educational institutions are eligible to operate MBECs. Applicants receiving three (3) consecutive funding award cycles (beginning 2007 through 2015) will not be eligible to receive an award in 2016 (and thereafter).

Program Description: In accordance with Executive Order 11625 and 15 U.S.C. Section 1512, the Minority Business Development Agency (MBDA) is soliciting applications from organizations to operate a Minority Business Enterprise Center (MBEC) (formerly Minority Business Development Center). The MBEC Program requires MBEC staff to provide standardized business assistance services to minority firms with $500,000 or more in annual revenues and/or ''rapid-growth potential'' minority businesses (''Strategic Growth Initiative or ''SGI'' firms) directly; to develop a network of strategic partnerships; and to provide strategic business consulting. This is a fee for service program, therefore, the MBEC is required to charge client fees.

These requirements will be used to generate increased results with respect to financing and contracts awarded to minority-owned firms and thus, are a key component of this program.

The MBEC Program will concentrate on serving SGI firms capable of generating significant employment and long-term economic growth. The MBEC program shall continue to leverage telecommunications technology, including the Internet, and a variety of online/computer-based resources to dramatically increase the level of service that the MBEC can provide to minority-owned firms.

The MBEC program incorporates an entrepreneurial approach to building market stability and improving the quality of services delivered. This strategy expands the reach of the MBEC by requiring project operators to develop and build upon strategic alliances with public and private sector partners, as a means of serving SGI firms within the project's geographic service area. In addition, MBDA will establish specialized business consulting training programs to support the MBEC client assistance services. These MBEC training programs are designed specifically to foster growth assistance to its clients. The MBEC will also encourage increased collaboration and client/non-client referrals among the MBDA-sponsored networks. This will provide a comprehensive approach to serving the emerging sector of the minority business community. The MBEC will operate through the use of trained professional business consultants who will assist minority entrepreneurs through direct client engagements. Entrepreneurs eligible for assistance under the MBEC Program are African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian and Pacific Islander Americans, Asian Indians, Native Americans, Eskimos and Hasidic Jews.

As part of its strategy for continuous improvement, the MBEC shall expand its delivery capacity to all minority firms (as defined in the FFO), with greater emphasis on SGI firms capable of impacting economic growth and employment. MBDA wants to ensure that MBEC clients are receiving a consistent level of service throughout its funded network. To that end, MBDA will require MBEC consultants to attend training course(s) designed to achieve standardized services and quality expectations.

Further programmatic information can be found in the FFO.

Match Requirements: Cost sharing of at least 20% for year 1, 2 and 3 is required. Cost sharing is the portion of the project cost not borne by the Federal Government. Applicants must meet this requirement in (1) cash contributions; (2) non-cash applicant contributions; and/or (3) third party in-kind contributions. Bonus points will be awarded for cost sharing exceeding 20 percent that is applied on the following scale: More than 20%—less than 25%—1 point; 25% or more-less than 30%—2 points; 30% or more-less than 35%—3 points; 35% or more-less than 40%—4 points; and, 40% or more—5 points. Applicants must provide a detailed explanation of how the cost-sharing requirement will be met. The MBEC must charge client fees for services rendered. Client fees shall be used towards meeting cost share requirements. Client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives.

Evaluation Criteria: Proposals will be evaluated and applicants will be selected based on the following criteria. An application must receive at least 70% of the total points available for each evaluation criterion, in order for the application to be considered for funding. The maximum total of points that can be earned is 105 including bonus points for related non-federal cost sharing, except when oral presentations are made by applicants. If oral presentations are made (see paragraph 5 below), the maximum total of points that can be earned is 115.

1. Applicant Capability (40 points). The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- *MBE Community*—experience in and knowledge of the minority business sector and strategies for enhancing its growth and expansion; particular emphasis shall be on expanding SGI firms (4 points);
- *Business Consulting*—experience in and knowledge of business consulting of SGI firms (5 points);
- *Financing*—experience in and knowledge of the preparation and formulation of successful financial transactions (5 points);
- *Procurements and Contracting*—experience in and knowledge of the public and private sector contracting opportunities for minority businesses, as well as demonstrated expertise in assisting MBEs into supply chains (5 points);
- *Financing Networks*—resources and professional relationships within the corporate, banking and investment community that may be beneficial to minority-owned firms (5 points);
- *Establishment of a Self-Sustainable Service Model*—summary plan to establish a self-sustainable model for continued services to the MBE community beyond the MBDA funding cycle (3 points);
- *MBE Advocacy*—experience and expertise in advocating on behalf of minority businesses, both as to specific transactions in which a minority business seeks to engage, and as to broad market advocacy for the benefit of the minority community at large (3 points); and
- *Key Staff*—assessment of the qualifications, experience and proposed role of staff who will operate the MBEC. In particular, an assessment will be made to determine whether proposed key staff possesses the expertise in utilizing information systems and the ability to successfully deliver services (10 points).

2. Resources (20 points). The applicant's proposal will be evaluated according to the following criteria:

- *Resources*—discuss those resources (not included as part of the cost-sharing arrangement) that will be used, including (but not limited to) existing prior and/or current data lists that will serve in fostering immediate success for the MBEC (8 points);
- *Location*—Applicant must indicate if it shall establish a location for the Center that is separate and apart from any existing offices in the geographic service area (2 points);
- *Partners*—discuss how you plan to establish and maintain the network of five (5) Strategic Partners and how these partners will support the MBEC to meet its performance objectives (5 points); and
- *Equipment*—discuss how you plan to accomplish the computer hardware and software requirements (5 points).

3. Techniques and Methodologies (20 points). The applicant's proposal will be evaluated as follows:

- *Performance Measures*—relate each performance measure to the financial, information and market resources available in the geographic service area to the applicant (including existing client list) and how the goals will be met (marketing plan). Specific attention should be placed on matching performance outcomes (as described under ''Geographic Service Areas and Performance Goals'' of the FFO) with client service (billable) hours. The applicant should consider existing market conditions and its strategy to achieve the goal (10 points);
- *Plan of Action*—provide specific detail on how the applicant will start operations. The MBEC shall have thirty (30) days to become fully operational after an award is made. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment are in place

and operational, all necessary forms are developed (e.g., client engagement letters, other standard correspondence, etc.), and the center is ready to open its doors to the public (5 points); and,

• *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently all staff time will be used to achieve the work requirements (5 points).

4. Proposed Budget and Supporting Budget Narrative (20 points). The applicant's proposal will be evaluated on the following sub-criteria:

• Reasonableness, allowability and allocability of costs. All of the proposed expenditures must be discussed and the budget line item narrative must match the proposed budget. Fringe benefits and other percentage item calculations must match the proposed line item on the budget. (5 points);

• Proposed cost sharing of 20% is required. The non-Federal share must be adequately documented, including how client fees will be used to meet the cost-share (5 points); and,

• Performance Based Budget. Discuss how the budget is related to the accomplishment of the work requirements and the performance measures. Provide a budget narrative that clearly shows the connections (10 points).

Proposals with cost sharing which exceeds 20% will be awarded bonus points on the following scale: more than 20%—less than 25%—1 point; 25% or more-less than 30%—2 points; 30% or more-less than 35%—3 points; 35% or more-less than 40%—4 points; and 40% or more—5 points.

5. Oral Presentation—Optional (10 points). Oral presentations are held only when determined by MBDA. When the merit review by the panel results in applications scoring 70% or more of the available points for each criterion, MBDA may request all those applicants to develop and provide an oral presentation. This presentation will be used to establish a final evaluation and rating.

The applicant's presentation will be evaluated on the following sub-criteria:

(a) The extent to which the presentation demonstrates how the applicant will effectively and efficiently assist MBDA in the accomplishment of its mission (2 points);

(b) The extent to which the presentation demonstrates business operating priorities designed to manage a successful MBEC (2 points);

(c) The extent to which the presentation demonstrates a management philosophy that achieves an effective balance between micromanagement and complete autonomy for its Project Director (2 points);

(d) The extent to which the presentation demonstrates robust search criteria for the identification of a Project Director (1 point);

(e) The extent to which the presentation demonstrates effective employee recruitment and retention policies and procedures (1 point); and,

(f) The extent to which the presentation demonstrates a competitive and innovative approach to exceeding performance requirements (2 points).

Review and Selection Process

1. *Initial Screening.* Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present.

2. *Panel Review.* Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. MBDA anticipates that the review panel will be made up of at least three independent reviewers (all Federal employees) who will review all applications based on the above evaluation criteria. Each reviewer will evaluate and provide a score for each proposal. In order for an application to be considered for funding, it shall need to achieve 70% of the available points for each criterion. Failure to achieve these results will automatically deem the application as unsuccessful.

3. *Oral Presentation—Optional.* When the merit review by the panel results in applications scoring 70% or more of the available points for each criterion, MBDA may request all those applicants to develop and provide an oral presentation. The applicants may receive up to 10 additional points based on the presentation and content presented. If a formal presentation is requested, the applicants will receive a formal communication (via standard mail, e-mail or fax) from MBDA indicating the time and date for the presentation. In person presentations are not mandatory but are encouraged; telephonic presentations are acceptable. Applicants will be asked to submit a power point presentation (or equivalent) to MBDA that addresses the oral presentation criteria (see above, Evaluation Criteria, item 5. Oral Presentation—Optional). This presentation must be submitted at least 24 hours before the scheduled date and time of the presentation. The presentation will be made to the National Director (or his/her designee) and/or up to three senior MBDA staff who did not serve on the merit evaluation panel. The oral panel members may ask follow-up questions after the presentation. MBDA will provide the teleconference dial-in number and pass code. Each finalist will present to MBDA staff only; other applicants are not permitted to listen (and/or watch).

All costs pertaining to this presentation shall be borne by the applicant. MBEC award funds may *not* be used as a reimbursement for this presentation. MBDA will not accept any requests or petitions for reimbursement.

The oral panel members shall score each presentation in accordance with the oral presentation criteria. An average score shall be compiled and added to the original score of the panel review.

4. *Final Recommendation.* The National Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the selection criteria as outlined in this Announcement and the following:

(a) The evaluations and rankings of the independent review panel and the evaluation(s) of the oral presentations, if applicable;

(b) Funding priorities. The National Director (or his/her designee) reserves the right to conduct a site visit (subject to the availability of funding) to applicant organizations receiving at least 70% of the total points available for each evaluation criterion, in order to make a better assessment of the organization's capability to achieve the funding priorities; and,

(c) The availability of funding.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: Applicants are hereby given notice that funds have not yet been appropriated for this program for Fiscal Year 2007. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige MBDA or the Department of Commerce to award any specific project or to obligate any available funds.

Universal Identifier: Applicants should be aware that they will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. See the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information.

Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by accessing the Grants.gov Web site at *http://www.Grants.gov*.

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of standard forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice for an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grant, benefits and contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the regulatory flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: July 21, 2006.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. E6–11947 Filed 7–25–06; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Information for Share Transfer in the Wreckfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 25, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Rueter, (727) 824–5350 or *jason.rueter@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Southeast Region manages the wreckfish fishery of the Exclusive Economic Zone (EEZ) in or from the South Atlantic under the Fishery Management Plan for Snapper/Grouper (FMP). The South Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation & Management Act. The regulations implementing the FMPs are at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requests information from participating wreckfish participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the wreckfish fishery in or from the South Atlantic EEZ.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0262.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 4.

Estimated Time per Response: 15 minutes per transfer.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost to Public: $161.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–11902 Filed 7–25–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, as amended (5 U.S.C. Appendix), the Department of Defense gives notice that the Amputee Patient Care Program Board, which is determined to be in the public interest, is hereby renewed on July 6, 2006. This committee provides

necessary and valuable independent advice to the Secretary of Defense and other senior Defense officials in their respective areas of expertise.

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balance is obtained.

FOR FURTHER INFORMATION CONTACT: Frank Wilson, DoD Committee Management Officer, 703–601–2554.

Dated: June 20, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6480 Filed 7–25–06; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Termination of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, as amended (5 U.S.C. Appendix), the Department of Defense gives notice that the DoD Advisory Committee on Military Compensation, was terminated effective July 11, 2006.

This committee has concluded their objectives and provided necessary and valuable independent advice to the Government's decision makers.

FOR FURTHER INFORMATION CONTACT: Frank Wilson, DoD Committee Management Officer, 703–601–2554.

Dated: June 20, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6479 Filed 7–25–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to introduce new members and conduct orientation training. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration of the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than 5 p.m., 15 August 2006. Oral presentations by members of the public will be permitted only on Tuesday, 22 August 2006 from 4:30 p.m. to 5 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentation to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) coy of the presentation by 5 p.m., 18 August 2006 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on 18 August 2006.

DATES: 22 August 2006, 8:30 a.m.–5 p.m.; 23 August 2006, 10 a.m.–12 p.m.

Location: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Gerald Posey, USA DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4100. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Tuesday, 22 August 2006, 8:30 a.m.–5 p.m.

Welcome & Administrative Remarks.

New member Orientation.

Public Forum.

Wednesday, 23 August 2006, 8:30 a.m.–10 a.m. (Not Open to Public)

Committee Administrative and Security Training.

Wednesday, 23 August 2006, 10 a.m.–12 p.m.

Outline and Review 2006 Report Protocols.

Note: Exact order may vary.

Dated: July 20, 2006.

L.M. Bynum,

OSD Federal Register Liaision Officer, DOD.

[FR Doc. 06–6481 Filed 7–25–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DOD–2006–OS–0163]

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice To Add a New System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This Action will be effective without further notice on August 25, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service 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 system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 20, 2006, to the House Committee on Government Reform, the Senate Committee on 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 December 12, 2000, 65 FR 239.

Dated: July 20, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T–7900

SYSTEM NAME:

Operational Data Store (ODS) System.

SYSTEM LOCATION:

Defense Enterprise Computing Center—St. Louis, Post Office Box 20012, St. Louis, MO 63120–0012.

Defense Finance and Accounting Service—Indianapolis, (SDS–TSDBC), 8899 East 56th Street, Indianapolis, IN 46249–2700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army Active and Reserve military members, members of the Army National Guard, military academy cadets, and Army Reserve Officer Training Corps (ROTC) students. DoD civilian employees paid by appropriated funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, home address, employing DoD and other Federal agencies, military branch of service, status (as appropriate), maintained in various Operational Data Store System database tables.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 31 U.S.C. 3512 and 3513; E.O. 9397; and DoD Directive 5118.5, Defense Finance and Accounting Service.

PURPOSE(S):

To permit DFAS and Army financial managers the ability to retrieve, and review and update financial payment information. Database records are also used for extraction or compilation of data and reports for budget execution status and statistical analyses for use internally or externally as required by DoD or other government agencies.

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 Federal, State, and local agencies for the purpose of conducting computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

The 'Blanket Routine Uses' published at the beginning of the DFAS 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:

Records are stored electronically in an Oracle database system.

IRRETRIEVABILITY:

Information is retrieved by name and Social Security Number.

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need to know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, or destroyed up to 6 years and 3 months after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service—Indianapolis, Operational Data Store System Manager, (SDS–TSDBC), 8899 East 56th Street, Indianapolis, IN 46249–2700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From the individual concerned, Federal agencies or other DoD Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–6483 Filed 7–25–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem Bulletin Number 247. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 247 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* August 1, 2006.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United Sttes. It supersedes Civilian Personnel Per Diem Bulletin Number 246. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments

outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: July 20, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 247 ARE UPDATES TO THE RATES FOR PUERTO RICO.				
ALASKA				
ADAK	120	79	199	07/01/2003
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	170	93	263	05/01/2006
09/16 - 04/30	95	85	180	05/01/2006
BARROW	159	95	254	05/01/2002
BETHEL	125	78	203	05/01/2006
BETTLES	135	62	197	10/01/2004
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER				
05/01 - 09/30	129	75	204	04/01/2006
10/01 - 04/30	89	71	160	04/01/2006
CORDOVA				
05/01 - 09/30	95	74	169	05/01/2006
10/01 - 04/30	85	72	157	04/01/2005
CRAIG				
04/15 - 09/14	125	67	192	04/01/2006
09/15 - 04/14	95	64	159	04/01/2006
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	90	82	172	04/01/2006
DENALI NATIONAL PARK				
06/01 - 08/31	122	66	188	04/01/2006
09/01 - 05/31	70	61	131	04/01/2006
DILLINGHAM	114	69	183	06/01/2004
DUTCH HARBOR-UNALASKA	121	84	205	04/01/2006
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	169	88	257	04/01/2006
09/16 - 04/30	75	79	154	04/01/2006
ELMENDORF AFB				
05/01 - 09/15	170	93	263	05/01/2006
09/16 - 04/30	95	85	180	05/01/2006
FAIRBANKS				
05/01 - 09/15	169	88	257	04/01/2006
09/16 - 04/30	75	79	154	04/01/2006
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	90	82	172	04/01/2006
FT. RICHARDSON				
05/01 - 09/15	170	93	263	05/01/2006
09/16 - 04/30	95	85	180	05/01/2006
FT. WAINWRIGHT				
05/01 - 09/15	169	88	257	04/01/2006
09/16 - 04/30	75	79	154	04/01/2006
GLENNALLEN				
05/01 - 09/30	129	75	204	04/01/2006

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30	89	71	160	04/01/2006
HAINES	90	69	159	04/01/2006
HEALY				
06/01 - 08/31	122	66	188	04/01/2006
09/01 - 05/31	70	61	131	04/01/2006
HOMER				
05/15 - 09/15	139	80	219	05/01/2006
09/16 - 05/14	79	74	153	05/01/2006
JUNEAU				
05/01 - 09/30	129	89	218	04/01/2006
10/01 - 04/30	79	84	163	04/01/2006
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
05/01 - 08/31	129	92	221	04/01/2006
09/01 - 04/30	79	87	166	04/01/2006
KENNICOTT	189	85	274	04/01/2005
KETCHIKAN				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK				
04/15 - 09/14	125	67	192	04/01/2006
09/15 - 04/14	95	64	159	04/01/2006
KODIAK				
05/01 - 09/30	123	91	214	04/01/2006
10/01 - 04/30	99	88	187	04/01/2006
KOTZEBUE				
05/15 - 09/30	151	90	241	05/01/2006
10/01 - 05/14	135	89	224	05/01/2006
KULIS AGS				
05/01 - 09/15	170	93	263	05/01/2006
09/16 - 04/30	95	85	180	05/01/2006
MCCARTHY	189	85	274	04/01/2005
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	169	88	257	04/01/2006
09/16 - 04/30	75	79	154	04/01/2006
NOME	125	86	211	05/01/2006
NUIQSUT	180	53	233	05/01/2002
PETERSBURG	80	62	142	06/01/2005
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 09/30	171	79	250	04/01/2006
10/01 - 04/30	69	69	138	04/01/2006
SITKA-MT. EDGECUMBE				
05/01 - 09/30	119	75	194	04/01/2006
10/01 - 04/30	99	73	172	04/01/2006
SKAGWAY				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
SLANA				
05/01 - 09/30	139	55	194	02/01/2005
10/01 - 04/30	99	55	154	02/01/2005
SPRUCE CAPE				
05/01 - 09/30	123	91	214	04/01/2006
10/01 - 04/30	99	88	187	04/01/2006
ST. GEORGE	129	55	184	06/01/2004
TALKEETNA	100	89	189	07/01/2002
TANANA	125	86	211	05/01/2006
TOGIAK	100	39	139	07/01/2002
TOK	90	65	155	05/01/2006
UMIAT	180	107	287	04/01/2005
UNALAKLEET	79	80	159	04/01/2003
VALDEZ				
05/01 - 10/01	129	80	209	04/01/2006
10/02 - 04/30	79	75	154	04/01/2006
WASILLA				
05/01 - 09/30	134	84	218	04/01/2006
10/01 - 04/30	80	79	159	04/01/2006
WRANGELL				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	122	73	195	12/01/2005
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	90	225	06/01/2005
HAWAII				
CAMP H M SMITH	149	100	249	05/01/2006
EASTPAC NAVAL COMP TELE AREA	149	100	249	05/01/2006
FT. DERUSSEY	149	100	249	05/01/2006
FT. SHAFTER	149	100	249	05/01/2006
HICKAM AFB	149	100	249	05/01/2006
HONOLULU (INCL NAV & MC RES CTR)	149	100	249	05/01/2006
ISLE OF HAWAII: HILO	112	93	205	05/01/2006
ISLE OF HAWAII: OTHER	150	95	245	05/01/2006
ISLE OF KAUAI	188	102	290	05/01/2006
ISLE OF MAUI	159	95	254	05/01/2006
ISLE OF OAHU	149	100	249	05/01/2006
KEKAHA PACIFIC MISSILE RANGE FAC	188	102	290	05/01/2006
KILAUEA MILITARY CAMP	112	93	205	05/01/2006

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
LANAI	175	130	305	05/01/2006
LUALUALEI NAVAL MAGAZINE	149	100	249	05/01/2006
MCB HAWAII	149	100	249	05/01/2006
MOLOKAI	153	95	248	05/01/2006
NAS BARBERS POINT	149	100	249	05/01/2006
PEARL HARBOR [INCL ALL MILITARY]	149	100	249	05/01/2006
SCHOFIELD BARRACKS	149	100	249	05/01/2006
WHEELER ARMY AIRFIELD	149	100	249	05/01/2006
[OTHER]	72	61	133	01/01/2000
MIDWAY ISLANDS				
MIDWAY ISLANDS				
INCL ALL MILITARY	100	45	145	06/01/2006
NORTHERN MARIANA ISLANDS				
ROTA	129	91	220	05/01/2006
SAIPAN	121	94	215	05/01/2006
TINIAN	85	80	165	06/01/2005
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
AGUADILLA	87	70	157	07/01/2006
BAYAMON	195	77	272	08/01/2006
CAROLINA	195	77	272	08/01/2006
CEIBA				
05/01 - 10/31	155	57	212	08/01/2006
11/30 - 04/30	185	57	242	08/01/2006
FAJARDO (INCL ROOSEVELT RDS NAVA				
05/01 - 10/31	155	57	212	08/01/2006
11/30 - 04/30	185	57	242	08/01/2006
FT. BUCHANAN [INCL GSA SVC CTR,	195	77	272	08/01/2006
HUMACAO				
05/01 - 10/31	155	57	212	08/01/2006
11/30 - 04/30	185	57	242	08/01/2006
LUIS MUNOZ MARIN IAP AGS	195	77	272	08/01/2006
LUQUILLO				
05/01 - 10/31	155	57	212	08/01/2006
11/30 - 04/30	185	57	242	08/01/2006
MAYAGUEZ	109	73	182	07/01/2006
PONCE				
01/01 - 05/31	139	73	212	07/01/2006
06/01 - 07/31	230	82	312	07/01/2006
08/01 - 11/30	139	73	212	07/01/2006
12/01 - 12/31	230	82	312	07/01/2006
SABANA SECA [INCL ALL MILITARY]	195	77	272	08/01/2006
SAN JUAN & NAV RES STA	195	77	272	08/01/2006
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	135	92	227	05/01/2006
12/15 - 04/14	187	97	284	05/01/2006
ST. JOHN				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
04/15 - 12/14	163	98	261	05/01/2006
12/15 - 04/14	220	104	324	05/01/2006
ST. THOMAS				
04/15 - 12/14	240	105	345	05/01/2006
12/15 - 04/14	299	111	410	05/01/2006
WAKE ISLAND				
WAKE ISLAND	152	15	167	06/01/2006

[FR Doc. 06–6482 Filed 7–25–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Defense Logistics Agency

[DOD–2006–OS–0164]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records 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 August 25, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency 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 July 20, 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: July 20, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S600.30

SYSTEM NAME:

Safety, Health, Injury, and Accident Records (November 16, 2004, 69 FR 67112).

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace the last sentence in the second paragraph to read ''Official mailing addresses are available from the Privacy Act Office, Headquarters, Defense Logistics Agency ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Replace first sentence with ''Employee's name, Social Security Number or Foreign National Number, gender, age, date of birth, home address and telephone numbers, place of employment, accident reports, next of kin data, names of witnesses and their statements, photographs, and proposed or actual corrective action, where appropriate, name of physician/health care professional providing treatment, name of the company providing medical treatment, and the address of the medical provider. Information is collected on DLA Form 1591, Supervisory Mishap Report.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Revise name of DoD Instruction 6055.1 to read ''DoD Safety and Occupational Health (SOH) Program.''

* * * * *

NOTIFICATION PROCEDURE:

Replace with ''Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.''

RECORD ACCESS PROCEDURES:

Replace address with Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.''

CONTESTING RECORD PROCEDURES:

Replace address with ''Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.''

* * * * *

S600.30

SYSTEM NAME:

Safety, Health, Injury, and Accident Records.

SYSTEM LOCATION:

Environment, Safety and Occupational Health Office, Headquarters, Defense Logistics Agency, ATTN: DES, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the DLA Field Activity Safety and Health Offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Records are also maintained by DLA Security Control Centers, Emergency

Support Operations Centers, and fire and rescue departments certified to provide primary response and medical aid in emergencies. Official mailing addresses are available from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who suffer accidents, become injured or ill, or otherwise require emergency rescue or medical assistance while on DLA facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, Social Security Number or Foreign National Number, gender, age date of birth, home address and telephone numbers, place of employment, accident reports, next of kin data, names of witnesses and their statements, photographs, and proposed or actual corrective action, where appropriate, and the name of physician/health care professional providing treatment, company providing medical treatment, and the address of the medical provider. Information is collected on DLA Form 1591, Supervisory Mishap Report. The records may also contain medical history data, current medications, allergies, vital signs and other medical details obtained at the site of injury or illness, details of treatment administered on the scene, name of receiving medical facility, names of units responding to the scene along with their response times, and whether the patient refused treatment or transport.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 29 U.S.C. 651 *et seq.*, The Occupational Safety and Health Act of 1970 (OSHA); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 29 CFR 1960, Subpart I, Recordkeeping and Reporting Requirements for Federal Occupational Safety and Health Programs; DoD Instruction 6055.1, DoD Safety and Occupational Health (SOH) Program; and E.O. 9397 (SSN).

PURPOSE(S):

Information is maintained to administer emergency first aid or medical treatment; to identify and correct causes of accidents; to formulate improved accident prevention programs; to document emergency fire and rescue activities; to comply with regulatory reporting requirements; to identify individuals involved in repeated accidents; and to prepare statistical reports.

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 Department of Labor to comply with the requirement to report Federal civilian employee on-the-job accidents (29 CFR part 1960).

To hospitals, medical centers, medical or dental practitioners, or similar persons for the purpose of providing initial or follow-up care or treatment.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA'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:

Records are stored in paper and electronic formats.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or SHIRS case number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours. All individuals granted access to this system of records have received Privacy Act training.

RETENTION AND DISPOSAL:

Cases involving reportable mishaps are destroyed five years after case is closed. Cases involving non-reportable mishaps are destroyed three years after case is closed. Documentation of fire department activities and actions pertaining to fire/emergency calls are destroyed after 7 years.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Environment, Safety and Occupational Health Office, Headquarters, Defense Logistics Agency, ATTN: DES, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221;

Commander, Defense Distribution Center, 2009 Mission Drive, New Cumberland, PA 17070–5000;

Commander, Defense Supply Center Columbus, 3990 Broad Street, Columbus, OH 43216–5000;

Commander, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA 23297–5000; and

Commander, Defense Logistics Information Services, 74 Washington Avenue North, #7, Battle Creek, MI 49017–3084.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject, supervisors, medical units, security offices, police, fire departments, investigating officers, or witnesses to accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–6484 Filed 7–25–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 25, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 20, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Pre-Elementary Education Longitudinal Study (PEELS).

Frequency: Varies.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 7,824; Burden Hours: 4,708.

Abstract: PEELS will provide the first national picture of experiences and outcomes of three to five year old children in early childhood special education. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization with data from parents, service providers, and teachers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3159. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–11916 Filed 7–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies and State approval agencies whose applications to the Secretary for initial or renewed recognition, requests for an expansion of the scope of recognition, or reports will be reviewed at the Advisory Committee meeting to be held on December 4–6, 2006, at The Madison, 15th and M Street, NW., Washington, DC 20005, telephone: 202–587–2684.

Where Should I Submit My Comments?

Please submit your written comments by mail, fax, or e-mail no later than August 25, 2006 to Ms. Robin Greathouse, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, Room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7011, fax: (202) 219–7005, or e-mail: *Robin.Greathouse@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity To Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comments.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with Section 496 of the Higher Education Act of 1965, as amended, and the Secretary's Criteria for Recognition of Accrediting Agencies and State Approval Agencies. The Criteria are regulations found in 34 CFR part 602 (for accrediting agencies) and in 34 CFR part 603 (for State approval agencies) and are found at the following site: *http://www.ed.gov/admins/finaid/accred/index.html*. We will also include your comments with the staff analyses we present to the Advisory Committee at its December 2006 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by August 25, 2006. In all instances, your comments about agencies seeking initial recognition, continued recognition and/or an expansion of an agency's scope of recognition must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the

Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency or State approval agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

What Agencies Will the Advisory Committee Review at the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs it accredits that are encompassed within the scope of recognition she grants to the agency.

Please note that the agencies listed below, which were originally scheduled for review during the National Advisory Committee's June 2006 meeting, were postponed and will be reviewed at the December 2006 meeting.

- Accrediting Bar Association.
- Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

Any third-party written comments regarding these agencies that were received by March 8, 2006, in accordance with the **Federal Register** notice published on February 6, 2006, will become part of the official record. Those comments will be considered by the National Advisory Committee when it reviews the agencies at the December 2006 meeting.

The following agencies will be reviewed during the December 2006 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Renewal of Recognition That Includes a Contraction of the Scope of Recognition

1. American Occupational Therapy Association, Accreditation Council for Occupational Therapy Education. (Current scope of recognition: The accreditation of entry-level professional occupational therapy educational programs offering the Baccalaureate Degree, Post-baccalaureate Certificate, Professional Master's Degree, Combined Baccalaureate/Master's degree, and Doctoral Degree for the accreditation of occupational therapy assistant programs offering the Associate Degree or a Certificate; and for its accreditation of these programs offered via distance education.) (Requested scope of recognition: The accreditation of occupational therapy educational programs offering the professional master's degree, combined baccalaureate/master's degree, and occupational therapy doctorate (OTD) degree; the accreditation of occupational therapy assistant programs offering the associate degree or a certificate; and the accreditation of these programs offered via distance education.)

Petitions for Renewal of Recognition That Include an Expansion of the Scope of Recognition

1. The Association for Biblical Higher Education, Commission on Accreditation. (Current scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of Bible colleges and institutes in the United States offering undergraduate programs.) (Requested scope of recognition: The accreditation and preaccreditation throughout the United States of institutions and programs of biblical higher education that award undergraduate certificates and degrees, and masters, and doctoral degrees including those programs offered via traditional and alternative [distance education] delivery systems.)

2. Commission on Collegiate Nursing Education. (Current scope of recognition: The accreditation of nursing education programs in the United States, at the baccalaureate and graduate degree levels.) (Requested scope of recognition: The accreditation of nursing programs in the United States, at the baccalaureate and graduate degree levels, including programs offering distance education.)

3. Distance Education and Training Council, Accrediting Commission. (Current scope of recognition: The accreditation of postsecondary institutions in the United States that offer degree programs primarily by the distance education method up through the first professional degree level, and are specifically certified by the agency as accredited for Title IV purposes; and the accreditation of postsecondary institutions in the United States not participating in Title IV that offer programs primarily by the distance education method up through the first professional degree level.) (Requested scope of recognition: The accreditation of postsecondary institutions in the United States that offer degree programs primarily by the distance education method from the associate up to and including the professional doctoral degree, and are specifically certified by the agency as accredited for Title IV purposes; and the accreditation of postsecondary institutions in the United States not participating in Title IV that offer programs primarily by the distance education method from the associates up through the professional doctoral degrees.)

4. Middle States Commission on Secondary Schools. (Current scope of recognition: The accreditation of institutions with postsecondary, non-degree granting career and technology programs in Delaware, Maryland, New Jersey, New York, Pennsylvania, the Commonwealth of Puerto Rico, the District of Columbia, and the U.S. Virgin Islands.) (Requested scope of recognition: The accreditation of institutions with postsecondary, non-degree granting career and technology programs in Delaware, Maryland, New Jersey, New York, Pennsylvania, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands including programs offered all or in part via distance education modalities at those institutions.)

5. National League for Nursing Accrediting Commission. (Current scope of recognition: The accreditation in the United States of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs.) (Requested scope of recognition: The accreditation in the United States of programs in practical nursing, diploma, associate, baccalaureate and graduate degree nurse education programs including those that offer such programs via distance education.)

Petition for an Expansion of the Scope

1. Western Association of Schools and Colleges, Accrediting Commission for Schools. (Current scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of adult and postsecondary schools that offer programs below the degree level in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.) (Requested scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of adult and postsecondary schools that offer programs below the degree level in California, Hawaii, the United States

territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands; and the accreditation and preaccreditation of not-for-profit postsecondary non-degree-granting institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington.)

Petitions for Renewal of Recognition

1. American Academy for Liberal Education. (Current and requested scope of recognition: The accreditation and preaccreditation (''Candidacy for Accreditation'') of institutions of higher education and programs within institutions of higher education throughout the United States that offer liberal arts degree(s) at the baccalaureate level or a documented equivalency.)

2. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar. (Current and requested scope of recognition: The accreditation throughout the United States of programs in legal education that lead to the first professional degree in law, as well as freestanding law schools offering such programs.)

3. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education (Current and requested scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') in the United States of physical therapist education programs leading to the first professional degree at the master's or doctoral level and physical therapist assistant education programs at the associate degree level and for its accreditation of such programs offered via distance education.)

4. American Veterinary Medical Association, Council on Education. (Current and requested scope of recognition: The accreditation and preaccreditation (''Reasonable Assurance'') in the United States of programs leading to professional degrees (D.V.M. or D.M.V.) in veterinary medicine.)

5. Association for Clinical Pastoral Education, Inc., Accreditation Commission. (Current and requested scope of recognition: The accreditation of both clinical pastoral education (CPE) centers and CPE and Supervisory CPE programs located within the United States and territories.)

6. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities. (Current and requested scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands and the Republic of the Marshall Islands, including distance education programs offered at those institutions.)

Interim Reports. (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition.)

1. Council on Naturopathic Medical Education.

2. North Central Association Commission on Accreditation and School Improvement, Board of Trustees.

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Renewal Petitions

1. Oklahoma Board of Career and Technology Education (Current and requested scope of recognition: The approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents for Higher Education.)

2. Pennsylvania State Board of Vocational Education, Bureau of Career and Technical Education.

Interim Reports

1. New York State Board of Regents (Public Postsecondary Vocational Education).

2. Puerto Rico State Agency for the Approval of Public Postsecondary Vocational, Technical Institutions and Programs.

State Agency Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Maryland Board of Nursing.

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. National Defense University, Washington, DC (request to award a Master's in Arts in Strategic Security Studies degree).

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting will be available for public inspection at the U.S. Department of Education, Room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone (202) 219–7011 between the hours of 8 a.m. and 3 p.m., Monday through Friday, until November 6, 2006. They will be available again after the December 4–6, 2006 Advisory Committee meeting. An appointment must be made in advance of such inspection.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: July 20, 2006.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E6–11914 Filed 7–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC06–592–000; FERC–592]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

July 18, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due September 5, 2006.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC06–592–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERConlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–592 ''Marketing Affiliates of Interstate Pipelines'' (OMB No. 1902–0157) is used by the Commission to implement the statutory provisions of sections 4, 5, 7, 8, 10, 14, 16, and 20 of the Natural Gas Act (NPA) 15 U.S.C. 717–717w and Title II, section 311 and sections 501 and 504 of the Natural Gas Policy Act (Pub. L. 95–621).

The FERC–592 requirements apply to ''Transmission Providers'' who are defined as any interstate natural gas pipeline that transports gas for others, subject to the Natural Gas Act (*i.e.*, pursuant to subpart A of part 157 or subparts B or G of part 284). *See* 18 CFR 358.3(a)(1) and (2). A Transmission Provider *does not* include a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers or no market power, 18 CFR 358.3(a)(3).

Initially, FERC–592 was adopted when the Commission issued the Standards of Conduct in Order No. 497, 53 FR 22161, June 14, 1988. The Commission issued the Standards of Conduct to prevent Transmission Providers from discriminating against non-affiliated shippers or from granting undue preferences to their marketing and energy affiliates. In response to growing competition in the natural gas marketplace and to further ensure that it could monitor transactions for the exercise of market power, the Commission revised its reporting requirements in Order No. 637, 65 FR 10219, on February 25, 2000. The Commission required pipelines to post more transmission information on their Internet Web sites to improve transparency of transmission information.

With the revisions in Order No. 637, the Commission also eliminated many of the requirements of the original FERC–592s. First the Commission eliminated the requirement to submit the FERC–592 information to the Commission. Second the Commission eliminated many of the items required under the FERC–592 requirements and retained only two requirements: (1) A pipeline must retain information pertaining to discounts (affiliated and non-affiliated) and, (2) if a pipeline relies on contract information or other data to allocate capacity, it must maintain a log of that information for all shippers (affiliated and non-affiliated).

In November 2003, the Commission enhanced and expanded the Standards of Conduct in Order No. 2004 and subsequently in Order Nos. 2004–A, B, C, and D. However, Order No. 2004 did not substantively change the FERC–592 requirements, which applies only to natural gas Transmission Providers.

While there are many different requirements under the Standards of Conduct, the basic requirements are that a Transmission Provider must: (1) Function independently from its Marketing and Energy Affiliates; and (2) must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis and may not operate its transmission system to preferentially benefit its Marketing or Energy Affiliates. *See* 18 CFR 358.2.

This information is used by the Commission, market participants and state commissions to monitor for undue discrimination by pipeline companies in favor of their marketing affiliates and in some cases, this information is used in formal proceedings following the filing of a complaint.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
85	1	117	9,913

Estimated cost burden to respondents is $559,136; (9,913 burden hours/2080 work hours per year × $117,321 annual average salary per employee = $559,136). The estimated annual cost per respondent is $6,578.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; (7) transmitting, or otherwise disclosing the information; and (8) requesting *e.g.* waiver or clarification of requirements.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities, which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including 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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11884 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–436–000]

Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company; Crossroads Pipeline Company; Notice Requesting Temporary Waiver of Certain Tariff Provisions and NAESB Standards and Notice of Expedited Comment Period

July 18, 2006.

Take notice that on July 14, 2006, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company and Crossroads Pipeline Company (together referred to as the Pipelines) request temporary waiver of the following because of the relocation of the NiSource mainframe computers:

(1) Sections 2.8 (EBB Access requirements: Operations), 6.2 (Nominations) and 6.3 (Confirmation and Scheduling by Transporter) of the Pipelines' respective FERC Gas Tariffs;

(2) North American Energy Standards Board (NAESB) Standards 1.3.2, 1.3.3, 1.3.4, 1.3.8, 1.3.21, 1.3.37, 1.3.45 (nomination related standards), 2.3.6, 2.3.21, 2.3.40, 2.3.41, 2.3.42, 2.3.49 (flowing gas related standards), 5.3.31, 5.3.32, 5.3.33, 5.3.44, 5.3.45 (capacity release related standards); and

(3) Section 284.12 of the Commission's regulations (Standards for Pipeline Business Operations and Communications, 18 CFR 284.12 (2005)).

The Pipelines state that the relocation of its mainframe computers will cause all functions of its Electronic Bulletin Board (Navigator) to be unavailable for periods up to 48 hours beginning around 5 a.m. on the following days: Saturday, July 22, 2006; Saturday, August 12, 2006; Saturday, August 19, 2006 and Saturday and Sunday, September 2–3, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time July 19, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11879 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–419–000]

Dominion Transmission, Inc.; Notice of Application

July 19, 2006.

Take notice that on July 11, 2006, Dominion Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP06–419–000, an application pursuant to section 7 of the Natural Gas Act (NGA) for authorization to abandon wells EW–203 and EW–313 located at its Ellisburg Storage Field in Potter County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, telephone no. (804) 819–2877, fascimilie no. (804) 819–2064 and e-mail: *Matthew_R_Bley@dom.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on August 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11886 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–061]

Gulfstream Natural Gas System, L.L.C.; Notice of Filing

July 19, 2006.

Take notice that on July 13, 2006, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet Nos. 8.01t and 8.01z, reflecting effective dates of September 15, 2005, and March 1, 2006, respectively.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11890 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–405–000]

Iroquois Gas Transmission System, L.P.; Notice of Filing

July 19, 2006.

Take notice that on June 29, 2006, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing its schedules which reflect calculations supporting the Measurement Variance/ Fuel Use Factors utilized by Iroquois during the period January 1, 2006 through June 30, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time July 26, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11891 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–430–001]

Midwestern Gas Transmission Company; Notice of Corrected Tariff Sheets

July 19, 2006.

Take notice that on July 17, 2006, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective August 9, 2006:

Second Revised Sheet No. 55.
Fourth Revised Sheet No. 408.
Third Revised Sheet No. 79.
Fourth Revised Sheet No. 418.
Second Revised Sheet No. 246C.
Third Revised Sheet No. 426.
Sixth Revised Sheet No. 247.
Third Revised Sheet No. 493.
Second Revised Sheet No. 247A.
Third Revised Sheet No. 494.
Third Revised Sheet No. 267.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11892 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–291–002]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

July 18, 2006.

Take notice that on June 23, 2006, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, certain pro forma tariff sheets.

National Fuel states that the filing is being made in compliance with the Commission's Order Accepting and Suspending Tariff Sheets issued April 28, 2006 in the above-referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11883 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–417–000]

National Fuel Gas Supply Corporation; Notice of Application

July 19, 2006.

Take notice that on July 10, 2006, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP06–417–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, for authorization to convert two observation wells to withdrawal status and for the construction and operation of approximately 1,340 feet of 4-inch diameter pipeline located in Allegany County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

In its application, National Fuel proposes the conversion of Wells SC–517 and SC–519 from observation to withdrawal status to facilitate the recovery of gas that has migrated from National Fuel's Beech Hill Storage Field into the previously certificated Beech Hill Annex area and allow for more effective pool operation. The filing further indicates that the purpose of the construction of the 4-inch pipeline is to connect the wells to National Fuel's existing pipelines in Beech Hill. The total cost of the project is estimated to be approximately $1.6 million.

Any questions regarding this application should be directed to David W. Reitz, Deputy General Counsel for National Fuel, 6363 Main Street, Williamsville, New York 14221, or call at (716) 857–7949.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on August 9, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11894 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PH06–40–000; PH06–41–000; PH06–42–000; PH06–43–000; PH06–44–000; PH06–45–000; PH06–46–000; PH06–47–000]

Nicor Inc.; OGE Energy Corporation; Scottish Power Place; GAMCO Investors; The Catalyst Group; New Jersey Resources Corporation; Green Mountain Power Corporation; WGL Holding, Inc.; Notice of Effectiveness of Holding Company and Transaction Exemptions and Waivers

July 18, 2006.

Take notice that in June 2006 the holding company and transaction exemptions and waivers requested in the above-captioned proceedings are deemed to have been granted by operation of law pursuant to 18 CFR 366.4.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11881 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–434–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 19, 2006.

Take notice that on July 13, 2006, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective September 11, 2006:

Fourth Revised Sheet No. 302.
Fourth Revised Sheet No. 303.
Second Revised Sheet No. 303.01.
Sixth Revised Sheet No. 406.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11893 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–437–000]

Northern Natural Gas Company; Notice of Petition for Declaratory Order

July 19, 2006.

Take notice that on July 17, 2006, Northern Natural Gas Company (Northern) tendered for filing a Petition of for a Declaratory Order and Request for Expedited Action.

Northern Natural Gas Company hereby petitions the Commission to issue a declaratory order finding that Northern is authorized to charge market-based rates for sales of Firm Deferred Delivery (FDD) service that results from a planned expansion in 2008 of Northern's storage field located in Redfield, Iowa.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time July 28, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11885 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–82–000]

PPM Energy, Inc., Complainant v. PacifiCorp, Respondent; Notice of Complaint Filing

July 19, 2006.

Take notice that on July 14, 2006, pursuant to the sections 206 and 306 of the Federal Power Act and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, PPM Energy, Inc. (Complainant) filed a complaint against PacifiCorp, alleging that PacifiCorp improperly assessed the Complainant charges for having allegedly used PacifiCorp's transmission system without authorization since December 2004. The Complainant also has requested fast track processing for this complaint.

The Complainant states that copies of the complaint were served on contacts for PacifiCorp as listed on the Commission's Corporate Officials List.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11887 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 19, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–126–000; ES06–50–000.

Applicants: Boston Edison Company.

Description: Boston Edison Co submits a supplemental filing in support of its request under section 204 for authorization for $655 million in short term debt financing authorization.

Filed Date: July 12, 2006.

Accession Number: 20060713–0119.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 2, 2006.

Docket Numbers: EC06–135–000; ER01–2398–013.

Applicants: SVMF4, LLC; Liberty Electric Power, LLC; Merrill Lynch Credit Products, LLC.

Description: Liberty Electric Power LLC submits its responses to FERC's Information Request re the application filed on June 22, 2006 seeking prior authorization for the indirect disposition of jurisdictional facilities.

Filed Date: July 13, 2006.

Accession Number: 20060717–0093.

Comment Date: 5 p.m. Eastern Time on Thursday, August 3, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–2119–004.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits a compliance refund report pursuant to FERC's May 31, 2006 Order.
Filed Date: July 14, 2006.
Accession Number: 20060717–0113.
Comment Date: 5 p.m. Eastern Time on Friday, August 4, 2006.

Docket Numbers: ER03–719–002; ER03–720–002; ER03–721–002.
Applicants: New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating Company, LLC.
Description: New Athens Generating Co LLC et al submits a corrected version of Sheet A–4, Page 2 of 3 of Attachment A of the Triennial Report that replaces the same sheet filed on June 6, 2006.
Filed Date: July 12, 2006.
Accession Number: 20060713–0106.
Comment Date: 5 p.m. Eastern Time on Friday, July 21, 2006.

Docket Numbers: ER05–69–002.
Applicants: Boston Edison Company.
Description: Boston Edison Co submits its annual informational report updating the status of its long-term transmission projects in compliance with FERC's December 21, 2004 and May 27, 2005 Orders.
Filed Date: July 3, 2006.
Accession Number: 20060713–0086.
Comment Date: 5 p.m. Eastern Time on Monday, July 24, 2006.

Docket Numbers: ER06–723–003.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits corrected versions of Attachments B & C to their June 12, 2006 compliance filing.
Filed Date: July 13, 2006.
Accession Number: 20060717–0111.
Comment Date: 5 p.m. Eastern Time on Thursday, August 3, 2006.

Docket Numbers: ER06–1013–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits a new version of the Interconnection Service Agreement w/ Allegheny Energy Supply Company submitted on July 6, 2006.
Filed Date: July 13, 2006.
Accession Number: 20060714–0003.
Comment Date: 5 p.m. Eastern Time on Thursday, August 3, 2006.

Docket Numbers: ER06–1043–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits a supplement to its May 24, 2006 filing of Amended and Restated Large Generator Interconnection Agreement.
Filed Date: July 14, 2006.
Accession Number: 20060717–0112.
Comment Date: 5 p.m. Eastern Time on Friday, August 4, 2006.

Docket Numbers: ER06–1103–001; ER06–1104–001; ER06–1105–001; ER06–1106–001; ER06–1107–001; ER06–1108–001; ER06–1109–001; ER06–1110–001; ER06–1111–001.
Applicants: Bridgeport Energy, LLC; Casco Bay Energy Company, LLC; Griffith Energy LLC; LSP Arlington Valley, LLC; LSP Mohave, LLC; LSP Morro Bay, LLC; LSP Moss Landing, LLC; LSP Oakland, LLC; LSP South Bay, LLC.
Description: Bridgeport Energy LLC, Casco Bay Energy Co, LLC, Griffith Energy LLC et al submits revised market-based rate schedules to replace rate schedules that were included in the notices of succession.
Filed Date: July 14, 2006.
Accession Number: 20060717–0114.
Comment Date: 5 p.m. Eastern Time on Friday, August 4, 2006.

Docket Numbers: ER06–1152–001.
Applicants: Celeren Corporation.
Description: Celeren Corp submits an amendment to its Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: July 13, 2006.
Accession Number: 20060714–0004.
Comment Date: 5 p.m. Eastern Time on Thursday, August 3, 2006.

Docket Numbers: ER06–1234–001.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc, acting agent for Alabama Power Co, et al, submits revised coversheet to its unexecuted Interconnection Agreement with Longleaf Energy Associates, LLC correcting designation as Service Agreement 476.
Filed Date: July 12, 2006.
Accession Number: 20060713–0088.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 2, 2006.

Docket Numbers: ER06–1243–000.
Applicants: Liberty Power Holdings LLC.
Description: Liberty Power Holdings, LLC submits a petition for acceptance of the initial rate schedule, waivers, and blanket authority.
Filed Date: July 12, 2006.
Accession Number: 20060713–0090.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 2, 2006.

Docket Numbers: ER06–1244–000.
Applicants: Central Maine Power Company.
Description: Central Maine Power Co submits an Executed Large Generator Interconnection Agreement with Rumford Falls Hydro LLC.
Filed Date: July 11, 2006.
Accession Number: 20060719–0061.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Docket Numbers: ER06–1247–000.
Applicants: New Harquahala Generating Company, LLC; New Athens Generating Company, LLC, New Covert Generating Company, LLC; millennium Power Partners, L.P.
Description: New Athens Generating Co LLC, New Covert Generating Co, LLC, New Harquahala Generating Co, LLC et al submits revised market-based rate tariffs sheets.
Filed Date: July 12, 2006.
Accession Number: 20060714–0007.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 2, 2006.

Docket Numbers: ER06–1249–000.
Applicants: Southern Company Services, Inc.
Description: Southern Co Services Inc, agent for Alabama Power Co et al submits a rollover service agreement for long-term firm point-to-point transmission service with Exelon Generation Company, LLC.
Filed Date: July 13, 2006.
Accession Number: 20060714–0005.
Comment Date: 5 p.m. Eastern Time on Thursday, August 3, 2006.

Docket Numbers: ER06–1250–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits an interconnection service agreement with U.S. General Service Administration White Oak Federal Research Center and Potomac Electric Power Co etc.
Filed Date: July 13, 2006.
Accession Number: 20060714–0103.
Comment Date: 5 p.m. Eastern Time on Thursday, August 3, 2006.

Docket Numbers: ER06–1251–000; ER96–780–000; EC06–81–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc acting as agent for Alabama Power Co et al, submits various administrative amendments to certain rate schedules & tariffs and a notice of cancellation of Transmission Facilities Agreement.
Filed Date: July 13, 2006.
Accession Number: 20060717–0109.
Comment Date: 5 p.m. Eastern Time on Thursday, August 3, 2006.

Docket Numbers: ER06–1252–000.

Applicants: E.ON U.S., LLC.

Description: E.ON US, LLC on behalf of Louisville Gas & Electric Co submits a request to cancel portions of their August 14, 1968 Agreement with Eastern Kentucky Power Coop & a request to amend its interconnection agreement with Eastern Kentucky Power Coop.

Filed Date: July 14, 2006.

Accession Number: 20060718–0077.

Comment Date: 5 p.m. Eastern Time on Friday, August 4, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11895 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

July 18, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* A Subsequent License. (Minor Project).

b. *Project No.:* 946–007.

c. *Date Filed:* April 28, 2006.

d. *Applicant:* Hyrum City.

e. *Name of Project:* Hyrum City Hydroelectric Project.

f. *Location:* On the Blacksmith Fork River in Hyrum City, Cache County, Utah. The project affects about 17.03 acres of federal lands within the Wasatch Cache National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Dean Howard, Mayor, Hyrum City 83 West Main Street, Hyrum Utah 84319; (435) 245–6033, or Ken Tuttle or Mike Wilcox, Sunrise Engineering, Inc., 25 East 500 North, Fillmore, UT 84631; (435) 743–6151.

i. *FERC Contact:* Gaylord Hoisington, (202) 502-6032 or *gaylord.hoisington@FERC.gov.*

j. *Deadline for filing motions to intervene and protests and requests for cooperating agency status:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Hyrum City's Hydropower Project was initially constructed in 1930–1931, after receiving an original license on November 27, 1929. The project has been licensed since that time with one amendment in 1977, and one renewal in 1981. The current license expires on April 30, 2008. The run-of-river, base-load plant operates on 85-cubic-foot-per-second of water diverted by a diversion dam located in Blacksmith Fork Canyon. The 3,419-foot-by-passed reach is not de-watered because the flows in the river exceeds the capacity of the plant, and during low flows, Hyrum City operates the plant at less than maximum flow to maintain a continuous flow throughout the river channel for aesthetic enjoyment in the city park that adjoins the powerhouse.

The project includes the following constructed facilities: (1) A 15-foot-high, 70-foot-long earth-fill concrete core embankment to the north, a 14-foot-high, 65-foot-long concrete spillway section, a 15-foot-high, 125-foot-long earth-fill concrete core embankment to the north which makes the total length of the dam approximately 260-foot-long; (2) a 16-foot-high, 8-foot-wide concrete intake structure with a 20-foot-high, 8-foot-wide trash rack and fish ladder; (3) a 60-inch-diameter concrete penstock inlet with head gate; (4) a 3,470-foot-long, 48-inch-diameter concrete penstock going into a 130-foot-long, 42-inch-diameter steel penstock; (5) a 37-acre-foot de-silting pond; (6) a 26-foot-wide, 39-foot-long, 20-foot-high brick powerhouse; (7) a 400-kilowatt Leffel horizontal shaft scroll case turbine; (8) a 100-foot, 2.4-kV underground transmission line and; (9) appurtenant facilities.

The average annual generation of the project is approximately 3,083,000 kilowatt-hours and there are no proposed changes to the facilities or the current mode of operation at this time.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC

Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11880 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of 5MW Exemption and Soliciting Comments, Motions To Intervene, and Protests

July 19, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of 5MW Exemption.

b. *Project No.:* 8412–003.

c. *Date Filed:* June 20, 2006.

d. *Applicant:* Ronald W. and Kathryn C. Denney.

e. *Name of Project:* Coiner Mill Project.

f. *Location:* The project is located on the South River in Augusta County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Ronald W. Denney, Route 1, P.O. Box 18, Waynesboro, VA 22980, (703) 944–6191.

i. *FERC Contact:* Henry Woo, (202) 502–8872.

j. *Deadline for filing comments and or motions:* August 21, 2006.

k. *Description of Application:* Ronald W. and Kathryn C. Denney propose to surrender the exemption from licensing for the Coiner Mill Project. As part of their request, Ronald W. and Kathryn C. Denney propose to decommission the project and sell the electrical equipment and turbines.

l. *Location of the Application:* This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, P–8412, in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–8412–003). All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11889 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–301–000; ER06–301–001]

Xcel Energy Services Inc.; Notice Extending Deadline for Post-Technical Conference Comments

July 19, 2006.

A technical conference was convened on Monday, June 12, 2006, from 10 a.m. to 11:30 p.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The technical conference addressed, among other things, the two issues related to Xcel Energy Services Inc.'s (XES) proposed Service Schedules H and I, as discussed in the Commission's order issued on May 5, 2006.[1] Prior to the technical conference, a notice was issued on May 31, 2006, that set forth two questions; namely,

[1] *Xcel Energy Services Inc.,* 115 FERC ¶ 61,148 (2006).

why the transfer price proposed in Service Schedule H is different from the transfer price proposed in Service Schedule I, and why XES needs both service schedules. These questions were discussed at the technical conference.

Take notice that the deadline for initial comments pursuant to the discussion at the technical conference is hereby extended. Initial comments originally were due on Wednesday, July 19, 2006. Initial comments are now due no later than 5 p.m. Eastern Time on Wednesday, July 26, 2006. Reply comments are due no later than 5 p.m. Eastern Time on Friday, August 4, 2006.

For further information please contact Christopher Daignault at (202) 502–8286 or e-mail *christopher.daignault@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–11888 Filed 7–25–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0458; FRL–8203–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements Under EPA's Hospitals for a Healthy Environment (H2E) Program; EPA ICR No. 2088.02, OMB No. 2070–0166

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OPPT–2005–0458, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Docket Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Mailcode: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 31, 2006 (71 FR 5055), EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2005–0458, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov*. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program.

ICR Numbers: EPA ICR Number 2088.02, OMB Control Number 2070–0166.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Hospitals for a Healthy Environment (H2E) program is a voluntary partnership program jointly administered by the Environmental Protection Agency, the American Hospital Association, the American Nurses Association, and Health Care Without Harm that helps hospitals enhance work place safety, reduce waste and waste disposal costs, and become better environmental stewards and neighbors. The program is based on a 1998 Memorandum of Understanding signed by AHA and EPA to provide health care professionals with the tools and information necessary to reduce mercury waste, reduce the overall volume of waste, and identify pollution prevention opportunities.

The H2E program has two elements, the Partners for Change program and the Champions for Change program. The Partners for Change program recognizes health care facilities that pledge support to the H2E mission and develop goals for reducing waste and mercury in their own facilities. The Champions for Change program recognizes organizations that encourage and aid health care facilities to participate as H2E Partners, provide on-going promotional or technical assistance information, or make changes that support the goals of the H2E program in their own institutions. An organization's decision to participate in the H2E program is completely voluntary. This information collection addresses

reporting and recordkeeping activities that support the administration of the H2E program.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 0.5 and 20 hours per response, depending upon the type of information the respondent provides. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Establishments or organizations engaged in furnishing medical, surgical or other health services to individuals.

Frequency of Collection: Annual.

Estimated average number of responses for each respondent: 3.2.

Estimated Number of Respondents: 1,582.

Estimated Total Annual Burden on Respondents: 5,551 hours.

Estimated Total Annual Costs: $188,723.

Changes in Burden Estimates: There is a decrease of 4,559 hours (from 10,110 hours to 5,551 hours) in the total estimated respondent burden compared with that identified in the information collection most recently approved by OMB. This decrease reflects actual program experience in conducting the H2E program over the past three years. The number of new Partner facilities recruited per year has been revised downward to reflect average recruit numbers. Similarly, the number of award applicants has also been revised downward to reflect the number of award applications received per year. This decrease is an adjustment.

Dated: July 11, 2006.

Sara Hisel McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E6–11943 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0072; FRL–8203–6]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Secondary Aluminum Production, EPA ICR Number 1894.05, OMB Control Number 2060–0433 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and costs.

DATES: Additional comments may be submitted on or before August 25, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0072 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance (OC), (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 21, 2005 (70 FR 55368), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OECA–2005–0072, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Secondary Aluminum Production (Renewal).

ICR Numbers: EPA ICR Number 1894.05, OMB Control Number 2060–0433.

ICR Status: This ICR is schedules to expire on September 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An

Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for secondary aluminum production were proposed on February 11, 1999, and promulgated on March 23, 2002, with final rule amendments published on December 30, 2002.

These regulations apply to component processes at secondary aluminum production plants that are major sources and area sources including aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, secondary aluminum processing units (SAPUs) composed of in-line fluxers and process furnaces (including both melting and holding furnaces of various configurations), sweat furnaces, dross-only furnaces, and rotary dross coolers, commencing construction, or reconstruction after the date of proposal. As a result of a rule amendment in 2002, owners and operators of certain aluminum die casting facilities, aluminum foundries, and aluminum extrusion facilities were excluded from the rule coverage. Respondents do not include the owner or operator of any facility that is not a major source of hazardous air pollutant (HAP) emissions except for those that are area sources of dioxin/furan emissions.

In general all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, and malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP. Semiannual reports are also required.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 29 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Secondary aluminum production plants.

Estimated Number of Respondents: 1,624.

Frequency of Response: On occasion, initially, and semiannually.

Estimated Total Annual Hour Burden: 93,725.

Estimated Total Annual Costs: $8,164,143 which includes $84,000 annualized Capital Startup costs, $142,000 annualized O&M costs, and $7,938,143 annualized labor costs.

Changes in the Estimates: There is a decrease of 1,273 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease in burden is due to a decrease in the number of sources. This decrease is due to a number of sweat furnaces going out of business because of the current economic environment. There is also four less additional sources per-year as compared to the previous ICR.

There is a decrease in the capital/startup and operations and maintenance (O&M) costs from the previous ICR. This is due to the fact that there are four less sources as compared to the previous ICR.

Dated: July 11, 2006.

Sara Hisel McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E6–11944 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OA–2006–0172; FRL–8203–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Smart Growth and Active Aging National Recognition Program; EPA ICR No. 2221.01, OMB Control No. 2090–New

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2006–0172, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information (OEI) Docket, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathy Sykes, Aging Initiative, Office of Children's Health Protection and Environmental Education, Mail Code: 1107A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–3651; fax number: 202–564–2733; e-mail address: *sykes.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 3, 2006 (71 FR 16575), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comment letters during the comment period, which it reviewed and considered in finalizing the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0172, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Smart Growth and Active Aging National Recognition Program.

ICR numbers: EPA ICR No. 2221.01, OMB Control No. 2090–new.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA's Initiative on Aging is planning to launch a Smart Growth and Active Aging National Recognition Program for communities, municipalities, tribes, and counties (collectively referred to as ''communities''). Communities would submit a letter to EPA indicating that their State or local Area Agency on Aging is engaged in their smart growth planning activities and active aging programs, and complete an on-line questionnaire describing their processes and programs in these two areas. The purpose of the Program is to recognize communities that excel in promoting the health and well-being of older adults through smart growth and active aging and to raise public awareness of the interconnectedness and importance of these two areas to the aging population. In addition, the on-line questionnaire would include links to helpful information on the Internet. This would assist in educating communities on available resources to help them do better in the areas where they have not met the criteria for recognition. Finally, the Program would enable EPA to compile ''lessons learned'' from communities that have successfully implemented smart growth and active aging principles. EPA would use this information to create a learning network on its Web site where all communities could benefit from this experience.

The Recognition Program would be voluntary. EPA expects communities to participate only if they see a benefit by doing so. A primary benefit to communities would be recognition at the national level as leaders in smart growth and active aging. National recognition would promote their image as a desirable place to live. This could help them attract residents of all ages, which could benefit the communities (e.g., economically), as well as the new residents (e.g., because they could partake of their community's amenities, such as walkable neighborhoods, fitness trails, and more transportation choices). In addition, communities that participate but are not recognized under the Program (i.e., because they do not meet the criteria for recognition) would benefit by learning about their areas for improvement, finding ways to address these areas based on links to helpful resources on the Internet, and modifying their behavior as appropriate.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one hour and 45 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are communities, municipalities, and counties that choose to participate in the Recognition Program.

Estimated Total Annual Number of Respondents on Average: 110.

Average Frequency of Response: Once.

Estimated Total Annual Burden Hours: 186 hours.

Estimated Total Annual Cost: $8,284. This includes an estimated labor cost of $8,183, an estimated operation and maintenance cost of $101, and no capital cost.

Dated: July 13, 2006.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E6–11945 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0040; FRL–8065–9]

N-Octyl Bicycloheptene Dicarboximide (MGK-264) Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide N-Octyl bicycloheptene dicarboximide (MGK-264), and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the MGK-264 Docket. MGK-264 is a

pesticide active ingredient that acts as a synergist. Synergists are chemicals which, while lacking pesticidal properties of their own, enhance the pesticidal properties of other active ingredients including pyrethrins and pyrethroids. Commercial uses of MGK-264 include application to non-food plants, applications in food and non-food handling commercial and agricultural structures and outdoor premises, housing for veterinary and farm animals, and direct application to veterinary and non-food animals. Residentially, it is used to control insects both inside the home, as well as outside on gardens, lawns and ornamentals, patios, and other outdoor structures. No agricultural crop uses of MGK-264 are being supported, and MGK-264 is not used in wide area mosquito abatement programs. EPA has reviewed MGK-264 through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before October 24, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0040, 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–2005–0040. 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: Cathryn O'Connell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0136; fax number: (703) 308-7070; e-mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. 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. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, MGK-264 under section 4(g)(2)(A) of FIFRA. MGK-264 is a pesticide active ingredient that acts as a synergist. Synergists are chemicals which, while lacking pesticidal properties of their own, enhance the pesticidal properties of other active ingredients including pyrethrins and pyrethroids. Commercial uses of MGK-264 include application to non-food plants, applications in food and non-food handling commercial and agricultural structures and outdoor premises, housing for veterinary and farm animals, and direct application to veterinary and non-food animals. Residentially, it is used to control insects both inside the home, as well as outside on gardens, lawns and ornamentals, patios, and other outdoor structures. No agricultural crop uses of MGK-264 are being supported, and MGK-264 is not used in wide area mosquito abatement programs. EPA has determined that the data base to support reregistration is substantially complete and that products containing MGK-264 are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing MGK-264.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the MGK-264 tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, MGK-264 was reviewed through the full 6-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for MGK-264.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the MGK-264 RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for MGK-264. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the MGK-264 RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 13, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–11715 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0578; FRL–8077–2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before August 25, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0578, 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–2006–0578. 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:

Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703)305-6928; e-mail address:*bryceland.andrew@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. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

Application Form

File Symbol: 53575-GR. Applicant: Pacific Biocontrol Corporation, 14615 NE 13th Court, Suite A, Vancouver, WA, 98685. Product name: Isomate-CM/LR TT. Type of product: biochemical (straight chain lepidopteran pheromone) for mating disruption codling moth (*Cydia pomonella*) and leafroller moths [obliquebanded leafroller (*Choristoneura rosaceana*), pandemis leafroller (*Pandemis pyrusana*), fruittree leafroller (*Archips argyrospilus*), threelined leafroller (*Pandemis limitata*), European leafroller (*Archips rosamus*)] Active ingredients: Z-9-Tetradecen-1-yl Acetate; Z-11-Tetradecen-1-ol; and Z-11-Tetradecenal at 4.34%, 1.05%, and 1.00%, respectively. Proposal classification/Use: Biochemical (straight chain lepidopteran pheromone) for mating disruption/End use product for direct application to orchards. (A. Bryceland).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 7, 2006.

Phillip O. Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–11823 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0042; FRL–8066–1]

Piperonyl Butoxide (PBO) Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide piperonyl butoxide, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the piperonyl butoxide Docket. Piperonyl butoxide (PBO) is a pesticide active ingredient that acts as a synergist. Synergists are chemicals which, while lacking pesticidal properties of their own, enhance the pesticidal properties of other active ingredients including pyrethrins and pyrethroids. PBO is used in four general ways: Preharvest and postharvest uses on many agricultural crops; direct and indirect treatments of livestock animals and premises; treatments of commercial and industrial facilities and storage areas where raw and processed food/feed commodities are stored or processed; and mosquito abatement areas. EPA has reviewed piperonyl butoxide through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before October 24, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0042, 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–2005–0042. 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: Cathryn O'Connell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number (703) 308-0136; fax number: (703) 308-7070; e-mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. 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. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, piperonyl butoxide under section 4(g)(2)(A) of FIFRA. Piperonyl butoxide (PBO) is a pesticide active ingredient that acts as a synergist. Synergists are chemicals which, while lacking pesticidal properties of their own, enhance the pesticidal properties of other active ingredients including pyrethrins and pyrethroids. PBO is used in four general ways: Preharvest and postharvest uses on many agricultural crops; direct and indirect treatments of livestock animals and premises; treatments of commercial and industrial facilities and storage areas where raw and processed food/feed commodities are stored or processed; and mosquito abatement areas. EPA has determined that the data base to support reregistration is substantially complete and that products containing piperonyl butoxide are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing piperonyl butoxide.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the piperonyl butoxide tolerances.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, piperonyl butoxide was reviewed through the full 6-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for piperonyl butoxide.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the piperonyl butoxide RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for piperonyl butoxide. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the piperonyl butoxide RED will be implemented as it is now presented without further notice.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 13, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–11717 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2003–0348; FRL–8059–7]

Propanil; Notice of Availability of the Propanil Amendment to the Reregistration Eligibility Decision (RED) and Completion of the Comment Period for the Propanil RED.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the amendment to the Propanil Reregistration Eligibility Decision (RED) and completion of the comment period for the propanil RED. The Agency has reviewed the public comments submitted and has responded to those that relate specifically to the propanil RED. As a result of its review of the public comments and review of additional data submitted by the Propanil Task Force, the Agency is amending the Propanil RED, where appropriate. EPA develops reregistration decisions pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment decisions under provisions of the Federal Food, Drug and Cosmetic Act (FFDCA). Through these programs, EPA ensures that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Cathryn O'Connell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–8041; e-

mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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 Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2003–0348. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OPP Regulatory Public Docket in Rom. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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. Background

A. What Action is the Agency Taking?

This notice announces the availability of the amendment to the propanil RED and completion of the comment period for the propanil RED. The propanil RED document was signed on September 30, 2003. A public comment period for the Propanil RED (and the supporting assessments) was conducted from February 25, 2004 to April 26, 2004. The risk assessments, benefit assessment, and public comments can be found on the Federal docket system, available at regulations.gov, docket ID number EPA–HQ–OPP–2003–0348. The Agency has reviewed the public comments submitted and has responded to those that relate specifically to the propanil RED. The Agencys responses are available for viewing under the same docket ID number on the regulations.gov system. As a result of its review of the public comments and review of additional data submitted by the Propanil Task Force, the Agency is amending the propanil RED, where appropriate. These revisions include label changes and an updated Appendix B: Data Supporting Guideline Requirements for the Reregisrtaion of Propanil. The label changes related to dry flowable closed systems are contingent on the outcome of exposure data that are due in December 2006. EPA considers the amendment to the propanil RED and the propanil RED final decisions as of the publication date of this notice.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products, and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 13, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–11714 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0043; FRL–8066–2]

Pyrethrins Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide pyrethrins, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the pyrethrins Docket. Pyrethrins are botanical insecticides derived from the flowers of *Chrysanthemum cinerariaefolium*. Pyrethrins are used in four general ways: Pre-harvest and post-harvest uses on many agricultural crops; direct and indirect treatments of livestock animals and premises; treatments of commercial and industrial facilities and storage areas where raw and processed food/feed commodities are stored or processed; and wide area mosquito abatement use. EPA has reviewed pyrethrins through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before October 24, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0043, 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–2005–0043. 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:

Cathryn O'Connell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0136; fax number: (703) 308-7070; e-mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. 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. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, pyrethrins under section 4(g)(2)(A) of FIFRA. Pyrethrins are botanical insecticides derived from the flowers of *Chrysanthemum cinerariaefolium.* Pyrethrins are used in four general ways: Pre-harvest and post-harvest uses on many agricultural crops; direct and indirect treatments of livestock animals and premises; treatments of commercial and industrial facilities and storage areas where raw and processed food/feed commodities are stored or processed; and wide area mosquito abatement use. EPA has determined that the data base to support reregistration is substantially complete and that products containing pyrethrins are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing pyrethrins.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the pyrethrins tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, pyrethrins was reviewed through the full 6-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for pyrethrins.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the pyrethrins RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary

amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for pyrethrins. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the pyrethrins RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated:July 13, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–11913 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0284; FRL–8067–2]

Resmethrin Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide resmethrin, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the resmethrin docket. Resmethrin is a synthetic Type I pyrethroid insecticide registered for control of insects in residential, commercial and industrial settings, in animal living areas, and in food handling establishments. Resmethrin is also registered as a restricted use pesticide when used to control adult mosquitoes in the interest of public health. EPA has reviewed resmethrin through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before October 24, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0284, 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–2005–0284. 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 Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Katie Hall, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0166; fax number: (703) 308-7070; e-mail address: *hall.katie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since

others also may 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. 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. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide resmethrin under section 4(g)(2)(A) of FIFRA. EPA has determined that the data base to support reregistration is substantially complete and that products containing resmethrin are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing resmethrin.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the resmethrin tolerances.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, resmethrin was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for resmethrin.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the resmethrin RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for resmethrin. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the resmethrin RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 17, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–11821 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0559; FRL–8079–4]

Notice of Filing of Pesticide Petitions for Establishment to Regulations for Residues of Diuron in or on Cactus, Prickly Pear; Spearmint, tops; Peppermint, tops, and Fish-Freshwater Finfish, Farm Raised

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of diuron in or on cactus, prickly pear; spearmint, tops; peppermint, tops; and fish-freshwater finfish, farm raised.

DATES: Comments must be received on or before August 25, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0559 and pesticide petition numbers (PP) 6E3390, 2E6438 and 6F4680 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–2006–0559. 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: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: *brothers.shaja@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 each 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 these pesticide petitions.

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 Tolerances

1. *PP 6E3390 and 2E6438*. Interregional Research Project Number 4 (IR-4), 681 Highway 1 South, North Brunswick, NJ 08902, proposes to establish tolerances for residues of the herbicide diuron, (3-(3,4-dichlorophenyl)-1,1-dimethylurea)] in or on cactus, prickly pear at 0.05 part per million (ppm), and mint at 1.5 ppm. Cactus, prickly pear was also requested as a regional registration for the states of CA, TX, AZ, and NM.

2. *PP 6F4680*. Catfish Farmers of America, 1100 Hwy. 82 East, Suite 202, Indianola, MS 38751, proposed to establish a tolerance for residues of the herbicide diuron in or on catfish, edible portions at 2.0 ppm (OPP-2005-0272). Subsequently, the Agency has amended the commodity expression to fish-freshwater finfish, farm raised at 2.0 ppm.

An analytical method is available, a modified form of DuPont Agricultural Products method #5470. The principle of the determination is the hydrolysis of diuron and its metabolites by alkaline reflux to 3,4-dichloroanaline (3,4-DCA), followed by a distillation of the aniline into an acid solution. The acid distillate is made alkaline with concentrated base and subsequently extracted into an organic solvent (hexane) and analyzed by gas chromatography. With the modified method, recoveries exceeded 70% and the limit of quantitation (LOQ) is 0.01.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 12, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–11831 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0576; FRL–8074–4]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Tetraconazole in or on Soybean and Poultry 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 tetraconazole in or on soybean (aspirated grain fractions/refined oil/seed) and poultry (eggs/fat/liver/meat/meat byproducts).

DATES: Comments must be received on or before August 25, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0576 and pesticide petition number PP 5F6971, 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–2006–0576. 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: Lisa Jones, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9424; e-mail address: *jones.lisa@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**.

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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.

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vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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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 each 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 5F6971. Isagro S.p.A., 430 Davis Dr., Suite 240, Morrisville, NC 27560, proposes to establish a tolerance for residues of the fungicide tetraconazole in or on food commodities soybean, aspirated grain fractions/refined oil at 0.5 parts per million (ppm); soybean, seed at 0.1 ppm; poultry, fat at 0.05 ppm; and poultry, egg/ liver/meat/meat byproducts at 0.01 ppm. In plants and animals, the residue of concern, parent tetraconazole, can be determined using high pressure liquid chromatography (HPLC) with a mass spectrometer (MS) detector. The proposed limit of quantitation (LOQ) for the methods are 0.01 ppm for soybean seed and processed commodities, and 0.02 ppm for poultry fat/liver/meat/meat byproducts, and 0.01 ppm for egg.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 17, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–11829 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0603; FRL–8079–5]

Notice of Filing of Pesticide Petitions for Establishment or Amendment to Regulations for Residues of 2-Propenoic Acid, Methyl Ester, Polymer with Ethenyl Acetate, Hydrolyzed, Sodium Salts in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petition proposing the establishment or amendment of regulations for residues of 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts in or on various commodities when use as an inert ingredient in pesticide products.

DATES: Comments must be received on or before August 25, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0603 and pesticide petition number PP 6E7085, 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–2006–0603. 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:

Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8380 fax number: (703) 305-0599; e-mail address: *gandhi.bipin@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 each 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 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 6E7085. Monosol, LLC, 1701 County Line Road, Portage, IN 46368, proposes to establish an exemption from the requirement of a tolerance for residues of the 2-propenoic acid, methyl ester, polymer with ethenyl acetate, hydrolyzed, sodium salts, CAS Reg. No. 886993–11–9, under 40 CFR in or on food commodities when used as an inert ingredient in pesticide products. Because this petition is a request for an exemption from the requirement of a

tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 17, 2006.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–11808 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0617; FRL–8080–6]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of *Pantoea agglomerans* E325

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing an exemption from the requirement of a tolerance for residues of the pesticide *Pantoea agglomerans* E325 in or on apples and pears.

DATES: Comments must be received on or before August 25, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0617 and pesticide petition number PP 6F7087, 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) Public Regulatory Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Public Regulatory Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 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–2006–0617. 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 Public Regulatory Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 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: Leonard Cole, Microbial Pesticides Branch, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5412; e-mail address: *cole.leonard@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 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 Exemption from Tolerance

PP 6F7087. Northwest Agricultural Products, 82 South Chestnut Avenue, Pasco, WA 99301, proposes to establish an exemption from the requirement of a tolerance for residues of the pesticide *Pantoea agglomerans* E325, in or on apples and pears. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 17, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–11723 Filed 7–25–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8083–7]

Temporary Relocation of the EPA Docket Center Public Reading Room

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Docket Center (EPA/DC) and its Public Reading Room in Washington, DC were damaged by flooding that occurred during the week of June 25, 2006. The Docket Center, including most services offered by the old Public Reading Room, continues to operate with temporary changes to its operations during the cleanup. On July 24, 2006, EPA formally reopened its EPA/DC Public Reading Room in a new location. This notice provides information regarding accessing the newly relocated EPA/DC Public Reading Room.

FOR FURTHER INFORMATION CONTACT: Patrick Grimm, Mailcode 2822T, Office of Environmental Information, Office of Information Collection, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1677; fax number: (202) 566–1639; e-mail address: *Grimm.Patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA/DC houses eight consolidated paper docket facilities and includes a Public Reading Room, offering a variety of tools for members of the public seeking access to hardcopy or electronic public dockets. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, reopened on July 24, 2006, in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays. EPA visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. Visitors will be provided an EPA/DC badge that must be visible at all times. Visitor materials will be processed through an X-ray machine. In addition, security personnel will escort visitors to and from the new Public Reading Room location. Other temporary changes described in EPA's previous **Federal Register** of July 5, 2006 (71 FR 38147) (FRL–8078–8) are still in effect. During the cleanup, there will be access to docket materials that were physically located in the EPA/DC at the time of the flooding; however, it may take a longer time period to retrieve certain materials. Please note that all open publicly accessible docket materials are available at regulations.gov(*http://www.regulations.gov*).

As stated in the July 5, 2006 **Federal Register** notice, if you wish to obtain materials that are listed in a docket index but are not available electronically at *http://www.regulations.gov*, please call the applicable docket at the number listed in the **Federal Register** notice and on the EPA Docket Center internet site regarding access to the materials. Regular updates concerning the EPA/DC will be posted on the EPA Docket Center internet site at*http://www.epa.gov/epahome/dockets.htm* as they become available.

List of Subjects

Environmental protection.

Dated: July 24, 2006.

Mark Luttner,

Director, Office of Information Collection, Office of Environmental Information.

[FR Doc. 06–6510 Filed 7–24–06; 12:48 pm]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 13, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–2247 or via the Internet at *Dana.Jackson@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0687.

OMB Approval Date: 5/24/2006.

Expiration Date: 5/31/2009.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form Number: N/A.

Estimated Annual Burdens: 22,500,000 responses; 0.000277 hours per response (1 second); 6,282 total annually hourly burden.

Needs and Uses: 47 CFR 68.224—Notice of non-hearing aid compatibility. Every non-hearing aid compatible telephone offered for sale to the public on or after August 17, 1989, whether previously-registered, newly registered or refurbished shall (a) contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible, or if offered for sale without a surrounding package, shall be affixed with a written statement that the telephone is not hearing aid compatible; and (b) be accompanied by instructions. 47 CFR 68.300—Labeling requirements. As of April 1, 1997, all registered telephones, including cordless telephones, manufactured in the United States (other than for export) or imported for use in the United States, that are hearing aid compatible (HAC) shall have the letters ''HAC'' permanently affixed. The information collections for both rules contain third party disclosure and labeling requirements. The information is used primarily to inform consumers who purchase and/or use telephone equipment to determine whether the telephone is hearing aid compatible.

OMB Control Number: 3060–0737.

OMB Approval Date: 6/8/2006.

Expiration Date: 6/30/2009.

Title: Disclosure Requirements for Information Services Provided Under a Presubscription or Comparable Arrangement.

Form Number: N/A.

Estimated Annual Burdens: 1,000 responses; 5 hours per response; 5,000 total annually hourly burden.

Needs and Uses: 47 CFR 64.1501(b) imposes disclosure requirements on information providers that offer ''presubscribed'' information services. The requirements are intended to ensure that consumers receive information regarding the terms and conditions associated with these services before they enter into a contract to subscribe to them.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–11633 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

June 23, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Ronnie Banks, Federal Communications Commission, 445 12th Street., SW., Washington, DC 20554. (202) 418–1099 or via the Internet at *ronnie.banks@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0718.

OMB Approval Date: June 23, 2006.

Expiration Date: 6/30/09.

Title: Part 101, Governing the Terrestrial Microwave Fixed Radio Service.

Form No.: N/A.

Estimated Annual Burden: 6,364 responses; 36,585 total annual burden hours; approximately .25–3 hours per response.

Needs and Uses: Part 101 requires various information to be filed and maintained by the respondent to determine the technical, legal and other qualifications of applications to operate a station in the public and private operational fixed services. The information is also used to determine whether the public interest, convenience, and necessity are being served as required by 47 U.S.C. 309. The Commission's staff also uses this information to ensure that applicants and licensee comply with ownership and transfer restrictions imposed by 47 U.S.C. 310. The Appendix attached to the OMB submission lists the rules in Part 101 that impose reporting, recordkeeping and third party disclosure requirements approved under OMB Control No. 3060–0718.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–11635 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 06–92]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) debars Inter-Tel Technologies, Inc.'s (Inter-Tel) from all activities associated with the schools and libraries universal service support mechanism, also known as the E-Rate program. Inter-Tel pled guilty to and was convicted of serious fraud-related felonies against the E-Rate program. We find Inter-Tel's conduct merits a debarment of at least three years, as contemplated by our debarment rule, but in light of several important factors, we will impose a debarment period of one year from the effective date of this Order.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A265, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at 202–418–1420 or e-mail at *diana.lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: This a summary of the Commission's Notice of Debarment, released June 30, 2006. As an additional precaution to protect the E-Rate program, we put in place two monitoring measures to ensure NEC's compliance upon its re-entry into the E-Rate program. First, we order USAC to review with heightened scrutiny NEC's applications submitted during the first two funding years after re-entry.[1] Second, we order the Administrator to conduct automatic annual audits regarding NEC's compliance with the Act and the Commission's rules governing the E-Rate program, for each of the first two funding periods upon NEC's re-entry. We find these additional precautionary measures are necessary to ensure that E-Rate funds are used only for their intended purpose and that the program is not subject to additional waste, fraud, or abuse. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A–257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased from the

[1] *See Fifth Report and Order,* 19 FCC Rcd at 15822–23, para. 44. We note that the Commission currently is considering what particular requirements, if any, that it should apply in conducting heightened review of E-Rate program participants. *See Universal Service Fund Oversight NPRM,* 20 FCC Rcd at 11345, para. 91.

Commission's duplicating contractor, Best Copy and Printing, Inc. (BCP), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The complete item is also available on the Commission's Web site at *http://www.fcc.gov/eb.*

Federal Communications Commission.

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. E6–11636 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 06–91]

Notice of Debarment and Order Denying Waiver Petition

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) debars NEC-Business Network Solutions, Inc.'s (NEC) from all activities associated with the schools and libraries universal service support mechanism, also known as the E-Rate program. NEC pled guilty to and was convicted of serious fraud-related felonies against the E-Rate program. We find NEC's conduct merits a debarment of at least three years, as contemplated by our debarment rule, but in light of several important factors, we will impose a debarment period of six months from the effective date of this Order.

DATES: Debarment commences on the date NEC-Business Network Solutions, Inc. receives the debarment letter or whichever date comes first, for a period of six months.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A265, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at 202–418–1420 or e-mail at *diana.lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: This a summary of the Commission's Notice of Debarment and Order Denying Waiver Petition, released June 30, 2006. As an additional precaution to protect the E-Rate program, we put in place two monitoring measures to ensure NEC's compliance upon its re-entry into the E-Rate program. First, we order USAC to review with heightened scrutiny NEC's applications submitted during the first two funding years after re-entry.[1] Second, we order the Administrator to conduct automatic annual audits regarding NEC's compliance with the Act and the Commission's rules governing the E-Rate program, for each of the first two funding periods upon NEC's re-entry. We find these additional precautionary measures are necessary to ensure that E-Rate funds are used only for their intended purpose and that the program is not subject to additional waste, fraud, or abuse. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A–257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCP), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The complete item is also available on the Commission's Web site at *http://www.fcc.gov/eb.*

Federal Communications Commission.

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. E6–11631 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 04–424; DA 06–1449]

SBC and Global Crossing Petitions for Declaratory Ruling

AGENCY: Federal Communications Commission.

ACTION: Notice, termination of proceeding.

SUMMARY: This document provides notice of the final termination of the petitions for declaratory ruling of SBC and Global Crossing. No oppositions to the prior notice of termination were received; therefore, interested parties are hereby notified that this proceeding has been terminated.

DATES: This proceeding was terminated effective June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Lynne Hewitt Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: On May 19, 2006, the Wireline Competition Bureau's Pricing Policy Division issued a Public Notice in the above-listed proceeding stating that the proceeding would be terminated effective 30 days after publication of the Public Notice in the **Federal Register,** unless the Bureau received oppositions to the termination before that date. The notice was published in the **Federal Register** on May 31, 2006. *See* 71 FR 30924, May 31, 2006. The Bureau did not receive any oppositions to the termination of this proceeding within 30 days of **Federal Register** publication of the notice; therefore, the above-listed proceeding was terminated as of *June 30, 2006.*

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–11901 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 94–1, 96–262, DA 06–1446]

Reconsideration of Price Cap Performance Review for Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice, termination of proceeding.

SUMMARY: This document is a notification of final termination of the petitions for reconsideration of a 1997 Commission order, which established a 6.5 percent productivity-based X-factor and eliminated the sharing requirements in the Commission's price cap rules. The petitions for reconsideration have been withdrawn by the petitioners. No oppositions to the prior notice of termination were received; therefore, interested parties are hereby notified that the proceeding has been terminated.

DATES: This proceeding was terminated effective June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On May 19, 2006, the Wireline Competition Bureau's Pricing Policy Division issued a Public Notice in the above-listed proceeding stating that the proceeding would be terminated effective 30 days after publication of the Public Notice in the **Federal Register,** unless the Bureau received an opposition to the

[1] *See Fifth Report and Order,* 19 FCC Rcd at 15822–23, para. 44. We note that the Commission currently is considering what particular requirements, if any, that it should apply in conducting heightened review of E-Rate program participants. *See Universal Service Fund Oversight NPRM,* 20 FCC Rcd at 11345, para. 91.

termination before that date. The notice was published in the **Federal Register** on May 31, 2006. 71 FR 30925, May 31, 2006. The Bureau did not receive any oppositions to the termination of this proceeding within 30 days of **Federal Register** publication of the notice; therefore, the above-listed proceeding was terminated as of June 30, 2006.

Authority: 47 U.S.C. 152, 153, 154, 155, 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–11900 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–237; DA 06–1447]

Qwest Petition for Clarification of Verizon Physical Collocation Discontinuance Order

AGENCY: Federal Communications Commission.

ACTION: Notice; termination of proceeding.

SUMMARY: This document is a notification of final termination of Qwest's petition for clarification of a 2003 Commission order, which granted Verizon authority to discontinue providing federally-tariffed physical collocation services pursuant to section 201 of the Communications Act. The petition for clarification has been withdrawn by the petitioner. No oppositions to the prior notice of termination were received; therefore, interested parties are hereby notified that this proceeding has been terminated.

DATES: This proceeding was terminated effective June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On May 19, 2006, the Wireline Competition Bureau's Pricing Policy Division issued a Public Notice in the above-listed proceeding stating that the proceeding would be terminated effective 30 days after publication of the Public Notice in the **Federal Register**, unless the Bureau received an opposition to the termination before that date. The notice was published in the **Federal Register** on May 31, 2006. 71 FR 30926, May 31, 2006. The Bureau did not receive any oppositions to the termination of this proceeding within 30 days of **Federal Register** publication of the notice; therefore, the above-listed proceeding was terminated as of June 30, 2006.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–11905 Filed 7–25–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding the National Historic Preservation Act

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of Policy.

SUMMARY: The FDIC is revising its Statement of Policy Regarding the National Historic Preservation Act of 1966 (NHPA). The Statement of Policy clarifies and revises the NHPA Statement of Policy so that it reflects the statutory changes to the NHPA and its implementing regulations. The Statement of Policy is relevant to applications for deposit insurance for *de novo* institutions and applications by state non-member banks to establish a domestic branch and to relocate a domestic branch or main office.

DATES: This Statement of Policy is effective on July 11, 2006.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Beach, Review Examiner, Risk Management and Applications Section, Division of Supervision and Consumer Protection (202) 898–6617, or Susan van den Toorn, Counsel, Legal Division (202) 898–8707; Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On October 18, 2005, the FDIC issued a request for comment for a proposed Statement of Policy in the **Federal Register** concerning revisions to its Statement of Policy Regarding the NHPA (SOP). (70 FR 60523). The proposed SOP provided for more efficient processing and timely resolution of matters pertaining to the NHPA and its implementing regulations and incorporated the role of Tribal Historic Preservation Officers (THPOs) in the review process to take into account the responsibilities of the FDIC pursuant to a number of statutes relating to Indian Tribes and Native Hawaiian organizations.

The NHPA sets forth a national policy to promote the preservation of historic resources. It requires, in part, that all agencies of the Federal Government consider the effects of their undertakings on historic properties. The Advisory Council on Historic Preservation (Advisory Council or ACHP) has adopted regulations that implement this requirement (36 CFR part 800). The FDIC considers applications for deposit insurance for *de novo* institutions and applications by state non-member banks to establish a domestic branch and to relocate a domestic branch or main office (collectively, ''Covered Applications'') to be undertakings for the purposes of section 106 of the NHPA. Because the NHPA has been amended and the Advisory Council has revised its regulations during the interim period, the FDIC is revising its SOP to conform to those amendments and revisions.

Overview of Comments Received

The FDIC received 11 comments on the proposed Statement of Policy. Comments were received from the Advisory Council, state historic preservation offices, the Department of Natural Resources of the Confederated Tribes of the Umatilla Indian Reservation, financial institutions and individuals. While a number of commenters supported the proposed SOP, others did not. Commenters generally requested that terminology used in the SOP conform to the terminology used in the Advisory Council's implementing regulations. In addition, commenters also suggested clarifying the consultation process, streamlining consultation with state and national organizations, and educating applicants regarding the availability of additional resources valuable to assessing proposed undertakings. Commenters also requested that the SOP be amended to make clear that Applicants and the FDIC will consult with tribes regarding Historic Properties and the identification and evaluation of such properties, including those of traditional religious and cultural importance where tribes are located or were traditionally located. A commenter suggested that when there may be an adverse effect on an Historic Property that additional background information be included in the Covered Applications.

Advisory Council Comment

The Advisory Council's comment stated that, ''In its present format the ACHP cannot endorse the proposal * * * since it does not comport with our regulations.'' The Advisory Council suggested that the FDIC delay revising the SOP ''pending further consultation with the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes, and a review

of the public comments received in response to the **Federal Register** notice.'' As an overall issue, the Advisory Council believes that the process described in the proposed SOP did not reflect all the steps outlined in, or the information required by, its regulations. Instead, it believes the proposals included in the SOP modify the process in a manner that may compromise the FDIC's ability to demonstrate that it followed those regulations. The Advisory Council suggested that the modifications to the SOP required the approval of the ACHP through one of the alternatives set forth in its regulation. In particular, it commented that the proposed SOP modifies the coordination of the initial step of the review process, which requires the FDIC to specify if the process is being coordinated with other applicable reviews, identify consulting parties, and develop a plan to involve the public. As such, the ACHP noted that the FDIC must issue delegations of authority letters to applicable State Historic Preservation Officers (SHPOs) and THPOs authorizing Applicants to act on the FDIC's behalf to initiate the consultative process. The Advisory Council also commented on its concern about Applicants altering properties prior to considering the NHPA issues and requirements. The Advisory Council raised the issue of ''anticipatory demolition'' or the modification of a property by an Applicant prior to the determination that no Historic Property was affected. Section 110(k) of the NHPA provides that a Federal agency cannot approve a license (in this case a ''Covered Application'') if the Applicant intentionally altered an Historic Property in order to avoid the requirements of the NHPA unless the Federal agency, after consulting with the Advisory Council, makes a finding that the circumstances justify granting the license. The Advisory Council requested that a warning to Applicants relative to section 110(k) of the NHPA be incorporated into the SOP. The Advisory Council also suggested that additional background information be required of the Applicant when an Historic Property may be affected.

In order to clarify the concerns raised by the Advisory Council, the FDIC initiated follow-up discussion with the Advisory Council telephonically and requested that they provide clarification regarding their initial comments. The Advisory Council suggested that with regard to Applicants initiating the Section 106 process, ''36 CFR 800.2(c)(4) allows for a blanket delegation of authority to all applicants. The publication of this SOP in the **Federal Register** and placement of it in FDIC's Web site constitutes a valid blanket delegation and notice thereof.'' The Advisory Council also provided further comments relating to clarification language regarding the issue of ''anticipatory demolition,'' and additional clarification regarding terminology used in the SOP.

Revisions to the Statement of Policy

After a review of the comments, the FDIC has modified the proposed SOP. In response to concerns raised by the Advisory Council, the SOP has been amended to state expressly that the purpose is to provide guidance that supplements, but does not alter, FDIC regulations and those of the Advisory Council. The SOP has also been amended so that it is consistent with the regulations implementing section 106 of the NHPA promulgated by the ACHP as amended in 2000. Cross-references have been added to relevant statutes, regulations, and executive orders, but those materials have not been reproduced or extensively summarized in the SOP. In this regard, several areas that could have been viewed as more than general guidance were eliminated or modified. Terminology was conformed to language in the Advisory Council's regulations; most notably, the SOP now references ''consultation'' with the state and tribal entities, rather than ''clearance'' from such entities. In addition, the SOP has been revised to specify that the FDIC and Applicants will consult with Indian tribes that may attach religious and cultural significance to sites located off of tribal lands. The SOP also has been modified to clarify when the consultative process may not be required and notes that Applicants must consult with the appropriate Regional Office to confirm that consultation is not required. In response to the comment regarding background information, the SOP now requires that Applicants submit additional information with the Covered Application relating to alternative activities in cases when the proposed undertaking may otherwise result in an adverse effect on an Historic Property.

The SOP has been revised to include language regarding section 110(k) of the NHPA and now requires a discussion of alternatives when proposed undertakings would result in an adverse effect on an Historic Property. In response to the Advisory Council's comment regarding the initiation of the section 106 process, the FDIC has amended the SOP so that the SOP is the requisite authorization pursuant to 36 CFR 800.2(c)(4) for Applicants to initiate consultation with the SHPOs/THPOs and others under the ACHP's regulations and notice of such to all SHPOs/THPOs.

After review of all the comments received and for the reasons set forth above, the Board of Directors of the FDIC hereby adopts the Statement of Policy Regarding the National Historic Preservation Act of 1966, as set forth below.

Statement of Policy Regarding the National Historic Preservation Act of 1966

This Statement of Policy (SOP) provides general guidance regarding the FDIC's compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.* (NHPA), with respect to certain applications submitted to the FDIC in accordance with governing regulations at 12 CFR part 303. The SOP is intended to supplement, but not alter, the procedures detailed in FDIC regulations and the regulations implementing Section 106 of the NHPA at 36 CFR part 800. Those statutes and regulations will be followed by the FDIC regardless of whether they are highlighted in this SOP. This guidance addresses applications for deposit insurance for *de novo* institutions and applications by state non-member banks to establish a domestic branch and to relocate a domestic branch or main office (collectively, ''Covered Applications'').

A. Relevant Laws, Executive Orders and Regulations

The NHPA and its implementing regulations are the primary Federal historic preservation laws and regulations affecting Covered Applications and outline the historic preservation responsibilities of the FDIC. Among these responsibilities, the FDIC must consider the effects of the Covered Application on Historic Properties and afford the Advisory Council on Historic Preservation (Advisory Council or ACHP) a reasonable opportunity to comment on such undertakings before they occur. The NHPA and other applicable statutes, regulations, and guidance are as follows:

- National Historic Preservation Act of 1966, as amended through 2000, (16 U.S.C. 470 *et. seq.*).
- National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4321–4347).
- Archeological and Historic Preservation Act of 1974, (AHPA), (16 U.S.C. 469–469c).
- Archeological Resources Protection Act of 1979 (ARPA), (16 U.S.C. 470aa–mm).

• Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), (25 U.S.C. 3001).
• American Indian Religious Freedom Act of 1978 (AIRFA), (42 U.S.C. 1996 and 1996a).
• Executive Order 12898: Environmental Justice (see 59 FR 2935, January 20, 1994).
• Executive Order 13007: Indian Sacred Sites (see 61 FR 28721, June 5, 1996).
• 12 CFR part 303.
• 36 CFR part 68.
• 36 CFR part 800

B. Covered Applications

In assessing Covered Applications, the FDIC must consider the effects an Applicant's proposed undertaking may have on an historic property. ''Proposed undertaking,'' as that term is used in this SOP, refers to any property associated with a Covered Application. An historic property is defined in the NHPA as ''any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places (National Register), including artifacts, records, and material remains related to such a property or resource'' [1]; hereafter, referred to as ''Historic Property.'' Proposed undertakings that may potentially affect historic properties include those that may impact the properties associated with Covered Applications in which the land and structures are of historical, architectural, archeological, religious, or cultural significance, by virtue of the significance of the structure or land itself or its location within an area with historic, architectural, archeological, religious, or cultural significance. The FDIC must consider the impact of the proposed undertaking relative to properties that not only are owned, or to be owned, by the financial institution but also those that are leased, or will be leased, from a third party.

Applicants should consult with the FDIC, appropriate State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Native Hawaiian organizations and other interested parties prior to, or in conjunction with, the filing of a Covered Application, to determine if the proposed undertaking may have a potential effect on an Historic Property. Such consultations are particularly important if there is a question as to whether the proposed undertaking involves an Historic Property, or whether the proposed undertaking may have an adverse effect on the Historic Property. To the extent an Applicant or a particular SHPO/THPO relies upon independent third-parties to review Historic Properties or perform other studies or assessments, such third parties should satisfy the Secretary of the Interior's professional qualification standards. The appropriate Indian tribe or Native Hawaiian organization is to be consulted in situations involving proposed undertakings that may affect historic properties of cultural or religious significance. THPO consultation may be required for properties that are located on tribal lands as well as for those that are located on non-tribal lands but with which Indian tribes may attach a significant religious or cultural meaning.

Consultation with the SHPO/THPO may not be necessary if the proposed undertakings are located in recently constructed supermarkets or shopping centers, are properties that have been newly constructed and the Applicant had no ownership interest prior to or during construction, or are newly constructed properties whose immediate prior usage was that of a financial institution and no ground disturbing activities will take place. Consultation may also not be necessary for applications involving messenger services where no new physical location is necessary or temporary or seasonal branches which do not involve permanent structures that will alter the location or surrounding areas. These examples are intended to provide general guidance for Covered Applications where the proposed location does not exhibit historic characteristics that would require a more complex review. The Applicant must consult with the appropriate FDIC Regional Office to confirm that further consultation with the SHPO/THPO is not required.

If the proposal may affect an Historic Property, the Applicant should provide the FDIC with information relevant to the Historic Property. This information will facilitate the FDIC's review of the proposal, and should include:

• Locational details, such as appropriate maps and photographs;
• Description of the historical use of the Historic Property;
• Previous ownership, to the extent known;
• Plans for destruction or alteration of all or any part of the Historic Property;
• Plans for isolation from or alteration of the surrounding environment;
• Plans for the introduction of visual, audible, or atmospheric elements;
• Details regarding any restrictions or conditions affecting the long-term preservation of the property's historic significance;
• An analysis of alternatives for activities that may otherwise result in an adverse affect on the Historic Property;
• Information received from the SHPO/THPO, as applicable; and
• Such other details as appropriate for the proper evaluation of the proposal.

Section 110(k) of the NHPA prohibits a Federal agency from granting a license to an applicant who, with the intent to avoid the NHPA's requirements, intentionally significantly adversely affects the historic property, unless the Federal agency makes a finding, after consultation with the ACHP, that the circumstances justify granting the license. This means that any action regarding the property prior to the FDIC making a finding could potentially jeopardize the approval of the application. As a result, it is very important that assessment of the property occur prior to the Applicant taking any action with respect to the proposed undertaking relevant to the Covered Application, especially when such actions include:

• Demolition of existing buildings or any change to the external or internal physical structure or use of the property, or of physical features within the property's settings;
• Excavation of the land, construction of any new structures, or the introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features;
• Neglect of a property that causes its deterioration; or
• The transfer, lease, or sale of a property or any portion of the property by the applicant without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

The Applicant may not take any action, as defined above, with respect to the property associated with the Covered Application prior to one of the following: (1) Confirmation from the appropriate Regional Office that the proposed undertaking, based upon the characteristics of the property, does not require further consultation, (2) submission to the appropriate Regional Office of documented evidence from the appropriate SHPO, THPO, or other relevant party stating that the SHPO, THPO, or other relevant party has reviewed the proposed undertaking and determined that it will have no adverse

[1] National Historic Preservation Act of 1966 section 301(5).

effect on historic properties, (3) the receipt of documented evidence from the FDIC that the proposed undertaking will have no adverse effect on historic properties, or (4) the implementation of an alternate resolution with the FDIC and, as applicable, the appropriate SHPO or THPO, and the Advisory Council. Resolution of the historic preservation aspects of a Covered Application does not constitute approval of the application.

C. Authorization To Initiate Section 106 Consultation

Pursuant to 36 CFR 800.2(c)(4), the FDIC authorizes Applicants to initiate the consultation process with the appropriate SHPOs/THPOs and others to identify historic properties within the area of potential effects. However, the FDIC remains legally responsible for all findings and determinations.

D. Other Consulting Parties

At its discretion, the FDIC may also solicit participation from parties other than the Applicant and appropriate SHPO/THPO at any time while a Covered Application is pending. Further, the FDIC may, in its discretion, designate such third parties as Consulting Parties.

E. FDIC Determinations and Resolution of Potential Adverse Effects

Pursuant to the provisions of the NHPA and 36 CFR part 800, the FDIC will make a determination as to whether the proposed undertaking has an effect on an Historic Property. If the FDIC determines that the proposed undertaking may affect an Historic Property, the FDIC will work closely with the Applicant, the SHPO/THPO, and designated consulting parties to determine whether the proposed undertaking will have an adverse effect on the Historic Property. If there is no adverse effect, the FDIC will proceed with consideration of the Covered Application and any agreed-upon conditions. If there is an adverse effect, the FDIC, pursuant to the ACHP's regulations, will begin consultation to seek ways to avoid, minimize, or mitigate the adverse effects. Consultation may result in a Memorandum of Agreement, which outlines agreed-upon measures the FDIC, Applicant, and other consulting parties may take to avoid, minimize, or mitigate the adverse effects. If consultation proves ineffective, the FDIC will proceed pursuant to the ACHP's regulations, including by obtaining, considering, and responding to the ACHP's formal comments on the undertaking.

F. Information Requests

Public involvement through the comment period for a Covered Application (as provided for in 12 CFR part 303) is an important part of the consultation process. Inquiries by interested parties regarding specific Covered Applications should be directed to the appropriate Regional Director of the FDIC's Division of Supervision and Consumer Protection.

Dated at Washington, DC, this 11th day of July 2006.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. E6–11898 Filed 7–25–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011654–016.

Title: Middle East Indian Subcontinent Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; China Shipping Navigation Co., Ltd. d/b/a Indotrans; CMA CGM S.A.; Hapag-Lloyd Container Linie GmbH; MacAndrews & Company Limited; The National Shipping Company of Saudi Arabia; and United Arab Shipping Company (S.A.G.).

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds Emirates Shipping Line FZE; Shipping Corporation of India, Ltd.; and Zim Integrated Shipping Services, Ltd. as parties to the agreement. The amendment also changes Hapag-Lloyd's corporate name to Hapag-Lloyd AG.

Agreement No.: 011666–003.

Title: West Coast North America/ Pacific Islands Vessel Sharing Agreement.

Parties: Hamburg-Süd and Polynesia Line Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment revises the number of vessels provided by Hamburg-Süd under the agreement.

Agreement No.: 011741–009.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line; CP Ships USA, LLC; and Hamburg-Süd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes FESCO Ocean Management Limited (''FOML'') as a party, adds a trade name for Hamburg-Süd, and revises the vessel provision and space allocations of the agreement to reflect the acquisition of FOML's assets in the trade by Hamburg Süd.

Agreement No.: 011741–010.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: A.P. Moller-Maersk A/S; Hamburg-Süd; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Australia-New Zealand Direct Line and CP Ships USA, LLC as parties to the agreement, adds Hapag-Lloyd AG as a party, and makes corresponding revisions to the agreement where necessary.

Agreement No.: 011777–002.

Title: CP Ships/CCNI Slot Charter Agreement.

Parties: CP Ships USA, LLC and Compania Chilena de Navegacion Interoceanica S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes CP Ships USA, LLC as a party to the agreement, adds Hapag-Lloyd AG, makes corresponding changes to the agreement where necessary, and restates the agreement.

Agreement No.: 011966.

Title: West Coast USA-Mexico & Canada Vessel Sharing Agreement.

Parties: Compania Sud Americana de Vapores S.A.; Hamburg-Süd; Compania Chilena de Navegacion Interoceania, S.A.; and Maruba S.C.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement would authorize the parties to operate a service between the U.S. West Coast and the Pacific Coasts of Mexico and Canada and engage in a limited range of cooperative activities.

Agreement No.: 011967.

Title: CSAV/NYK Venezuela Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. (''CSAV'') and Nippon Yusen Kaisha (''NYK'').

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes CSAV to charter space to NYK for the carriage of motor vehicles from Baltimore, MD to ports in Venezuela. The agreement expires August 31, 2006.

Agreement No.: 011968.

Title: Hanjin-Evergreen Cross Slot Charter Agreement.

Parties: Evergreen Marine Corp., Ltd. (''Evergreen'') and Hanjin Shipping Co., Ltd. (''Hanjin'').

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: Under the agreement, Evergreen will provide space to Hanjin on its Far East/East Coast of South America service and in return Hanjin will provide space to Evergreen on its U.S. East Coast/East Coast South America service.

By Order of the Federal Maritime Commission.

Dated: July 21, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–11956 Filed 7–25–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 06–07]

Ritco International, Inc. v. Air 7 Seas Transport Logistics, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Ritco International, Inc., (''Complainant''), against Air 7 Seas Transport Logistics, Inc. (''Respondent''). Complainant contends that Respondent Air 7 Seas Transport Logistics, Inc., is an NVOCC under The Shipping Act of 1984. Complainant asserts that they booked 10 containers with Respondent to be shipped to New Delhi (India), and that the destination was verified on the house bill of lading. Complainant further asserts that under the Master Bill of Lading the destination was changed to Nhava Sheva, a port 837 miles away. Complainant contends that due to this mistake they were forced to pay demurrage and detention charges. Complainant alleges that Respondent violated Section 10(d)(1) of the Act (46 U.S.C. App. 1709(d)(1)) by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. Respondent prays that the Commission award Complainant for injuries in the amount of $61,618.00 (USD).

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 19, 2007, and the final decision of the Commission shall be issued by November 16, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–11955 Filed 7–25–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Sony Supply Chain Solutions (America), Inc., 2201 East Carson Street, MD:71, Long Beach, CA 90810. Officers: Yoshio Robert Kooda, Jr., Director (Qualifying Individual). Rintaro Miyoshi, Director.

C & S Shipping, LLC, 4360 Casa Grande Cr., Ste. 284, Cypress, CA 90630. Officer: Cristina De La Torre, Member (Qualifying Individual).

Agencia Internacional, 599 Central Street, Lowell, MA 01852, Officer: Manuel L. Melo, Owner (Qualifying Individual).

Western Shipping America, Inc., 1245–A East Watson Center Road, Carson, CA 90745, Officers: Craig Nakatsumi, President (Qualifying Individual).

Cargo Station dba Accord Logistics USA, 2726 Fruitland Ave., Vernon, CA 90058. Officer: Hae Yun Kim, President (Qualifying Individual).

Sea & Air International, Inc., 356 E. 74 Street, Suite #2, New York, NY 110021. Officers: Yaniv Risman, Vice President (Qualifying Individual). Nir Shuminer, President.

World Transport Agency Limited, Thameside House Kingsway Business Park, Oldfield Road, Hampton Middlesex, TW122HD United Kingdom. Officer: Gerard William Lawler, Managing Director (Qualifying Individual).

Ultimate Lines, Inc., 1026 Hickory Street, 3rd Floor, Kansas City, MO 64101. Officers: Angela Rae Nakata, President (Qualifying Individual). Thom Ruffolo, Vice President.

Dynamic L.A., A California Corporation, 11755 Sheldon Street, Sun Valley, CA 91352. Officer: Mark Hezroni, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Summit of Washington LLC, 8033 S. 224th Street, Bldg. F, Renton, WA 98032. Officers: Chang K. Choe, CEO (Qualifying Individual). Soon Mon Kim, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

JK Moving & Storage Inc., 44112 Mercure Circle, Sterling, VA 20166. Officer: Charles S. Kuhn, President (Qualifying Individual).

Nick's International Shipping, Inc., 1841 Carter Avenue, Bronx, NY 10457. Officer: Olimpia Sandoval, President (Qualifying Individual).

Cargo Control, Inc., 265 E. Merrick Road, Ste. 102, Valley Stream, NY 11580. Officers: Anthony Paolino, Vice President (Qualifying Individual). Thomas Greco, President.

Dated: July 21, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–11957 Filed 7–25–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire 100 percent of the voting shares of Royal Palm Bancorp, Inc., Naples, Florida, and thereby indirectly acquire Royal Palm Bank of Florida, Naples, Florida.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. PBI Acquisition Corp., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Pine City, Pine City, Minnesota.

Board of Governors of the Federal Reserve System, July 21, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11920 Filed 7–25–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice; correction.

SUMMARY: The Office of Population Affairs, OPHS, HHS published a notice in the **Federal Register** of Monday, July 3, 2006 announcing the anticipated availability of funds for family planning services grants. This notice contained an error. The application due date for an eligible State/Population/Area was listed incorrectly. This Notice corrects the application due date for the State of Wisconsin.

FOR FURTHER INFORMATION CONTACT: Susan B. Moskosky, 240–453–2888.

Correction

In the **Federal Register** of July 3, 2006, FR Doc. 06–5956, on page 37985, correct Table I to read:

TABLE I

States/populations/areas to be served	Approximate funding available	Application due date	Approx. grant funding date
Region I:			
New Hampshire	$1,265,000	09/01/06	01/01/07
Vermont	752,000	09/01/06	01/01/07
Maine	1,765,000	09/01/06	01/01/07
Rhode Island	817,000	09/01/06	01/01/07
Connecticut	2,295,000	09/01/06	01/01/07
Massachusetts	2,583,000	09/01/06	01/01/07
Region II:			
No service areas competitive in FY 2007.			
Region III:			
Washington, DC	1,073,000	09/01/06	01/01/07
Central Pennsylvania	2,785,000	03/01/07	07/01/07
Virginia	4,528,000	12/01/06	04/01/07
Region IV:			
Georgia	7,933,000	03/01/07	07/01/07
Florida, Greater Orlando area	549,000	06/01/07	09/30/07
Region V:			
Ohio, Greater Cleveland	2,023,000	12/01/06	04/01/07
Illinois	7,931,000	09/01/06	01/01/07
Illinois, Chicago area	205,000	06/01/07	09/30/07
Michigan	7,549,000	12/01/06	04/01/07
Wisconsin	3,405,000	11/01/06	03/01/07
Minnesota, Ramsey County	320,000	09/01/06	01/01/07
Region VI:			
Texas	11,824,000	12/01/06	04/01/07
Region VII:			
No service areas competitive in FY 2007.			
Region VIII:			
South Dakota	1,014,000	03/01/07	07/01/07
Wyoming	821,000	09/01/06	01/01/07

TABLE I—Continued

States/populations/areas to be served	Approximate funding available	Application due date	Approx. grant funding date
Region IX:			
Navajo Nation	640,000	03/01/07	07/01/07
Commonwealth of the Northern Mariana Islands	170,000	09/01/06	01/01/07
Federated States of Micronesia	411,000	03/01/07	07/01/07
Nevada, Washoe County	708,000	03/01/07	07/01/07
Region X:			
Alaska	420,000	03/01/07	07/01/07
Oregon	2,452,000	03/01/07	07/01/07
Idaho	1,568,000	03/01/07	07/01/07
Washington	3,240,000	09/01/06	01/01/07
Washington, Seattle area	159,000	03/01/07	07/01/07

Dated: July 19, 2006.

Evelyn M. Kappeler,

Acting Director, Office of Population Affairs.

[FR Doc. E6–11963 Filed 7–25–06; 8:45 am]

BILLING CODE 4150–34–P

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 third meeting of the American Health Information Community Biosurveillance Data Steering Group in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: August 8, 2006 from 2 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (you will need a photo ID to enter a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Internet access. Go to *http://www.hhs.gov/healthit/ahic.html* for additional information on the meeting.

Dated: July 19, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–6485 Filed 7–25–06; 8:45am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of Public Health and Science, Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood Safety and Availability (ACBSA) will hold a meeting. The ACBSA will meet to review progress and solicit additional input regarding numerous recommendations made during the past year, specifically biovigilance of blood components and its derivatives, cells, tissues, and organs. Vigilance is recognized as a necessary step in monitoring outcomes in a quality assurance process toward the goal of providing safe and available biological products (i.e., blood components and derivatives, cells, tissues and organs) and improvement of care of the donor and recipient. Elements necessary for vigilant surveillance are detection, analysis, reporting, utilizations, research, education, and management of outcomes, including emerging or re-emerging infectious and non-infectious events of transfusion and/or transplantation, will be discussed.

DATES: The meeting will take place Wednesday, August 30 and Thursday, August 31, 2006 from 9 a.m. to 5 p.m.

ADDRESSES: Marriott Crystal Gateway, 1700 Jeff Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, PhD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Room 250, Rockville, MD 20852, (240) 453–8809, fax (240) 453–8456, e-mail *jholmberg@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Public comment will be solicited at the meeting and will be limited to five minutes per speaker. Individuals who wish to present comments to the Committee should contact the Executive Secretary to register no later than close of business on August 25, 2006. Individuals who wish to have printed material distributed are encouraged to provide thirty (30) copies to the Executive Secretary no later than close of business August 25, 2006. Likewise, those who wish to utilize electronic data projection to the Committee must submit their materials to the Executive Secretary prior to close of business August 25, 2006.

Dated: July 20, 2006.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. E6–11962 Filed 7–25–06; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006O–0231]

Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Sunscreen Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of eligibility; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data for safety and effectiveness information on the following condition as part of FDA's ongoing review of over-the-counter (OTC) drug products: Diethylhexyl butamido triazone, up to 3 percent, as a sunscreen single active

ingredient and in combination with other sunscreen active ingredients. FDA reviewed a time and extent application (TEA) for this condition and determined that it is eligible for consideration in our OTC drug monograph system. FDA will evaluate the submitted data and information to determine whether this condition can be generally recognized as safe and effective (GRASE) for its proposed OTC use.

DATES: Submit data, information, and general comments by October 24, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2006O–0231, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket number for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments, Data, and Information'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael L. Koenig, Center for Drug Evaluation and Research (mail stop 5411), Food and Drug Administration, bldg. 22, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule establishing criteria and procedures for additional conditions to become eligible for consideration in the OTC drug monograph system. These criteria and procedures, codified in § 330.14 (21 CFR 330.14), permit OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any marketing experience in the United States to become eligible for FDA's OTC drug monograph system. The term ''condition'' means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use (§ 330.14(a)). The criteria and procedures also permit conditions that are regulated as cosmetics or dietary supplements in foreign countries but that would be regulated as OTC drugs in the United States to become eligible for the OTC drug monograph system.

Sponsors must provide specific data and information in a TEA to demonstrate that the condition has been marketed for a material time and to a material extent to become eligible for consideration in the OTC drug monograph system. When the condition is found eligible, FDA publishes a notice of eligibility and request for safety and effectiveness data for the proposed OTC use. The TEA that FDA reviewed (Ref. 1) and FDA's evaluation of the TEA (Ref. 2) have been placed on public display in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. Information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j) (section 301(j) of the Federal Food, Drug, and Cosmetic Act) was deleted from the TEA before it was placed on public display.

II. Request for Comments, Data, and Information

FDA determined that the information submitted in this TEA satisfies the criteria of § 330.14(b). FDA will evaluate diethylhexyl butamido triazone, up to 3 percent, as a sunscreen single active ingredient and in combination with other existing monograph sunscreen active ingredients, for inclusion in the monograph for OTC sunscreen drug products (part 352 (21 CFR part 352)). Accordingly, FDA invites all interested persons to submit data and information, as described in § 330.14(f), on the safety and effectiveness of this active ingredient for this use so that FDA can determine whether it can be GRASE and not misbranded under recommended conditions of OTC use. Additional data should be included to establish the safety and effectiveness of sunscreen drug products containing a combination of diethylhexyl butamido triazone with other existing sunscreen monograph active ingredients in § 352.10.

The TEA did not include an official or proposed United States Pharmacopeia-National Formulary (USP–NF) drug monograph for diethylhexyl butamido triazone. According to § 330.14(i), sponsors must include an official or proposed USP–NF monograph as part of the safety and effectiveness data for this ingredient.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments, data, and information. Submit three copies of all comments, data, and information. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

III. Marketing Policy

Under § 330.14(h), any product containing the condition for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. TEA for diethylhexyl butamido triazone submitted by 3V, Inc., on September 16, 2005.

2. FDA's evaluation and comments on the TEA for diethylhexyl butamido triazone.

Dated: July 14, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11874 Filed 7–25–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a telephonic meeting of the Aviation Security Advisory Committee (ASAC).

DATES: The meeting will take place on August 16, 2006, from 2:30 p.m. to 3:30 p.m., Eastern time.

ADDRESSES: The meeting will be held by telephonic conference call. Dial-in instructions are set forth in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Richard Swigart, Office of Transportation Sector Network Management (TSA–28), TSA Headquarters, 601 South 12th Street, Arlington, VA 22202; telephone 571–227–3719, e-mail *richard.swigart@dhs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The agenda for the meeting will include presentation of the report and recommendations of the Baggage Screening Investment Study (BSIS) working group.

This meeting, from 2:30 p.m. to 3:30 p.m., is open to the public but telephonic conferencing capacity is limited. Members of the public who wish to monitor the discussion may dial into this telephonic meeting by dialing (800) 988–9352. At the prompt, provide the conference code ''ASAC'' (pronounced ''*A*-sack''). Parties calling from locations outside the United States must contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**, for international calling instructions.

Persons desiring a copy of the working group's report may request it by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Members of the public must make advance arrangements to present oral statements at this ASAC meeting. Written statements may be presented to the committee by providing copies of them to the Chair prior to the meeting. Comments may be sent to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Arlington, Virginia, on July 21, 2006.

John Sammon,

Assistant Administrator for Transportation Sector Network Management.

[FR Doc. E6–11935 Filed 7–25–06; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–25335]

RIN 1652–ZA08 [Corrected]

Privacy Act of 1974: System of Records; National Finance Center (NFC) Payroll Personnel System; Correction

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice to establish a new system of records; request for comments; correction.

SUMMARY: This document makes a correction to the notice published in the **Federal Register** on July 17, 2006, establishing a new system of records under the Privacy Act of 1974. The new system is known as the National Finance Center Payroll Personnel System (DHS/TSA 022) and is to be used to reflect the Transportation Security Administration's (TSA) migration from its legacy payroll system (the Department of Transportation's Integrated Personnel and Payroll System (IPPS), Consolidated Uniform Payroll System (CUPS), and Consolidated Personnel Management Information System (CPMIS)) to the Department of Agriculture's National Finance Center (NFC). TSA inadvertently transposed the digits in the RIN number in the document headings section. This document corrects this number.

DATES: Effective July 26, 2006.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Office of the Chief Counsel (Regulations), TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2706.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 2006, TSA published a notice in the **Federal Register** (71 FR 40530), establishing a new system of records under the Privacy Act of 1974, known as the National Finance Center Payroll Personnel System (DHS/TSA 022). TSA inadvertently transposed the digits in the RIN number in the document headings section. This document corrects this number from RIN 1652–AZ08 to RIN 1652–ZA08.

Correction

In notice FR Doc. E6–11235, published on July 17, 2006 (71 FR 40530), make the following correction:

On page 40530, column one, line five, in the document headings section, remove the words ''RIN 1652–AZ08'' and add in its place the words ''RIN 1652–ZA08''.

Issued in Arlington, Virginia, on July 19, 2006.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations.

[FR Doc. E6–11903 Filed 7–25–06; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Interagency Record of Individual Requesting Change/Adjustment To or From A or G Status or Requesting A, G, or NATO Dependent Employment Authorization; Form I–566, OMB Control Number 1615–0027.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 25, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated

response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number1615–0027 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Interagency Record of Individual Requesting Change/Adjustment to or From A or G Status or Requesting A, G, or NATO Dependent Employment Authorization.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–566. U.S. Citizenship and Immigrations Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by U.S. Citizenship and Immigration Services, and the Department of State.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,800 responses at 15 minutes (.250 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,450 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: July 21, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–11911 Filed 7–25–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Application for Waiver of Grounds of Excludability, Form I–690, OMB Control Number 1615–0032.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 25, 2006.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd floor Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail add the OMB control number 1615–0032 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the 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, and forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–690. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information on the application will be used by the USCIS in considering eligibility for legalization under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85 respondents at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at *http://uscis.gov/graphics/formfee/forms/pra/index.htm*. We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor Suite 3008, Washington DC, 20529, 202–272–8377.

Dated: July 21, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–11912 Filed 7–25–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 25, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Lance G. Barrett-Lennard, Homer, AK, PRT–118442

The applicant requests a permit to take by harassment up to 60 wild northern sea otters (*Enhydra lutris kenyoni*) in the Aleutian Islands, southwest Alaska, for the purpose of scientific research.

Otters will be exposed to killer whale fin decoys and recordings of killer whale calls and blows; sea otter response will be observed and measured according to activity level. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Craig A. Stanley, San Jose, CA, PRT–125911

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: July 7, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–11958 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
120504	William C. Holt	71 FR 19892; April 18, 2006	May 22, 2006.
068235, 068236, 068237, 068238, 068239, 068240, 068241, 068242, 068243, 068349, 068350, 068353, 119894, and 120319.	Hawthorn Corporation	71 FR 26555; May 5, 2006	June 5, 2006.
115655	University of California, Riverside.	71 FR 19892; April 18, 2006	June 20, 2006.
121438	Jere Moyer	71 FR 26555; May 5, 2006	June 20, 2006.
122447	Robert V. Underwood	71 FR 28881; May 18, 2006	June 26, 2006.
122242	Kirk E. Winward	71 FR 28881; May 18, 2006	June 26, 2006.

Dated: June 30, 2006.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–11960 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance of Permit for Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency issuance of permit for endangered species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On July 19, 2006, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–125946) to the Wildlife Conservation Society (WCS/Bronx Zoo), New York, New York, to import an orphaned male snow leopard (*Uncia uncia*) from Pakistan for the purpose of enhancement of the survival of the species. Authorization of this action is under Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service determined that an emergency affecting the health and life of the snow leopard existed, and that no reasonable alternative was available to the applicant for the following reasons.

The WCS requested a permit to import a male snow leopard from Pakistan. The animal, born in June 2005, was orphaned at approximately three weeks of age when a farmer killed his mother in self-defense. The animal was turned over to the Pakistani Northern Areas Forest Department. Prior to the earthquake in October 2005, the Government of Pakistan intended to keep the animal in Pakistan. However, after the earthquake, all available resources were dedicated to earthquake relief; the required resources needed to house and care for the orphaned snow leopard were no longer available.

The Government of Pakistan, after determining that it could not care for the animal, requested assistance from the WCS, which has a presence in Pakistan. Since the animal was removed from the wild at such a young age, it is highly unlikely that it could ever be reintroduced to the wild. The snow leopard is currently being housed in a facility that is inadequate for the proper care of the animal. The WCS, through its facility, the Bronx Zoo, has extensive experience with both wild and captive snow leopards. The facilities at the Bronx Zoo have well-trained staff and the resources necessary to maintain this animal.

The WCS signed a Memorandum of Understanding with the Government of Pakistan that outlined certain conditions and arrangements in regards to the import of this animal. In exchange for importing the animal, the WCS will provide technical support for and assist in raising funds for a wild foundling care facility in Northern Areas, Pakistan, that will have the particular focus on care and management of foundling snow leopards. In addition, the Government of Pakistan will retain ownership of the snow leopard and WCS agrees to return the animal to Pakistan when so requested.

Therefore, notice is hereby given that on the date above, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein. As required by the ESA, the application requesting this import was filed in good faith by the WCS. In granting authorization for this import, the Service has determined that it would not operate to the disadvantage of the endangered species since the animal had been removed from the wild for purposes other than importing it to the United States. Further, since the animal is currently housed in facilities that are inadequate for its long-term survival, housing it at the Bronx Zoo would ensure that this specimen of a highly endangered species will survive. Lastly, the granting of this permit is consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

Dated: July 19, 2006.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–11961 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Post-Delisting Monitoring Plan for the Douglas County Distinct Population Segment of the Columbian White-tailed Deer (Odocoileus virginianus leucurus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Post-Delisting Monitoring Plan for the Douglas County Distinct Population Segment of the Columbian White-tailed Deer (*Odocoileus virginianus leucurus*). The monitoring plan describes the methods that are being used to monitor the status of the Douglas County distinct population segment of the Columbian white-tailed deer and its habitat for a 5-year period, from 2003 (at the time of delisting) to 2008. The plan also provides a strategy for identifying and responding to unexpected population declines and habitat alteration, as well as disease outbreaks.

ADDRESSES: Copies of the post-delisting monitoring plan are available by request from the State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266 (telephone: 503–231–6179; fax: 503–231–6195). It is also available on the World Wide Web at: *http://www.fws.gov/oregonfwo/Species/ESA-Actions/CWTDPage.asp.*

FOR FURTHER INFORMATION CONTACT: Cat Brown, Fish and Wildlife Biologist, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer is the westernmost representative of 30 subspecies of white-tailed deer in North and Central America (Halls 1978, p. 44; Baker 1984, p. 11). The subspecies was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936, p. 90; Verts and Carraway 1998, p. 479). It currently exists in two distinct population segments (DPS), one in Douglas County, Oregon (Douglas County DPS), and the other along the lower Columbia River in Oregon and Washington (Columbia River DPS).

The Douglas County DPS was removed from the Federal List of Endangered and Threatened Wildlife and Plants on July 24, 2003 (68 FR

43647). The DPS was determined to be recovered and no longer in need of the protections of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) due to robust population growth and amelioration of threats to its survival (see July 24, 2003, 68 FR 43647). The Columbia River DPS remains listed as endangered.

Section 4(g)(1) of the ESA requires the Service to implement a system, in cooperation with the States, to monitor effectively for not less than 5 years the status of all species which have been removed from the Federal List of Endangered and Threatened Wildlife and Plants due to recovery. The purpose of post-delisting monitoring is to verify that a species delisted due to recovery remains secure from risk of extinction after it has been removed from the protections of the ESA.

To fulfill the requirement of section 4(g)(1) of the ESA, we developed a post-delisting monitoring plan for the Douglas County DPS of the Columbian white-tailed deer in cooperation with the Oregon Department of Fish and Wildlife and the Bureau of Land Management. The monitoring plan describes the methods that are being used to monitor the status of the Douglas County DPS of the Columbian white-tailed deer and its habitat for a 5-year period, from 2003 (at the time of delisting) to 2008. The monitoring plan also provides a strategy for identifying and responding to unexpected population declines and habitat alteration, as well as disease outbreaks.

A draft of this post-delisting monitoring plan was peer reviewed by two scientific experts familiar with the biology of the Columbian white-tailed deer and was made available for public comment from November 23, 2005, through December 23, 2005 (70 FR 70876). Information submitted during the comment period has been considered in the preparation of the final post-delisting monitoring plan and is summarized in Appendix 2 of the plan.

A combined annual report for the first 3 years of post-delisting monitoring (2003, 2004, and 2005) is currently available on the World Wide Web at: *http://www.fws.gov/ oregonfwo/Species/ ESA-Actions/CWTDPage.asp.* Annual reports will continue to be compiled by the Service, in cooperation with the Oregon Department of Fish and Wildlife and the Bureau of Land Management, until the end of the 5-year monitoring period in 2008, and will be made available at the above Internet address.

References Cited

A complete list of all references cited herein is available, upon request, from the Oregon Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this document is Cat Brown, Oregon Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 3, 2006.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E6–11922 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for Horicon National Wildlife Refuge (NWR) in Dodge and Fond du Lac Counties, Wisconsin and Fox River NWR in Marquette County, Wisconsin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has announced that a Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Horicon and Fox River NWRs, Wisconsin.

The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

DATES: Comments on the Draft CCP/EA must be received on or before August 28, 2006.

ADDRESSES: Copies of the Draft CCP/EA are available on compact disk or hard copy. You may obtain a copy by writing to: U.S. Fish and Wildlife Service, Division of Conservation Planning, BHW Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, or you may access and download a copy via the planning Web site at *http://www.fws.gov/midwest/planning/ horicon.*

All comments should be addressed to Horicon National Wildlife Refuge, Attention: CCP Comment, W4279 Headquarters Road, Mayville, Wisconsin 53050, or by e-mail to *r3planning@fws.gov.* Comments may also be submitted through the Service's regional Web site at *http://www.fws.gov/midwest/planning/.*

FOR FURTHER INFORMATION CONTACT: Patti Meyers, (920) 387–2658.

SUPPLEMENTARY INFORMATION: The EA evaluates three different approaches, or alternatives, to the future management of Horicon NWR, and two alternatives for Fox River NWR. The plan also identifies wildlife-dependent recreational opportunities available to the public.

The preferred alternative for Horicon includes increased opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation. Landscape and watershed involvement by staff and partners would be increased to reduce sedimentation rate and improve water quality in the Horicon Marsh. Habitat management efforts would seek to re-establish a braided river system flowing into the north end of the Horicon Marsh. Refuge uplands would continue to be restored and maintained as open grasslands and oak savanna, which is typical of habitat types prior to European settlement and represents a declining and rare habitat type.

The preferred alternative for Fox River would include an increased deer harvest, the initiation of a fishing program, new wildlife observation and photography opportunities, and the beginning of an environmental education and interpretation program. Habitat restoration and management would continue to perpetuate a variety of native plant and wildlife species, especially those of priority to the Service.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee *et seq.*), requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational

opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Dated: June 9, 2006.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. E6–11921 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Natural Resource Restoration Plan and National Environmental Policy Act Environmental Assessment for the W.R. Grace Superfund Site, Wayne Township, Passaic County, New Jersey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI) as a Natural Resource Trustee (Trustee), announces the release for public review of the Draft Natural Resource Restoration Plan and National Environmental Policy Act (NEPA) Environmental Assessment (RP/EA) for the W.R. Grace Superfund Site, Wayne Township, Passaic County, New Jersey. The Draft RP/EA describes the DOI's proposal to restore natural resources injured as a result of contamination at the W.R. Grace Superfund Site.

DATES: Written comments must be submitted on or before August 25, 2006.

ADDRESSES: Requests for copies of the Draft RP/EA may be made by mail or in person to: Clay Stern, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Pleasantville, New Jersey, 08232. Written comments or materials regarding the Draft RP/EA should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Clay Stern, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Pleasantville, New Jersey, 08232. Interested parties may also call 609–646–9310, extension 27 or electronic mail to *clay_stern@fws.gov* for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended (42 U.S.C. 9601 *et seq.*), commonly known as Superfund, ''* * *[Trustees] may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages.'' Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the Trustees can determine the proper compensation to the public for injury to natural resources. At the W.R. Grace Superfund Site in Wayne Township, Passaic County, New Jersey, DOI was the sole natural resource trustee involved in the Federal Government's settlement with W.R. Grace & Company—Connecticut (Civil Action No. 98–2045). The Service, acting on behalf of the DOI, determined that the primary injuries to trust resources resulting from site-related contamination and response actions were reduced quality and quantity of habitat for migratory birds and other wildlife. Trust resources that utilize these habitats were adversely affected through pathways such as food source contamination or reduced abundance and diversity of food supply due to impacts on the Sheffield Brook benthic community. The settlement of $270,000 was designated for restoration, replacement, or acquisition of the equivalent natural resources injured by the release of contaminants at the site.

The Draft RP/EA is being released in accordance with the Natural Resource Damage Assessment Regulations found at 43 CFR, part II. The Draft RP/EA describes several natural resource restoration, acquisition, and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative is to use the settlement funds to acquire and manage wildlife habitat in perpetuity which is similar to habitat injured at the Grace Superfund Site. Details regarding the proposed projects are contained in the Draft RP/EA.

Interested members of the public are invited to review and comment on the Draft RP/EA. All comments received on the Draft RP/EA will be considered and a response provided either through revision of this Draft RP/EA and incorporation into the Final Restoration Plan and Environmental Assessment, or by letter to the commenter.

Author

The primary author of this notice is Clay Stern.

Authority: The authority for this action is the CERCLA of 1980 as amended (42 U.S.C. 9601 *et seq.*), and implementing Natural Resource Damage Assessment Regulations found at 15 CFR part 990.

Dated: June 26, 2006.

Marvin E. Moriarty,

Regional Director, Region 5, U.S. Fish and Wildlife Service, DOI Authorized Official, U.S. Department of the Interior.

[FR Doc. E6–11910 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Lake Woodruff National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Lake Woodruff National Wildlife Refuge in Volusia and Lake Counties, Florida.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act of 1969 and its implementing regulations.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge mangers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: To ensure consideration, written comments must be received no later than August 25, 2006.

ADDRESSES: Address comments, questions, and requests for further information to: Cheri Ehrhardt, Refuge Planner, Lake Woodruff National Wildlife Refuge CCP, P.O. Box 6504, Titusville, Florida 32782–6504; Telephone: 321/861–2368; Fax: 321/861–1276; E-mail: *LakeWoodruffCCP@fws.gov.* You may find additional information concerning the refuge at its Internet site: *http://www.fws.gov/lakewoodruff/.*

SUPPLEMENTARY INFORMATION: The comprehensive conservation planning process will consider many elements, including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input to the planning process is essential. A public scoping meeting will be held. Please contact the refuge planner in the **ADDRESSES** section regarding the public scoping meeting. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)].

Congress established Lake Woodruff National Wildlife Refuge in 1964 as a migratory bird refuge. It comprises 21,574 acres of freshwater marshes, swamps, creeks, hammocks, and upland forests. More than 1,000 acres of the refuge are designated as Wilderness. Management of the refuge focuses on water-level manipulation for waterfowl and wading birds, prescribed fire, noxious weed control, deer and feral hog management, and partnerships.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: June 14, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–6475 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for the San Pablo Bay National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the San Pablo Bay National Wildlife Refuge (Refuge) located in Solano, Napa and Sonoma Counties of California. This notice advises the public that the Service intends to gather information necessary to prepare a CCP and EA pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and the National Environmental Policy Act (NEPA). The public and other agencies are encouraged to participate in the planning process by sending written comments on management actions that the Service should consider. The Service is also furnishing this notice in compliance with the Service CCP policy to obtain suggestions and information on the scope of issues to include in the CCP and EA. Opportunities for public input will be announced throughout the CCP/EA planning and development process.

DATES: To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received on or before September 11, 2006.

ADDRESSES: Send written comments or requests to be added to the mailing list to the following address: Winnie Chan, Refuge Planner, San Pablo Bay NWR CCP, San Francisco Bay National Wildlife Refuge Complex, P.O. Box 524, Newark, California 94560. Written comments may also be faxed to (510) 792–5828, or *sfbaynwrc@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Winnie Chan, Refuge Planner, at (510) 792–0222 or Christy Smith, Refuge Manager, at (707) 769–4200.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP will identify compatible wildlife-dependent recreational opportunities available to the public. The recreational opportunities that will receive priority consideration are hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The planning process will consider many elements, including habitat and wildlife management, compatible wildlife-dependent recreation, cultural resource protection, desired future conditions, land acquisition, environmental effects, and administrative resources. Public input into this planning process is very important. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

Comments received will be used to develop goals and objectives, as well as identify key issues evaluated in the NEPA document. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. Opportunities for public participation will occur throughout the process.

The Service will send Planning Updates to people who are interested in the CCP process. These mailings will provide information on how to participate in the CCP process. Interested Federal, State, and local agencies, organizations, and individuals are invited to provide input. The Service expects to complete the CCP in 2008.

Background

The San Pablo Bay National Wildlife Refuge is located in the cities of Petaluma, Vallejo, Napa and Novato. The 11,000-acre Refuge sits on the northernmost point of the San Francisco Bay Estuary known as the San Pablo Bay portion of the Estuary. The Refuge was initially established ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds'' (16 U.S.C. 715d (Migratory Bird Conservation Act)); ''* * * particular value in carrying out the national migratory bird management program'' (16 U.S.C. 667b (An Act Authorizing the Transfer of Certain Real Property for Wildlife, or other purposes)); and

''* * * to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants'' (16 U.S.C. 1534 (Endangered Species Act of 1973)).

The Refuge was established to protect endangered species, and to conserve migratory birds and other wildlife by preserving habitat and open space while providing compatible wildlife-oriented outdoor recreation to the public. While the Refuge was formally established in 1970, lands were not acquired until 1974.

The Service anticipates a draft CCP and EA to be available for public review and comment in 2007.

Doug S. Vandegraft,

Acting Manager, CA/NV Operations, Sacramento, California.

[FR Doc. E6–11915 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of a Draft Environmental Impact Statement for a Drought Management Plan for Operation of the Kerr Hydroelectric Project, Flathead Lake, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: The Bureau of Indian Affairs (BIA) announces the availability of a draft Environmental Impact Statement (EIS) for a drought management plan for the operation of the Kerr Hydroelectric Project, Flathead Lake, Montana. In addition to mailing the draft EIS to cooperating agencies and those who previously requested the document, the BIA has made the draft EIS available at the Polson City Library, 2 First Avenue East, Polson, Montana, and the Flathead County Library, 247 First Avenue East, Kalispell, Montana. Additionally, the draft EIS may be obtained on the following Web site: *http://www.flatheadlake-eis.com*. The purpose of this notice is to inform the public, other Federal agencies, tribal, State, and local governments, organizations and businesses of the availability of the draft EIS and to announce public hearings to discuss the draft EIS.

DATES: Comments on the draft EIS must be received by September 29, 2006. The hearing dates and locations are:

1. August 29, 2006, 6:30 p.m. to 9:30 p.m., Red Lion Inn, 20 North Main Street, Kalispell, Montana.

2. August 30, 2006, 6:30 p.m. to 9:30 p.m., Polson City Library, Community Meeting Room, 2 First Avenue East, Polson, Montana.

ADDRESSES: Mail or hand deliver written comments to Jeffery Loman, Chief, Natural Resources Division, Office of Trust Services, Bureau of Indian Affairs, Mail Stop 4655–MIB, 1849 C Street, NW., Washington, DC 20240. You may also fax comments to Chief, Natural Resources, (202) 219–0006 or (202) 219–1255.

FOR FURTHER INFORMATION CONTACT: Jeffery Loman, Chief, Natural Resources Division, (202) 208–7373 or (202) 903–8295.

SUPPLEMENTARY INFORMATION: Flathead Lake is the largest natural fresh water lake in the western United States. It is home to the Confederated Salish and Kootenai Tribes of the Flathead Nation, whose reservation encompasses an area including approximately the southern half of Flathead Lake. Flathead Lake is regulated by the operation of Kerr Dam, located at River Mile 72.0 at Polson, Montana. The Kerr Dam and Hydroelectric Project are located within the exterior boundaries of the Flathead Indian Reservation. The Project operates under a joint license issued by the Federal Energy Regulatory Commission on July 17, 1985 to PPL Montana, LLC, successor-in-interest to the Montana Power Company and current operator of the Kerr Project, and the Confederated Salish and Kootenai Tribes. The license has been amended several times since initial issuance.

Section 4(e) of the Federal Power Act authorizes the Secretary of the Interior to include conditions in hydropower licenses for the protection and utilization of Indian reservations. Pursuant to this authority, the Secretary required that certain articles be included in the Kerr Project license for the protection and utilization of the Flathead Indian Reservation. Among these is license Article 56, which requires minimum instream flow rates for the protection of fisheries and other resources in the Lower Flathead River below Kerr Dam. In addition to the Secretary's section 4(e) conditions, Article 43 of the Kerr Project license requires the operator to regulate Flathead Lake in accordance with a 1962 Memorandum of Understanding, as amended in 1965, between the Montana Power Company and the U.S. Army Corps of Engineers. The purposes behind the MOU include providing for flood control by drawing down Flathead Lake every spring, and supporting recreation, tourism and associated activities on Flathead Lake by refilling the lake in time for the summer season.

During low-water years, there may be an insufficient volume of water to achieve Article 43 lake levels while maintaining the minimum instream flow requirements of Article 56. Accordingly, the Secretary also included Article 60 in the Project license, which requires that the licensees develop and implement a drought management plan in consultation with the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, Bureau of Indian Affairs, and Montana Department of Environmental Quality. Article 60 further requires that the drought management plan include a re-evaluation and adjustment of flood control requirements and other provisions necessary for compliance with lower Flathead River minimum instream flow mandates.

Pursuant to Article 60, PPL Montana submitted a proposed drought management plan to the Secretary of the Interior on March 4, 2002. Under Article 60, the Secretary has the authority to reject, modify, or otherwise alter the proposed drought management plan. The Secretary determined that the decision on the proposed drought management plan constitutes a major federal action that could significantly affect the quality of the human environment. The National Environmental Policy Act therefore requires preparation of an EIS. PPL Montana's plan serves as the proposed action in the EIS.

The Bureau of Indian Affairs was delegated the responsibility to serve as the Lead Agency for NEPA compliance in connection with the proposed drought management plan. On June 20, 2002, BIA published a Notice of Intent in the **Federal Register** (67 FR 42054) informing agencies and the public of BIA's intent to gather information necessary to prepare an EIS for the proposed drought management plan and initiating the formal scoping process (See Appendix A). The Notice of Intent encouraged comments and participation in the scoping process and included meeting dates, times, and locations. BIA held a series of public meetings and workshops in Kalispell, Charlo and Polson, Montana, on July 9–10, 2002, August 27–28, 2002, and October 22–23, 2002.

The drought management plan ultimately approved by the Secretary will govern how the Kerr Project licensees will prepare for and operate the Project during a drought and will benefit the public by providing information regarding the operation of

the Kerr Project in drought conditions. The NEPA process will allow the Secretary of the Interior to issue a Record of Decision selecting an alternative regarding a drought management plan. Issues addressed in the environmental analysis include, but are not limited to, hydroelectric power production, recreation, tourism, irrigation, treaty-protected fisheries, biological resources, wildlife habitat, and Indian traditional and cultural properties and resources. Alternatives to the proposed drought management plan examined in the EIS include a variety of measures, such as adjustments to flood control rule curves, implementation of advanced climate prediction initiatives, and deviation from minimum instream flow requirements. The range of environmental issues and alternatives was developed through comments received during the scoping process, including the public scoping meetings and workshops held in Montana.

Authority

This notice is published in accordance with section 1503.1, Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1.6) and is within the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 19, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–11936 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Fire Island National Seashore

AGENCY: National Park Service, Interior.

ACTION: Announcement of park boundary revision.

SUMMARY: Notice is given that that the western boundary of Fire Island National Seashore is revised to include Tract No. 17–04 as depicted on map number 615/81,487 prepared by the National Park Service in October 2005. This map and other supporting documentation are available for inspection at the National Park Service, Northeast Region, Land Resources Division, New England Office, 222 Merrimack Street, Suite 400E, Lowell, Massachusetts 01852, and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772.

SUPPLEMENTARY INFORMATION: Section 7c) of the Land and Water Conservation Fund Act of 1965, as amended, 16 U.S.C. 460*l*–9(c), authorizes the Secretary of the Interior to make minor revisions to the boundaries of a unit of the National Park System that will contribute to and are necessary for the proper preservation, protection, interpretation, or management of such a unit. To provide for the proper protection and management of Fire Island National Seashore, it is necessary to include within the boundaries of the national seashore certain property referred to as Tract No. 17–04, consisting of 0.82 acre of Federal land, more or less, on Fire Island in the Town of Islip, Suffolk County, New York, located adjacent to federally owned Tract No. 17–01. The tract is owned by the United States of America by resumption of title from and with the acknowledgement of the State of New York pursuant to the Act of June 7, 1924, Public Law 252.

Dated: May 10, 2006.

Mary A. Bomar,

Regional Director, Northeast Region.

[FR Doc. 06–6476 Filed 7–25–06; 8:45 am]

BILLING CODE 4310–YV–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/ Environmental Impact Statement, Hovenweep National Monument, Colorado and Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of termination of the Environmental Impact Statement for the General Management Plan, Hovenweep National Monument.

SUMMARY: The National Park Service (NPS) is terminating preparation of an Environmental Impact Statement (EIS) for the General Management Plan, Hovenweep National Monument, Colorado and Utah. A Notice of Intent to prepare the EIS for the Hovenweep National Monument General Management Plan was published in Vol. 68, No. 167, of the August 28, 2003, **Federal Register** (2351). The National Park Service has since determined that an Environmental Assessment (EA) rather than an EIS is the appropriate environmental documentation for the general management plan.

SUPPLEMENTARY INFORMATION: The general management plan will establish the overall direction for the national monument, setting broad management goals for managing the area over the next 15 to 20 years. The plan was originally scoped as an EIS. However, few public comments were received in the scoping process. Although some concerns were expressed during the public scoping process, particularly on the potential for impacts related to energy exploration in areas adjacent to the national monument, no issues were identified for the general management plan that have the potential for controversial impacts.

In the general management planning process the NPS planning team developed two alternatives for the national monument, neither of which would result in substantial changes in the operation and management of the monument. As the park does not have a general management plan, management under the no-action alternative would continue existing operations with no changes in interpretation, resource protection strategies, or facility development. The action alternative would focus on maintaining and protecting resources, addressing park maintenance/operations needs and developing a maintenance facility within previously disturbed areas. The preliminary impact analysis of the alternatives revealed no major (significant) effects on the human environment or impairment of park resources and values. Most of the impacts to the national monument's resources and values were negligible to minor in magnitude.

For these reasons the NPS determined the appropriate National Environmental Policy Act documentation for the general management plan is an environmental assessment.

DATES: The draft general management plan/environmental assessment is expected to be distributed for a 30 day public comment period in the fall of 2006 and a decision is expected be made in the fall of 2006. The NPS will notify the public by mail, Web site, and other means, and will include information on where and how to obtain a copy of the EA, how to comment on the EA, and the length of the public comment period.

FOR FURTHER INFORMATION CONTACT: Coralee Hays, Superintendent,

Hovenweep National Monument; McElmo Route, Cortez, CO 81321; Telephone: (970) 562–4282; e-mail *corky_hays@nps.gov.*

Dated: June 14, 2006.

Hal J. Grovert,

Acting Director, Intermountain Region.

[FR Doc. 06–6473 Filed 7–25–06; 8:45 am]

BILLING CODE 4312–CN–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 15, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 10, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

IDAHO

Ada County

Chitwood, Joseph, House, 1321 Denver St., Boise, 06000709

Schick—Ostolasa Farmstead, 5213 Dry Creek Rd., Boise, 06000710

ILLINOIS

Ogle County

Oregon Commercial Historic District, Roughly bounded by Jefferson, Franklin, 5th and 3rd Sts., Oregon, 06000713

IOWA

Jackson County

Maquoketa Company—Clinton Machine Company Administration Building, 605 E. Maple St., Maquoketa, 06000712

Marion County

Coal Ridge Baptist Church and Cemetery, 1034 IA S71, Knoxville, 06000711

LOUISIANA

East Baton Rouge Parish

Kress Building, 445 Third St., Baton Rouge, 06000714

Orleans Parish

Texaco Building, 1501 Canal, New Orleans, 06000715

MASSACHUSETTS

Franklin County

Hill Cemetery and Parson Hubbard House Historic District, Old Village Rd., 72 Old Village Rd., Shelburne, 06000716

Worcester County

Vintonville Historic District, Roughly bounded by Cottage, Green, Pine, Brigham, Beach Sts., and rear of properties along the east side of South St., Westborough, 06000717

MICHIGAN

Oakland County

Detroit Finnish Co-operative Summer Camp, 2524 Loon Lake Rd., Wixom, 06000723

Lake Orion Historic District, Roughly bounded by Elizabeth St., Hauxwell Dr., Front St., and Lapeer St., Lake Orion, 06000722

NORTH CAROLINA

Buncombe County

West Asheville—Aycock School Historic District, 401–441 Haywood Rd., Asheville, 06000718

Mecklenburg County

Grier, Sidney and Ethel, House, (Rural Mecklenburg County MPS) 4747 Grier Farm Ln., Charlotte, 06000724

Orient Manufacturing Company—Chadwick—Hoskins No. 3, 311 E. Twelfth St., Charlotte, 06000721

Montgomery County

Hotel Troy, NW corner of N. Main and Smitherman Sts., Troy, 06000720

Troy Residential Historic District, E side of N. Main St., from one lot N of Chestnut St. to one lot N of Blair St. and 105 Blair St., Troy, 06000719

Rutherford County

Gilbert Town Historic District, Along sections of Rock Rd.—NC 1520 and Old Gilbert Town Rd.—NC 1539, Rutherfordton, 06000726

OREGON

Benton County

Poultry Building and Incubator House, 800 SW Washington Ave., Corvallis, 06000725

Lane County

Wilder Apartments, (Residential Architecture of Eugene, Oregon MPS) 259 E. 13th Ave., Eugene, 06000727

TENNESSEE

Giles County

Smith, Dr. Benjamin Franklin, House, 13494 Columbia Hwy., Waco, 06000728

WASHINGTON

Grays Harbor County

Hoquiam Olympic Stadium, 2811 Cherry St., Hoquiam, 06000731

Pierce County

Washington School, 3701 N. 26th St., Tacoma, 06000729

Snohomish County

Trafton School, (Rural Public Schools of Washington State MPS) 12616 Jim Creek Rd., Arlington, 06000730

[FR Doc. E6–11896 Filed 7–25–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Public Comment Period for Proposed Second Amendment to Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Second Amendment to Consent Decree in *United States and the States of Colorado, Louisiana, Oklahoma, and Montana* v. *Conoco, Inc.* (Civil action No. H–01–4430), which was lodged with the United States District Court for the District of Minnesota on July 12, 2006.

This is a proposed Second Addendum to Consent Decree in this national, multi-facility Clean Air Act (''Act'') enforcement action against Conoco Inc. (now ''ConocoPhillips''). The original settlement, covering four refineries, was entered by the Court on April 30, 2002, to address claims under Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991), as part of our Petroleum Refinery Initiative. The Consent Decree was first amended on August 1, 2003, to reflect the sale of the Denver refinery to Suncor Energy (U.S.A.) Inc. (''Suncor''). Suncor remains a party to the global settlement and has assumed responsibility for implementing the Consent Decree requirements at the Denver refinery.

This proposed Second Amendment, which affects both ConocoPhillips and Suncor, accomplishes the following: (1) Modifies the fluid catalytic cracking unit (''FCCU'') catalyst additive programs at all refineries; (2) establishes interim and final emission limits for FCCUs at the Ponca City, Oklahoma, refinery; (3) allows for alternative technologies for nitrogen oxide (''NO_X) controls on FCCUs; and (4) includes adjusted compliance dates resulting from the impact of Hurricanes Katrina and Rita.''

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Second Amendment to

Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al* v. *Conoco, Inc.*, D.J. Ref. 90–5–2–1–07295/1.

During the public comment period the Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002. The Amendment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6488 Filed 7–25–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Nanoparticle Benchmarking Research Project

Notice is hereby given that, on June 21, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Nanoparticle Benchmarking Research Project (''Project'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: E.I. du Pont de Nemours and Company, Wilmington, DE; Procter & Gamble Company, West Chester, OH; The Dow Chemical Company, Midland, MI; Cabot Corporation, Boston, MA; Air Products and Chemicals Incorporated, Allentown, PA; Rohm & Haas Company, Spring House, PA; PPG Industries Incorporated, Pittsburgh, PA; Intel Corporation, Santa Clara, CA; Degussa Corporation, Parsippany, NJ; and United Kingdom Health & Safety Executive, London, UNITED KINGDOM. The general area of Project's planned activity is to undertake research and development in the areas of health, safety, and environmental considerations raised by the exposure of workers to airborne nanoparticles in the production of goods. Specifically, Project's objectives include: (1) Design and development of portable workplace monitoring instrumentation; and (2) development and testing of protective clothing fabrics as a barrier to an aerosol of nanoparticles. This work is being jointly funded by DuPont, and the other entites names above, as sponsors who are interested in nanoparticle research.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–6469 Filed 7–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 9, 2006, Lin Zhi International Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085, 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 Schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxy- methamphetamine (7405).	I
Cocaine (9041)	II
Oxycodone	II
Hydrocodone (9193)	II
Methadone (9250)	II
Dextropropoxyphene, bulk, (9273)	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances as bulk reagents for use in drug abuse testing.

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 September 25, 2006.

Dated: July 19, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11931 Filed 7–25–06; 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) 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 June 30, 2005, Meridian Medical Technologies, 255 Hermelin Drive, St. Louis, Missouri 63144, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Morphine (9300), a basic class of controlled substance listed in Schedule II.

The company plans to import products for research experimentation or clinical use and analytical testing.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class 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 August 25, 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: July 19, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11932 Filed 7–25–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 7, 2006, Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02454, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The company plans to manufacture the listed controlled substance in bulk for conversion into non-controlled substance.

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 September 25, 2006.

Dated: July 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11933 Filed 7–25–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Health Information Technology; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of Health Information Technology will hold an open public meeting on August 10, 2006.

The session will take place in Room N4437 A–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:45 a.m. to approximately 5 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses. The Working Group will study what is necessary to encourage the widespread adoption of health information technology using common standards and how the federal government can work with the private sector and industry to accomplish this objective.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before August 3, 2006 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov.* Statements received on or before August 3, 2006 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by August 3, 2006 at the address indicated.

Signed at Washington, DC, this 18th day of July, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 06–6522 Filed 7–25–06; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Plan Asset Rules, Exemptions, and Cross Trading; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of Plan Asset Rules, Exemptions, and Cross Trading will hold an open public meeting on August 11, 2006.

The session will take place in Room N4437 A–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 5 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses. The working group will study (1) the current applicability of the 1987 plan asset regulation, to determine whether the regulation should be modified or whether other DOL action is appropriate to clarify the existing regulation, and (2) cross trading, to determine whether the DOL should issue broader exemptive relief for cross-trading.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before August 3, 2006 to Larry Good, Executive

Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before August 3, 2006 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Larry Good by August 3, 2006 at the address indicated.

Signed at Washington, DC, this 18th day of July, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E6–12055 Filed 7–25–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans 134th Full Council Meeting; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 134th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held on August 10, 2006.

The session will take place in Room N 4437 A–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 9:45 a.m., is for members to be updated on activities of the Employee Benefits Security Administration and for chairs of this year's working groups to provide progress reports on their individual study topics.

Organizations or members of the public wishing to submit a written statement may do so by submitting 25 copies on or before August 3, 2006 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before August 3, 2006 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by August 3 at the address indicated.

Signed at Washington, DC, this 18th day of July, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E6–12056 Filed 7–25–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on a Prudent Investment Process; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of a Prudent Investment Process will hold an open public meeting on August 9, 2006.

The session will take place in Room N4437 A–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 5 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses. The Working Group will study selected issues regarding the prudent investment process for both defined benefit plans and participant directed defined contribution plans. The Working Group will focus on plan asset valuations, soft dollars, and self-directed account plans under ERISA Section 404(c).

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before August 3, 2006 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before August 3, 2006 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Larry Good by August 3, 2006 at the address indicated.

Signed at Washington, DC, this 18th day of July, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E6–12060 Filed 7–25–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0205 (2006)]

Personal Protective Equipment (PPE) Standards for General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements specified in its standards on PPE for General Industry.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by September 25, 2006.

Fascimile and electronic transmission: Your comments must be received by September 25, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0205(2006), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit you comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and

Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit coments through the Internet at *http://ecomments.osha.gov*. Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov*. In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Theda Kenney at the below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' section in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporint burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate.

The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for its enforcement or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The general industry PPE standards (29 CFR part 1910, subpart I) include several paperwork requirements.[1] The following Describe the information collection requirements:

Hazard Assessment and Verification (29 CFR 1910.132(d)). Paragraph (d)(1) requires that the employer assess work activities to determine whether there are hazards present, or likely to be present, which necessitate the employee's use of PPE. If such hazards are present, or likely to be present, the employer must communicate selection decisions to affected employees and verify that the required occupational hazard assessment has been performed. Paragraph (d)(2) requires that the verification document, which must be identified as a certification of hazard assessment, must contain the following information: occupation, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment.[2]

The hazard assessment assures that potential workplace hazards necessitating PPE use have been identified and that the PPE selected is appropriate for those hazards and the affected employees. The required certification of the hazard assessment verifies that the required hazard assessment was conducted.

Training and Verification (29 CFR 1910.132(f)). Paragraph (f) requires that employers provide training for each employee who is required to wear PPE. Paragraph (f)(3) requires that employers also provide retraining when there is reason to believe that any previously trained employee does not have the understanding and skill to use PPE properly. Circumstances where such retraining is required include changes in the workplace or in the types of PPE used that render prior training obsolete, and inadequacies in the employee's knowledge or use of PPE that indicate the employee had not retained the requisite understanding and skill.

Paragraph (f)(4) requires that employers certify that employees have received and understood the PPE training required in § 1910.132(f). The training certification must include the name of the employee(s) trained, the date of training, and the subject of the certification (i.e., a statement identifying the document as a certification of training in the use of PPE).

The training certification verifies that employees have received the necessary training and know how to properly use PPE. OSHA compliance officers may require employers to disclose the certification records during an Agency inspection.

The part 1910 standards on PPE protection for the eyes and face (§ 1910.133), head (§ 1910.135), feet (§ 1910.136), and hands (§ 1910.138) do not contain any separate information collection requirements.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requiring OMB to extend their approval of the collection of information requirements contained in the general industry PPE standards. The Agency is requesting an increase in burden hours for the existing collection of information requirements from 3,169,344 to 3,953,759 (a total increase of 784,415 hours). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB.

Type of Review: Extension of currently approved information collection requirement.

Title: Personnel Protective Equipment (PPE) Standards for General Industry (29 CFR part, 1910, subpart I).

OMB Number: 1218–0205.

Affected Public: Business or other for-profits; Federal Governments; State, local or tribal government; Not-for-profit institutions.

Number of Respondents: 3,400,000.

Frequency: On occasion.

Average Time per Response: Varies from one minute (.02 hour) to maintain a training certification record to 29 hours to perform a hazard assessment.

[1] The Information Collection Request (ICR) does not include burden hours and costs associated with the information collection requirements in the standards on respiratory Protection (29 CFR 1910.134) and Electrical Protective Equipment (29 CFR 1910.137), both of which have been addressed in separate Information collection Requests (ICRs). See OMB Control Nos. 1218–0099 and 1218–0190, respectively.

[2] Paragraph (g) of § 1910.132 specifies that the section's hazard assessment (paragraph (d)) and training (paragraph (f)) requirements only apply to PPE for the eyes and face, head, feet and hands.

Estimated Total Burden Hours: 3,953,759.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY) (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

Comments, submissions, and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Electronic copies of this Federal Register notice as well as other relevant documents are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 19, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. 06–6487 Filed 7–25–06; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

Time and Date: 10 a.m., Monday, July 31, 2006.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Closed.

Matters To Be Considered:

1. Administrative Action under Section 206(h)(1)(A) of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).

For Further Information Contact: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 06–6504 Filed 7–24–06; 10:30 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

FirstEnergy Nuclear Operating Company, FirstEnergy Nuclear Generation Corp., Ohio Edison Company, The Toledo Edison Company, Beaver Valley Power Station, Unit Nos. 1 and 2; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 275 to Facility Operating License No. DPR–66 and Amendment No. 156 to Facility Operating License No. NPF–73 issued to FirstEnergy Nuclear Operating Company (the licensee), which revised the Technical Specifications (TSs) and licenses for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2) located in Beaver County, Pennsylvania. The amendments are effective as of the date of issuance.

The amendments modified the TSs and licenses to increase the maximum authorized rated thermal power from 2689 megawatts thermal (MWt) to 2900 MWt for each unit. Additionally, the amendments approved full implementation of an alternative source term in accordance with Title 10 of the Code of Federal Regulations, Section 50.67, using the guidance in Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Plants.'' The amendments also approved deletion of the power range neutron-flux high-negative rate trip, removal of the boron injection tank boron concentration and renaming the boron injection flow path for BVPS–1, the addition of a footnote to Table 3.3–3 for BVPS–1, and correction of an inconsistency regarding a referenced permissive for BVPS–1.

The application for the amendment 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 Amendments to Facility Operating Licenses and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on August 17, 2005 (70 FR 48443). The supplemental letters dated February 23, May 26, June 14, July 8 and 28, August 26, September 6, October 7, 28, and 31, November 8, 18, and 21, December 2, 6, 9, 16, and 30, 2005, and January 25, February 14 and 22, March 10 and 29, May 12, and July 6, 2006, provided additional clarifying information that did not expand the scope of the initial application as published in the **Federal Register**. No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (71 FR 40162).

For further details with respect to the action see (1) the application for amendment dated October 4, 2004, as supplemented by letters dated February 23, May 26, June 14, July 8 and 28, August 26, September 6, October 7, 28, and 31, November 8, 18, and 21, December 2, 6, 9, 16, and 30, 2005, and January 25, February 14 and 22, March 10 and 29, May 12, and July 6, 2006, (2) Amendment No. 275 to License No. DPR–66, (3) Amendment No. 156 to License No. NPF–73, (4) the Commission's related Safety Evaluation, and (5) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, 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 Systems (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 Public Document Room Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of July 2006.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–11918 Filed 7–25–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–32959]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 09–10672–03, for Unrestricted Release of the U.S. Environmental Protection Agency's Buildings 15, 16 and 17 in Gulf Breeze, FL

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Steve Hammann, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5399; fax number (610) 337–5269; or by e-mail: *sth2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 09–10672–03. This license is held by U.S. Environmental Protection Agency (the Licensee), for its Gulf Ecology Division Facility, located at 1 Sabine Island Drive in Gulf Breeze, Florida (the Facility). Issuance of the amendment would authorize release of Buildings 15, 16 and 17, which are part of the Facility, for unrestricted use. The Licensee requested this action in a letter dated March 14, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's March 14, 2006, license amendment request resulting in release of Buildings 15, 16 and 17 for unrestricted use. License No. 09–10672–03 was issued on November 2, 1992, pursuant to 10 CFR part 30, and has been amended periodically since that time. License No. 09–10672–03 superceded License No. 09–10672–02 which was issued in 1965 for this Facility. This license authorized the Licensee to use sealed and unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods.

Buildings 15, 16 and 17 have a total of 2,690 square feet and consist of office space, laboratories, and storage space. The Buildings are located in a mixed residential/commercial area. The Licensee has not conducted licensed activities in Buildings 15, 16 and 17 since 1997. Based on the Licensee's historical knowledge of the site and the condition of the Buildings, the Licensee determined that only routine decontamination activities, in accordance with its NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of Buildings 15, 16 and 17 and provided information to the NRC to demonstrate that they meet the criteria in subpart E of 10 CFR part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at Buildings 15, 16 and 17 and seeks the unrestricted use of this portion of the Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted in Buildings 15, 16 and 17 shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Buildings 15, 16 and 17 affected by these radionuclides.

The Licensee conducted a final status survey on March 5, 2006. This survey covered Buildings 15, 16 and 17. The final status survey report was attached to the Licensee's amendment request dated March 14, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the (ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material in Buildings 15, 16 and 17. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Buildings. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of Buildings 15, 16 and 17 for unrestricted use is in compliance with 10 CFR 20.1402. The Licensee will continue to perform licensed activities at other parts of the Gulf Ecology Division Facility, and must ensure that the decommissioned area does not become recontaminated. Before the license can be terminated, the Licensee will be required to show that the entire Facility, including previously-released

areas, complies with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity in Buildings 15, 16 and 17, and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that Buildings 15, 16 and 17 meet the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Florida Bureau of Radiation Control for review on April 4, 2006. On April 4, 2006, Florida Bureau of Radiation Control responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Amendment request and Final Status Survey Results for U.S. Environmental Protection Agency, Gulf Ecology Division, 1 Sabine Island Drive, Gulf Breeze, Florida, dated March 14, 2006 [ADAMS Accession No. ML060810415];
2. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
3. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
4. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
5. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities''.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 18th day of July 2006.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E6–11919 Filed 7–25–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee Meetings.

SUMMARY: The Office of Management and Budget announces one meeting of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: There is one *conditional* meeting announced in this **Federal Register** Notice. A Public meeting of the Panel will be held on August 10, 2006 if the Panel does not complete its work at the previously published public meeting on July 25, 2006. If held, the meeting will begin at 9 a.m. Eastern Time and end no later than 5 p.m. The public is urged to call (202) 208–7279 after 5 p.m. the work day before this meeting for a pre-recorded message to learn if the meeting is cancelled. The public may also visit the Panel's Web site the morning of the meeting for cancellation messages (*http://acquisition.gov/comp/aap/index.html*).

ADDRESSES: The August 10, 2006 meeting, if held, will be at the new FDIC Building, 3501 N. Fairfax Drive, Arlington, VA in the new auditorium Room C3050D. This facility is ¼ block off of the orange line metro stop for Virginia Square. The public is asked to pre-register one week in advance of the meeting due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning these meetings or the Panel itself, or to pre-register for the meeting, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov,* phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F

Street, NW., Room 4006, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meeting.

Meeting—The focus of this meeting will be discussions of and voting on any remaining working group findings and recommendations from selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see *http://acquisition.gov/comp/aap/index.html* for a list of working groups).

(b) *Posting of Draft Reports:* Members of the public are encouraged to regularly visit the Panel's Web site for draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at *http://acquisition.gov/comp/aap/index.html* under the link for ''Working Group Reports.'' The most recent posting is from the Commercial Practices Working Group. The public is encouraged to submit written comments on any and all draft reports.

(c) *Adopted Recommendations:* The Panel has adopted recommendations presented by the Small Business, Interagency Contracting, and Performance-Based Acquisition Working Groups. While additional recommendations from some of these working groups are likely, the public is encouraged to review and comment on the recommendations adopted by the Panel to date by going to *http://acquisition.gov/comp/aap/index.html* and selecting the link for ''Adopted Recommendations.''

(d) *Availability of Meeting Materials:* Please see the Panel's Web site for any available materials, including draft agendas and minutes. Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Revised Commercial Practices Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues in written statements to the Panel.

(e) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Panel Staff expects that public statements presented orally or in writing will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Written Comments: Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format).

Please note: Because the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(f) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. E6–11930 Filed 7–25–06; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27421; File No. 812–13243]

AXA Equitable Life Insurance Company, et al.; Notice of Application

July 20, 2006.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended (''Act''), granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: AXA Equitable Life Insurance Company (''AXA Equitable''), AXA Life and Annuity Company (''AXA Life and Annuity,'' and together with AXA Equitable, ''the Company''), Separate Account No. 45 of AXA Equitable, Separate Account No. 49 of AXA Equitable (''SA 49''), Separate Account VA of AXA Life and Annuity (the foregoing separate accounts each an ''Account,'' and collectively, the ''Accounts''), AXA Advisors, LLC, and AXA Distributors, LLC (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order to amend an Existing Order (defined below) to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Applicants to recapture certain credits applied to contributions made under certain amended deferred variable annuity contracts and certificates (''credits''), described herein, including certain amended certificate data pages and endorsements, that AXA Equitable will issue through the Accounts (the ''2006 Amended Contracts''), and under contracts and certificates, including certain certificate data pages and endorsements, that AXA Equitable may issue in the future through the Accounts, and any other separate accounts of AXA Equitable or AXA Life and Annuity (collectively, ''Future Accounts'') that are substantially similar in all material respects to the 2006 Amended Contracts (the ''Future Contracts''). Applicants also request that the order being sought extend to ''Equitable Broker-Dealers,'' as defined in the applications for the Existing Order (defined below) (''Prior Applications'').[1]

FILING DATE: The application was filed on October 24, 2005, and amended and restated applications were filed on March 29, 2006, and July 11, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 18, 2006, and should be accompanied by proof of service on Applicants in the form of an affidavit or,

[1] *The Equitable Life Assurance Society of the United States,* Rel. Nos. IC–23774 (Apr. 7, 1999) (File No. 812–11388), 23889 (July 2, 1999) (File No. 812–11662), 24963 (April 26, 2001) (File No. 812–12392), and 26170 (August 26, 2003) (File No. 812–13010).

for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o AXA Equitable Life Insurance Company, 1290 Avenue of the Americas, New York, NY 10104, Attn: Dodie Kent, Esq., copy to Goodwin Procter LLP, 901 New York Ave., NW., Washington, DC 20001, Attn: Christopher E. Palmer.

FOR FURTHER INFORMATION CONTACT: Sonny Oh, Staff Attorney, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Room 1580, Washington, DC 20549 (tel. (202) 551–8090).

Applicants' Representations

1. On May 3, 1999, the Commission issued an order (''May 1999 Order'') [2] exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The May 1999 Order specifically permits the recapture, under specified circumstances, of certain 3% Credits applied to contributions made under the Contracts or the Future Contracts as defined in the application for the May 1999 Order. Specifically, the May 1999 Order permits recapture of Credits if the Contract is returned during the free look period or if contributions are made within three years of annuitization.

2. On July 28, 1999, the Commission issued an order of exemption amending the May 1999 Order (''July 1999 Order'') [3] to permit the recapture of Credits of up to 5% under the Contracts or the Future Contracts under the same specified circumstances.

3. On May 21, 2001, the Commission issued an order of exemption (''May 2001 Order'') [4] amending the July 1999 Order to permit the recapture of Credits of up to 6% under the Contracts and the Future Contracts under the same and certain two additional circumstances. The additional circumstances include the recapture of Excess Credits when a Contract owner's Net First Year Contributions are lower than Total First Year Contributions, and when a Contract owner fails to fulfill the conditions of a Letter of Intent; all as described in the application for the May 2001 Order.[5]

4. On September 26, 2003, the Commission issued an order of exemption (''September 2003 Order'') [6] amending the May 2001 Order (together with the May 1999 Order, the July 1999 Order and the May 2001 Order, the ''Existing Order'') to permit the recapture of Credits of up to 6% under amended contracts (''Amended Contracts'') and Future Contracts, as defined in the application for the September 2003 Order, under the same and one additional circumstance. The additional circumstance includes the recapture of Credits when a Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, as described in the application for the September 2003 Order.[7]

5. The Amended Contracts provide for a death benefit payment upon the death of the annuitant. The death benefit payment is equal to the greater of: (1) The account value as of the date the Company receives satisfactory proof of death and other required forms and information; or (2) any applicable guaranteed minimum death benefit (''GMDB'') on the date of death (adjusted for any subsequent withdrawals, withdrawal charges and taxes that apply). Each GMDB is based on its related benefit base. The GMDB may be based on a benefit base calculated, in whole or in part, on contributions, but contributions for the purposes of this calculation do not include any Credits; or in part, on the highest account value as of particular dates, such as Contract anniversaries. The account value on a particular date includes any previously granted Credits, with any changes in value due to charges and investment performance.

6. The Amended Contracts provide a benefit option called ''Protection Plus.'' For an additional charge, the optional Protection Plus benefit provides an additional death benefit amount equal to 40% (25% for certain annuity issue ages) of the death benefit amount less total net contributions.

7. The Amended Contracts offer a guaranteed principal benefit (''GPB'') with two options. Under the first option (''GPB Type A''), the owner selects a fixed maturity option, and the Company specifies the portion of the initial contribution to be allocated to that fixed maturity option in an amount that will cause the value to equal the amount of the entire initial contribution (including any Credits) on the fixed maturity option's maturity date. Under the second option (''GPB Type B''), the Company specifies the portion of contributions to be allocated to one or more specified investment options. If on the benefit maturity date the account value is less than the amount guaranteed under GPB Type B, the Company increases the account value to be equal to the guaranteed amount. The guaranteed amount under the GPB Type B is equal to the initial contribution adjusted for any additional permitted contributions (excluding any Credits), withdrawals from the Contract, and in some cases transfers out of a specified fixed maturity option.

8. The Amended Contracts offer an optional guaranteed withdrawal benefit called ''Principal Protector'' (''GWB''). The GWB permits the owner to withdraw certain guaranteed amounts on an annual basis even if the account value falls to zero. The guaranteed withdrawal amounts are calculated using a GWB benefit base. The GWB benefit base is initially based on the initial contribution (not including any Credit).

9. The Amended Contracts include various options permitting under some circumstances the Amended Contract to be continued after a death of an annuitant that would otherwise trigger a death benefit payment. In those circumstances, the account value will be increased to the amount that would have been paid under a death benefit payment if such death benefit is greater than current account value. These options are described below.

10. Under the successor owner/annuitant option, if a spouse is the sole primary beneficiary or joint owner, and the annuitant dies, the spouse may elect to receive the death benefit or continue the Contract as successor owner/annuitant. If the surviving spouse

[2] *The Equitable Life Assurance Society of the United States,* Rel. No. IC–23822 (May 3, 1999) (File No. 812–11388).

[3] *The Equitable Life Assurance Society of the United States,* Rel. No. IC–23924 (July 28, 1999) (File No. 812–11662).

[4] *The Equitable Life Assurance Society of the United States,* Rel. No. IC–24980 (May 21, 2001) (File No. 812–12392).

[5] *The Equitable Life Assurance Society of the United States,* Rel. No. IC–24963 (April 26, 2001) (File No. 812–12392).

[6] *The Equitable Life Assurance Society of the United States,* Rel. No. IC–26192 (Sept. 26, 2003) (File No. 812–13010).

[7] *The Equitable Life Assurance Society of the United States,* Rel. No. IC–26170 (August 26, 2003) (File No. 812–13010). The prospectus for the Amended Contracts is included in a registration statement on Form N–4 for SA 49, Reg. No. 333–64749. The Amended Contracts covered by that prospectus are referred to as the Accumulator®Plus℠ 04 Contracts.

decides to continue the Contract, the Company increases the account value to equal any elected GMDB, if greater, plus any amount applicable under the Protection Plus additional death benefit, adjusted for any subsequent withdrawals.

11. The spousal protection option permits, under some circumstances, spouses who are joint owners to increase the account value to equal the GMDB, if greater, plus any amount applicable under the Protection Plus additional death benefit, adjusted for any subsequent withdrawals.

12. The beneficiary continuation option permits an individual to maintain a Contract in the deceased owner's name and receive distributions under the Contract, instead of receiving the death benefit in a single sum. If this election is made, the Company increases the account value to equal any elected GMDB, if greater, plus any amount applicable under the Protection Plus additional death benefit, adjusted for any subsequent withdrawals. If the owner/annuitant dies, and the beneficiary continues GWB under the beneficiary continuation option, the GWB benefit base will be stepped-up to equal the account value, if higher, as of the transaction date that the Company receives the beneficiary continuation option election.

13. Subject to any necessary regulatory approvals, the Company intends to offer a further amended version of the Amended Contracts (the ''2006 Amended Contracts''). The 2006 Amended Contracts will provide that, if the owner (or one of the joint owners) or annuitant dies within one year following the Company's receipt of a contribution to which Credit was applied, and that death triggers the calculation of a death benefit payment or recalculation of a benefit based on account value, the Company will reduce the account value by the amount of the Credit (or pro rated amount if required by state law).

14. The 2006 Amended Contracts will be issued through SA 49. Units of interest in SA 49 under the 2006 Amended Contracts will be registered under the Securities Act of 1933.[8] The Company may issue Future Contracts through SA 49, the other Accounts or Future Accounts.

15. That portion of the assets of each Account that is equal to the reserves and other contract liabilities with respect to that Account is not chargeable with liabilities arising out of any other business of AXA Equitable or AXA Life and Annuity. Any income, gains or losses, realized or unrealized, from assets allocated to an Account is, in accordance with the relevant contracts, credited to or charged against the Account, without regard to other income, gains or losses of AXA Equitable or AXA Life and Annuity. The same will be true of any Future Account of AXA Equitable or AXA Life and Annuity.

16. Applicants assert that the Amended Contracts and the 2006 Amended Contracts are substantially similar in all respects material to the Existing Order and to the relief requested by the application, except for the addition of one additional circumstance under which the Company will recapture Credits applied to contributions. In particular, under the 2006 Amended Contracts, if a death of an owner (or one of the joint owners) or annuitant that would trigger a death benefit occurs during the one-year period following the Company's receipt of a contribution to which a Credit was applied, the Company will reduce the account value by the amount of such Credit. However, the Credit recapture does not vary based on whether the benefit is triggered by the death of an owner or an annuitant and applies to any death that would trigger a death benefit. This account value reduction may affect the calculation of any death benefit payment, any supplemental death benefit payment under the Protection Plus benefit and account value and benefit calculations made at time of death when the Contract is continued under the successor owner and annuitant option, the spousal protection option, or the beneficiary continuation option. Each of these effects of the Credit recapture is discussed below.

17. Under the 2006 Amended Contracts, the account value used in the calculation of the death benefit payment will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant. The calculation of the GMDB will not be affected by the Credit recapture. A Credit recapture will reduce the death benefit payment if it causes the account value to fall below the GMDB or if the GMDB was already less than the account value. The Credit recapture will not affect the death benefit payment if the GMDB was greater than the account value before the Credit recapture.

18. To the extent that the recapture of the Credit reduces the death benefit payment amount, the recapture will also reduce the amount of the Protection Plus additional death benefit payment.

19. If a surviving spouse decides to continue the Contract under the successor owner/annuitant option, before calculating any possible increase in account value, the current account value will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant.

20. Under the spousal protection option, before calculating any possible increase in account value, the current account value will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant.

21. If the beneficiary continuation option is elected, the Company increases the account value to equal any elected GMDB, but before calculating any possible increase in account value, the current account value will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant.

22. Under the GWB benefit, if the owner/annuitant dies, and the beneficiary continues GWB under the beneficiary continuation option, the GWB benefit base will be stepped up to equal the account value. However, in calculating the step-up, the account value will be reduced by the amount of any Credit applied within one year prior to the death of the owner/annuitant. Therefore, the GWB benefit base under the step-up provision in connection with the beneficiary continuation option may be lower due to the Credit recapture (under some Contracts, the GWB ends if the beneficiary continuation option is selected; therefore, there is no step-up in the benefit base and the Credit recapture has no effect on the GWB benefit).

23. If a Contract continues under any successor owner/annuitant feature, the account value may be reduced by the amount of any recaptured Credit (as

[8] On March 6, 2006, AXA Equitable and SA 49 filed a prospectus supplement for the Accumulator®Plus^{SM} 04 Contracts (Reg. No. 333–64749) reflecting the Credit recapture within one year of death (and noting that any such recapture is subject to obtaining the exemptive order requested). See footnote 7 for information identifying the prospectus for the Accumulator®Plus^{SM} 04 Contracts.

In addition, on or about July 10, 2006, AXA Equitable plans to file in Reg. No. 333–64749 a new prospectus for a new generation of the Accumulator®Plus^{SM} Contract, which will be referred to as the Accumulator®Plus^{SM} 06 Contract, which is designed to replace the Accumulator®Plus^{SM} 04 Contracts as necessary state approvals are obtained. The Accumulator®Plus^{SM} 06 Contract will also include the Credit recapture within one year of death.

The references in the application to the ''2006 Amended Contracts'' includes both Accumulator®Plus^{SM} 04 Contracts with the addition of the Credit recapture within one year of death and all the Accumulator®Plus^{SM} 06 Contracts (because all such Contracts will include the Credit recapture within one year of death).

described above). If any portion of the Credit is recaptured from the fixed maturity option selected under GPB Type A, the amount in that fixed maturity option may not grow to equal the initial contribution plus the Credit. If any portion of the Credit is recaptured from a fixed maturity option under GPB Type B, the account value in that option would be reduced, but the guaranteed amount under GPB Type B would not be affected by the Credit recapture.

Applicants' Legal Analysis

1. Section 6 (c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit Applicants to recapture Credits under 2006 Amended Contracts under the same circumstances covered by the Existing Order, and if a death benefit is payable due to a death during the one-year period following the Company's receipt of a contribution to which a Credit was applied, as described above.

3. Applicants submit that the recapture of Credits under the 2006 Amended Contracts will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder for the same reasons given in support of the Existing Order. Applicants submit that when the Company recaptures any Credit, it is simply retrieving its own assets. Applicants submit that a Contract owner's interest in any Credit allocated on contributions made within one-year of the owner or annuitant's death is not vested. Rather, the Company retains the right to, and interest in, the Credit, although not any earnings attributable to the Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience attributable to any Credit). The amounts recaptured will never exceed the Credits provided by the Company from its own general account assets, and the Company will not recapture any gain attributable to the Credit.

5. Furthermore, Applicants submit that the recapture of Credits relating to contributions made within one year of death is designed to provide the Company with a measure of protection against ''anti-selection.'' The risk here is that rather than investing contributions over a number of years, a Contract owner could make a contribution to receive the benefits of the Credit shortly before the death (either through an increased death benefit payment or an increased account value or other benefit to a continuing owner), leaving the Company less time to recover the cost of the Credit applied.

6. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Credits provided by the Company from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value. Applicants are aware of no reason why the relief provided by the Existing Order should not also extend to the 2006 Amended Contracts.

7. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit under the 2006 Amended Contracts do not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

Conclusion

Applicants submit, based on the grounds summarized above, that their request for an order that applies to the Accounts or any Future Account in connection with the issuance of 2006 Amended Contracts described herein and Future Contracts that are substantially similar in all material respects to the 2006 Amended Contracts and underwritten or distributed by AXA Advisors, LLC, AXA Distributors, LLC, or the Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order. Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11897 Filed 7–25–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54171; File No. SR–CBOE–2006–01]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Regarding a Disaster Recovery Facility

July 19, 2006.

On January 3, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 regarding the establishment of a disaster recovery facility (''DRF''). On June 2, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 26, 2006.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

The Exchange proposes to adopt new Exchange Rule 6.18, which contains the rules that would govern the operation of the DRF in the event of a disaster or other unusual circumstance that renders the Exchange's trading floor inoperable. As set forth in the Notice, the DRF would allow CBOE's members to operate remotely in a screen-based-only environment until the Exchange's trading floor again became available. Prior to the commencement of trading on the DRF, the Exchange would announce all classes of securities that would be traded on the DRF with priority given to those classes exclusively listed on the Exchange. The Exchange represents that it is able to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE made minor revisions to the proposed rule text and clarified certain details of its proposal.

[4] *See* Securities Exchange Act Release No. 54014 (June 19, 2006), 71 FR 36367 (''Notice'').

conduct appropriate surveillance of trading activity on the DRF and has in place relevant surveillance procedures.[5] All classes of securities traded on the DRF would be subject to the Exchange's Hybrid System rules relating to the electronic component of Hybrid trading and any applicable non-trading rules. To the extent system capacity limits the number of members that can quote on the DRF, proposed Exchange Rule 6.18 provides a priority system to select member participants. Connectivity procedures are available to all CBOE members. The Exchange represents that there is already sufficient member connectivity to ensure that the DRF, if activated, could operate in a useful manner.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[8] which requires that an exchange is organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. Specifically, the Commission finds that proposed Exchange Rule 6.18 provides a business continuity plan that is reasonably designed to allow the Exchange to continue its trading operations in the event a disaster or other unusual circumstance renders the CBOE trading floor inoperable. Furthermore, the Commission believes the proposed rule change is reasonably designed to enhance the resilience of the U.S. financial markets generally.

In addition, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Commission finds the proposed rule change is reasonably designed to provide market participants with the necessary disclosure to understand the Exchange's operational capabilities and plans in the event of a disaster.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2006–01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11926 Filed 7–25–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54179; File No. SR–NASDAQ–2006–013]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify Nasdaq Data Feeds

July 20, 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 June 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 is proposing to incorporate data from Nasdaq's INET facility into Nasdaq TotalView data entitlements and to establish fees for the use and distribution of those data entitlements. Nasdaq proposes to: (1) Incorporate the INET ITCH Feed into the TotalView entitlement, rename the feed TotalView ITCH, and charge TotalView user fees to TotalView ITCH Feed recipients; (2) add the full depth of Nasdaq Market Participant quoting of New York Stock Exchange-(''NYSE'') and American Stock Exchange-(''Amex'') listed stocks into the TotalView entitlement; (3) establish a modified distributor fee for the TotalView entitlement, renamed the ''Depth Feed''; (4) establish a modified user fee schedule for TotalView data; (5) allow for the unlimited, free distribution of Nasdaq's aggregate best bid and offer quotation for Nasdaq's quoting in NYSE- and Amex-listed stocks; and (6) charge fees for the receipt and distribution of individual Nasdaq Market Participants' best bid and offer in NYSE- and Amex-listed stocks. If approved, Nasdaq states that it would make this proposal effective at the beginning of the first full month following the integration of Nasdaq's trading systems into a single platform.[3]

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

* * * * *

7019. Market Data Distributor Fees

(a) No change.

(b) The charge to be paid by Distributors of the following Nasdaq Market Center real time data feeds shall be:

	Monthly direct access fee	Monthly internal distributor fee	Monthly external distributor fee
Issue Specific Data			*$1000 for distribution to 50 or fewer subscribers;*
		$500 for distribution to 10 or fewer subscribers;	$2,500 *for distribution to more than 50 and less than or equal to 100 subscribers;*
Dynamic Intraday	$2,500	$1,000 *for distribution to greater than 10 subscribers.*	*$4,500 for distribution to greater than 100.*
Depth Feed:			

[5] *See* Notice at 3.

[6] *Id.*

[7] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53583 (March 31, 2006), 71 FR 19573 (April 14, 2006) (SR–NASDAQ–2006–001).

	Monthly direct access fee	Monthly internal distributor fee	Monthly external distributor fee
[TotalView].			
[OpenView].			
Daily	$500	$0	$500.
MFQS			
Market Summary Statistics:			
Intraday	$500	$50	$1,500.
Real Time Index.			

A distributor shall pay the higher of either the internal distributor fee or the external distributor fee but not both.

(c)–(d) No change.

7023. Nasdaq TotalView

(a) TotalView Entitlement

The TotalView entitlement allows a subscriber to see all individual Nasdaq Market Center participant orders and quotes displayed in the system as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center, *which currently includes Nasdaq, NYSE- and Amex-listed securities. In the case of Nasdaq listed securities, this entitlement automatically* include*s*[ing] the NQDS feed [and the Brut System Book Feed].

(1)(A) Except as provided in (a)(1)(B) and (C), for the TotalView entitlement there shall be a $*75* [70] monthly charge for each controlled device.

(B) Except as provided in (a)(1)(C), a non-professional subscriber, as defined in Rule 7011(b), shall pay $14 per month for each controlled device.

(C) As an alternative to (a)(1)(A) and (B), a broker-dealer distributor may purchase an enterprise license at a rate of $25,000 for non-professional subscribers or $100,000 per month for both professional and non-professional subscribers. The enterprise license entitles a distributor to provide TotalView to an unlimited number of internal users, whether such users receive the data directly or through third-party vendors, and external users with whom the firm has a brokerage relationship. The enterprise license shall not apply to relevant Level 1 and NQDS fees.

(2) 30-Day Free-Trial Offer. Nasdaq shall offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the user fees for TotalView. This waiver shall not include the incremental fees assessed for the NQDS-only service [, which are $30 for professional users and $9 for non-professional users per month]. This fee waiver period shall be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to TotalView. A distributor may only provide this waiver to a specific individual subscriber once.

For the period of the offer, *only* the TotalView *portion of the TotalView monthly* fee [of $40 per professional user and $5 per non-professional user per month] shall be waived.

(b) No change.

(c) OpenView

(1) The OpenView entitlement package consists of [all] *the best bid and offer quotation from each* individual Nasdaq Market Center participant quoting [quotes and orders] in *non-Nasdaq* exchange-listed securities in the system. There shall be a charge of $6 per month per controlled device for Open View.

(2) The OpenView Top-of-File (''OpenView TOF'') entitlement package consists of the Nasdaq aggregate best bid and offer quotation for non-Nasdaq exchange-listed securities in the system. There shall be no fee for the distribution of the Open View TOF.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

On December 7, 2005, Nasdaq acquired INET ATS, Inc., a registered broker-dealer and member of the NASD, and operator of the INET ATS (''INET''). Once purchased by Nasdaq, INET became a facility of a national securities association. On November 1, 2005, Nasdaq submitted a proposed rule change to establish rules governing the operation of this facility.[4] This proposed rule change was approved by the Commission on December 7, 2005.[5] On January 13, 2006, the Commission issued an order conditionally approving Nasdaq's registration as a national securities exchange.[6]

In its proposed rules governing the operation of the INET facility, Nasdaq stated its intention of ultimately integrating the INET facility with Nasdaq into a single technology platform that would further enhance execution quality for system users.[7] Nasdaq states that, as part of that process, it must, among other things, have INET distribute its full depth of its order book via its premium data entitlements, *e.g.*, TotalView.[8] Nasdaq states that this step would be completed when Nasdaq completes the integration of its INET, Brut, and Nasdaq Market Center trading facilities into a single integrated system—the ''Single Book''—as set forth in SR–NASDAQ–2006–001.[9]

Nasdaq states that Nasdaq TotalView is a comprehensive source of Nasdaq order and quote information, and provides the greatest level of transparency into the Nasdaq stock market. Nasdaq states that today, TotalView provides 23 times the liquidity displayed and nearly 5 times the orders disseminated by the Nasdaq Quotation Dissemination Service (''NQDS''). Nasdaq's full depth in NYSE- and Amex-listed stocks (OpenView) also provides access to 40% more liquidity than the top-of-file quote quotes provided via the Consolidated Quotation System feed from the Securities Information Automation

[4] Securities Exchange Act Release No. 52723 (November 2, 2005), 70 FR 67513 (November 7, 2005) (proposing SR–NASD–2005–128).

[5] Securities Exchange Act Release No. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (approving SR–NASD–2005–128).

[6] Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

[7] *See supra* note 4 at 67522.

[8] *Id.*

[9] *See supra* note 3.

Corporation. If approved, Nasdaq expects the proposed Nasdaq, Brut, and INET integrated data would represent triple the current level of liquidity.

Integrating INET Data Into Nasdaq Entitlements

Nasdaq states that a consequence of this integration is that market participants would be able to receive real-time information regarding the orders in INET's order book via two distinct sources. Today, Nasdaq's TotalView Feed provides information regarding all quotes and orders in the Nasdaq Market Center for Nasdaq-listed securities (including, but not limited to, INET orders). Upon the integration of the INET system, the Nasdaq TotalView entitlement would, if approved, for the first time include the equivalent quotation information for NYSE- and Amex-listed securities. Also today, INET separately disseminates the INET ITCH Feed, which contains information regarding orders entered into INET. Upon the integration to a single consolidated platform, the ITCH data feeds (1.0, 2.0, 2.0a, and 3.0) would be re-named ''TotalView ITCH'' and would contain the equivalent quotes and orders as those carried by TotalView, albeit in different formats. Thus, upon integration of Nasdaq's trading systems, the TotalView Entitlement, would be available in two separate datafeed formats, and both would contain substantially more data than they do today.

Because Nasdaq proposes to continue to distribute INET order information via both the traditional TotalView Feed as well as the TotalView ITCH Feed and because both would contain identical data, Nasdaq believes that it is appropriate for it to incorporate the TotalView ITCH Feed within the TotalView entitlement for fee purposes. The TotalView entitlement is intended to assess fees for the receipt of real-time information regarding depth of order book and related information, regardless of source. While Nasdaq believes it important to offer market participants the choice to receive INET order book information via either the existing TotalView Feed or the TotalView ITCH Feed, it further believes there is no justification to warrant differential fees based on the method of delivery because the two methods would provide recipients with the same data.

Accordingly, Nasdaq proposes to incorporate the TotalView ITCH Feed into the TotalView entitlement effective upon the completion of the integration of the Single Book. Nasdaq states that, as of that time, any recipient of the TotalView ITCH Feeds would need to complete relevant market data agreements, begin submission of monthly usage reporting, and pay associated fees. Current recipients of the TotalView ITCH pay no fees and would be required to pay the TotalView entitlement fee for the first time. Under this proposal, incremental fees would be assessed only where a distributor distributes the TotalView ITCH Feeds in an application or context that does not already distribute TotalView Entitlements to provide Nasdaq Market Center order book information. Nasdaq notes that, of the approximately 145 firms currently receiving the INET ITCH Feeds, many are already TotalView or OpenView distributors, and thus, for those firms, this rule change would impose no incremental expense unless their usage is expanded.

Consolidating Total View and OpenView Distribution and User Fees

Nasdaq offers various data products that firms may purchase and redistribute either within their own organizations or to outside parties. Nasdaq assesses ''distributor fees'' that are designed to encourage broad distribution of the data, and allow Nasdaq to recover the relatively high fixed costs associated with supporting connectivity and contractual relationships with distributors. Currently, Nasdaq has the following approved distributor fees [10] in place for both TotalView and OpenView.

- TotalView and OpenView Direct Access Fee: $2,500 per month each.
- TotalView and OpenView Internal Distribution Fee: $1,000 per month each.
- TotalView and OpenView External Distribution Fee: $2,500 per month each.

Thus, for example, if a firm receives TotalView and OpenView directly from Nasdaq and distributes the data externally, the firm currently pays $10,000 per month in distributor fees ($2,500 for direct access to TotalView, $2,500 for direct access to OpenView, $2,500 to externally distribute TotalView, and $2,500 to externally distribute OpenView).

To promote the continued distribution of full depth data as it becomes available with the full complement of INET order information, Nasdaq is proposing to combine the distribution of TotalView and OpenView data into a single entitlement for distribution purposes. Specifically, Nasdaq proposes to establish the ''Depth Feed Distributor Fees,'' a consolidated entitlement with a pricing structure comprised of three components:

- Depth Feed Direct Access Fee: $2,500 per month for any organization that receives an intraday Nasdaq market center depth data product directly from Nasdaq. Nasdaq states that a distributor receiving this data indirectly via a re-transmission vendor would not be liable for the Direct Access Fee.
- Depth Feed Internal Distribution Fee: $500 per month for internal distributors with distribution of TotalView data to 10 or fewer subscribers; $1000 per month for internal distributors with distribution of TotalView data to greater than 10 subscribers. Nasdaq states that, as with the current Internal Distribution Fees, this fee would be applicable to any organization that receives an intraday Nasdaq market center depth data product (either directly from Nasdaq or through a retransmission vendor) and distributes the data solely within its own organization.
- Depth Feed External Distribution Fee: $1,000 per month for external distributors distributing TotalView data to 50 or fewer subscribers; $2,500 per month for external distributors distributing TotalView data to more than 50 and less than or equal to 100 subscribers; and $4,500 per month for external distributors distributing TotalView data to more than 100 recipients. Nasdaq states that, as is the case today, this fee would be applicable to any organization that receives an intraday Nasdaq market center depth data product (either directly from Nasdaq or through a retransmission vendor) and distributes the data outside its own organization.

Nasdaq states that, under the new schedule, a firm that receives a TotalView Feed and/or an INET ITCH Feed directly from Nasdaq and distributes the data externally, would pay a range of $3,500-$7,000 per month, depending upon the number of end users, a significant reduction from the currently approved fees. Nasdaq states that the only firms that would be assessed higher fees would be: (1) distributors of the TotalView ITCH Feed alone because it is currently free and is proposed to be fee liable; and (2) firms that currently distribute either TotalView or OpenView but not both, and distribute that data to more than 100 subscribers, would have a resulting increase of $2,000 per month. Nasdaq states that, for that incremental $2,000 per month, those firms, of which there are currently seventeen, would gain the ability to distribute both NYSE-/Amex-listed and Nasdaq-listed depth

[10] *See* Securities Exchange Act Release No. 51814 (June 9, 2005), 70 FR 35151 (June 16, 2005) (approving SR–NASD–2004–185).

information to their subscribers where they had previously provided only one of them.

Nasdaq states that an organization that receives the Nasdaq Market Center full depth data directly from Nasdaq would pay the Direct Access Fee plus the higher of either the Internal Distribution or External Distribution Fee (but not both). An organization that only receives the Nasdaq Market Center full depth data indirectly from a retransmission vendor would pay either the Internal Distribution or External Distribution fee (but not both). Nasdaq states that, as with past distributor fee structures, the External Distribution Fee is higher than the Internal Distribution Fee to reflect the fact that external distributors typically have broader distribution of the data than internal distributors.

Nasdaq believes that lowering the fee for firms that subscribe to depth feeds would encourage more vendors to take the combination of both feeds. Additionally, Nasdaq believes that the new structure spreads the burden of Nasdaq data fees more equitably across the broader customer base of data distributors and consumers of Nasdaq market data.

Fee Increased To Recover Costs Of Providing Additional Data

Nasdaq states that, upon integration of the Single Book, both of Nasdaq's full depth feeds—TotalView and ITCH—would contain not only order and quotation information from Nasdaq market participant activity in Nasdaq-listed securities, but NYSE- and Amex-listed stocks as well. Upon the full Single Book integration, Nasdaq proposes to integrate the entitlement for full depth from Nasdaq market participants quoting in Nasdaq stocks with the full depth from Nasdaq market participants quoting in NYSE- and Amex-listed stocks, resulting in a single entitlement to be called TotalView. This single entitlement would cost $75 per user per month for professional users and $14 per user per month for non-professional users. Nasdaq states that, in the case of non-professionals, there is no fee increase on account of this change, simply an increase in functionality. In the case of professional users, the TotalView user fee increases by $5, though for those users who previously subscribed to the TotalView and OpenView entitlements separately, this amounts to a $1 per user per month discount. Nasdaq states that only those users that had one of the companion entitlements without the other would pay more under this proposal.

Distribution of Quotation Information for NYSE and Amex Securities

To encourage more competition in the trading and quoting of NYSE- and Amex-listed stocks, as well as to encourage subscribership to Nasdaq's full-depth products, Nasdaq is proposing Nasdaq Rule 7023(c)(2) to institute a fee waiver for firms wishing to distribute Nasdaq's aggregate real-time best bid and offer quote for NYSE- and Amex-listed stocks via the TotalView or TotalView ITCH versions of its feeds.

Nasdaq states that, in support of its exchange registration transition, it is proposing to distribute the best bid and offer from each Nasdaq market participant quoting in NYSE- and Amex-listed stocks in real-time. As set forth in Nasdaq Rule 7023(c)(1), Nasdaq proposes a $6 per user per month price for this product. Nasdaq expects that most users currently receiving full depth from Nasdaq in NYSE- and Amex-listed stocks would continue to do so via the TotalView entitlement. However, for any subscriber currently receiving only this depth data for NYSE- and Amex-listed stocks (*i.e.*, OpenView data), and not wishing to also receive the equivalent data for Nasdaq-listed stocks, this option would allow a user to continue paying at the same rate schedule for user-fees that they have in the past and the distributor fee schedule referenced earlier in this filing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act [11] in general, and Section 6(b)(4) of the Act [12] in particular, in that the incorporation of the TotalView ITCH Feeds into the TotalView entitlement and creating a unified distributor fee provides for the equitable allocation of reasonable charges among the persons distributing and purchasing Nasdaq depth of order book information. Nasdaq states that the proposed pricing structure would enable it to equitably charge for INET depth of book information regardless of the manner in which it is received, continue to provide market participants with choice regarding receipt of this information, and ease the transition to a single technology platform. Nasdaq further believes that this rule change would encourage the broader redistribution of the Nasdaq depth of book information, thus improving transparency and thereby benefit the investing public.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would 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

No written comments were either solicited or 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–2006–013 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–NASDAQ–2006–013. 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–2006–013 and should be submitted on or before August 16, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11925 Filed 7–25–06; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54180; File No. SR–NSX–2006–09]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Amend Its Fee Schedule Contained in Exchange Rule 11.10(A) to Include a Quotation Fee

July 20, 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 3, 2006, the National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 19, 2006, NSX submitted Amendment No. 1 to the proposed rule change. On July 20, 2006, NSX submitted Amendment No. 2 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member imposed by the Exchange under 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, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule reflected in Exchange Rule 11.10(A) to provide for a quotation fee. The quotation fee would be based upon the number of changes to the price or size of an ETP Holder's displayed bid or offer on the Exchange (''quotation updates'') and would apply only to the extent the ETP Holder's average number of daily quotation updates is greater than 3 million. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics.*

RULES OF NATIONAL STOCK EXCHANGE

* * * * *

CHAPTER XI

Trading Rules

* * * * *

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)-(r) No change.

(s) Quotation Fee. ETP Holders will be charged for quotation updates based upon the per quotation update rates as noted below. A ''quotation update'' means each change to the price or size of an ETP Holder's displayed bid or offer on the Exchange.

Avg. daily quotation updates	Charge per quotation update
0 to 3,000,000	$0.00
3,000,001 and higher	$0.01 over 3,000,000

* * * * *

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, as amended, 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.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's fee schedule reflected in Exchange Rule 11.10(A) currently provides for fees payable by ETP Holders based upon, among other things, transactions executed on the Exchange, but does not provide for any fees based solely upon the number of changes to the price or size of an ETP Holder's quotation updates. However, NSX states that quotation updates can affect both the Exchange's systems resources and its regulatory functions. For example, a sufficiently high level of quotation updates could require that the Exchange expend additional resources on its systems technology in order to avoid capacity and performance degradation issues. NSX states that the levels of surveillance and investigation required in order for the Exchange to adequately discharge its self-regulatory obligations also increase with an increase in quotation updates. For these reasons, the Exchange believes that it is appropriate to charge a fee for high levels of quotation updates that consume a high amount of the Exchange's systems capacity and require a higher amount of regulatory scrutiny.

The proposed quotation fee would be based upon the number of quotations updates posted by an ETP Holder, but would apply only to the extent that an ETP Holder averages in excess of 3 million quotation updates per day. The Exchange is proposing to charge ETP Holders that provide quotation updates in excess of 3 million updates on an average daily basis a penny a quote for all quotation updates in excess of 3 million.[5] The average daily quotation updates would be calculated on a monthly basis taking the total quotation updates for the month-end period (''TQU'') and dividing the TQU by the number of trading days the ETP Holder provides quotation updates. Three million would be subtracted from this average daily quotation to yield the amount of daily quotations in excess of 3 million quotes. The excess would be multiplied by a penny to yield the daily

[5] Thus, for example, an ETP Holder that has an averaged daily quotation updates of 3,000,001 would be assessed a penny and not have to pay $30,000.01.

quote charge. The daily quote charge would be multiplied by the number of trading days quoted for the month to yield the monthly quote charge. NSX states that the monthly quote charge would be collected by the Exchange on a monthly basis. The formula for the quote charge thus is:

[(Number of quotation updates for the month/number of trading days quoted) − 3,000,000] × $.01 × the number of trading days quoted.

NSX states that, in deciding whether to assess a quote fee, it made a business decision to allow a certain level of quote traffic as part of any Equity Trading Permit regardless of any trading activity through NSX. The Exchange states that it determined to use 3 million as the baseline for its quoting traffic after taking into consideration a number of business concerns. According to NSX, these concerns include, but are not limited to, the cost to the Exchange assessed by the Consolidated Quotation Service and the Securities Information Processor for Tape C securities (including the cost of penalties for exceeding capacity), the cost to the Exchange for software and hardware costs associated with increased capacity, the average number of quotes provided by ETP Holders, the capacity of the old NSTS System, and the increased regulatory costs associated with the surveillance and investigations of ETP Holders. NSX states that any ETP Holder could choose to remain under the baseline for quoting traffic and not be charged any quote fee, or could choose to exceed the baseline and be charged only for those quote updates in excess of the baseline. Thus, the rule would apply equally to all ETP Holders. The Exchange states that the rule also benefits ETP Holders as it allows them to plan for and administer their quoting traffic based on cost considerations during the interim period until the Exchange's new trading system is launched.

NSX states that the quotation fee has been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under Section 6(b) of the Act[6] in the event of a high volume of quotation updates on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change, as amended, furthers the objectives of Section 6(b)(1) of the Act[9] in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its ETP Holders with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2006–09 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–NSX–2006–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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–NSX–2006–09 and should be submitted on or before August 16, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11927 Filed 7–25–06; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on July 20, 2006, the date on which the Exchange submitted Amendment No. 2.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54178; File No. SR–NYSE–2006–47]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Requiring Member Organizations to Remit a Branch Office System Processing Fee in Connection with the Registration of Branch Offices via the Uniform Branch Office Registration Form Through the National Association of Securities Dealers, Inc.'s Central Registration Depository System

July 20, 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 June 30, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[3] NYSE has designated this proposal as establishing or changing a due, fee, or other charge imposed by NYSE pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) thereunder,[5] 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to require NYSE-only member organizations to remit to the National Association of Securities Dealers, Inc. (''NASD'') two fees in connection with branch offices processed via Form BR (Uniform Branch Office Registration Form) through NASD's Central Registration Depository (''CRD'') system. The fees, an initial $20.00 fee (''CRD Branch Office System Processing Fee'') and a $20.00 annual fee (''CRD Annual Branch Office System Processing Fee''), are consistent with those paid by NASD-only and joint NYSE/NASD member organizations. The fees would be reflected in the amended NYSE Price List.[6] The text of the proposed rule change is available on NYSE's Web site (*http://www.nyse.com*), at NYSE's Office of the Secretary, 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

The Exchange proposes to require NYSE-only member organizations to remit to NASD two conforming branch office system processing fees in connection with the registration of branch offices via Form BR through NASD's CRD system.

Background

On September 30, 2005, the SEC approved the Exchange's proposed Form BR, which became effective on October 31, 2005.[7] The Form BR replaces Schedule E of the Form BD, the NYSE Branch Office Application Form and certain state branch office forms. The Form BR enables firms to register branch offices electronically with NASD, NYSE, and states that require branch registration or reporting via a single filing through the CRD system. At the same time, the SEC approved a comparable NASD rule proposal.[8]

Branch office registration through the CRD system creates efficiencies for firms by, among other things, making it easier for firms to register or report branch offices and to manage their ongoing registration and/or reporting responsibilities with regard to those branch offices. In addition to being able to submit a single filing to fulfill the branch office registration requirements of NASD, NYSE and the states, member organizations benefit from one centralized branch office system, online work queues, electronic notifications and other features available through the CRD system. Firms are also able to link their registered persons to the physical location from which they work via the Form BR, which not only aids regulators' examination efforts, but helps firms in meeting certain recordkeeping requirements.

On May 23, 2006, NASD filed for immediate effectiveness a filing establishing an annual branch office system processing fee and waiver of the annual branch office system processing fee and the annual branch office registration fee for one branch office per member per year. [9] The branch office system processing fee is set at $20.00 upon the registration of a branch office and $20.00 annually thereafter per registered branch. NASD will begin assessing the processing fee during the third quarter of 2006 for all branch offices in existence as of July 3, 2006.[10] NASD will bill firms for all branch offices in existence as of July 3, 2006 via invoices, rather than through the CRD system.[11] For any branch office that is registered on or after July 3, 2006, NASD will assess and collect the branch office system processing fee through the CRD system at the time a firm registers a new branch office.[12] Starting December 2006, all firms will be assessed $20.00 annually for each existing branch office as part of the CRD renewal program.[13] In NASD's filing, it was noted that the manner of assessment and collection of branch office system processing fees from firms that are solely members of other self-regulatory organizations (''SROs'') that require their members to register branch offices via the Form BR would be addressed by other SROs.[14]

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] Pursuant to discussions with NYSE staff, the Commission has made clarifying changes throughout this notice. Telephone conversation between Stephen Kasprzak, Principal Counsel, and Cory Figman, Senior Special Counsel, Rule and Interpretive Standards, NYSE and Kate Robbins, Attorney, Division of Market Regulation (''Division''), Commission, on July 6, 2006 (''July 6 Telephone Conversation'').

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The Exchange clarified that the amendments to the NYSE 2006 Price List would be inserted in the section entitled ''Registration & Regulatory Fees,'' in the subsection entitled ''Registration Fees,'' after the ''Branch Office Fee'' and before the ''Registered Persons'' fees. Telephone conversation between Cory Figman, Senior Special Counsel, NYSE and Kate Robbins, Attorney, Division, Commission, on July 12, 2006. In addition, the Exchange clarified that it intends to change the date on the NYSE Price List from 2005 to 2006. *See* July 6 Telephone Conversation, *supra* note 3.

[7] *See* Release No. 34–52543 (September 30, 2005), 70 FR 58771 (October 7, 2005) (SR–NYSE–2005–13). *See also* NYSE Information Memo 05–75.

[8] *See* Release No. 34–52544 (September 30, 2005), 70 FR 58764 (October 7, 2005) (SR–NASD–2005–030). *See also* NASD Notice to Members 05–66.

[9] *See* Release No. 34–53955 (June 7, 2006), 71 FR 34658 (June 15, 2006) (SR–NASD–2006–065).

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

The proposed rule change would require NYSE-only members to remit to NASD a conforming initial $20.00 CRD Branch Office System Processing Fee and a conforming $20.00 CRD Annual Branch Office System Processing Fee in connection with branch offices processed via Form BR through the CRD system. These fees would be included on the NYSE Price List. The purpose of these branch office system processing fees is to recover the cost to NASD of developing and implementing the Form BR as well as for ongoing branch office system maintenance and enhancements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(4) of the Act,[15] which requires the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees and other charges among its members, and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[16] of the Act and paragraph (f)(2) of Rule 19b–4 thereunder,[17] in that it establishes or changes a due, fee, or other charge applicable to NYSE members.

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.

[15] U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–47 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–NYSE–2006–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–47 and should be submitted on or before August 16, 2006

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11929 Filed 7–25–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5474]

30-Day Notice of Proposed Information Collection: DS–1998E, Foreign Service Written Examination Registration Form, OMB Control Number 1405–0008

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Foreign Service Written Examination Registration Form.
- *OMB Control Number:* 1405–0008.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Human Resources, HR/REE/BEX.
- *Form Number:* DS–1998E.
- *Respondents:* Registrants for the Foreign Service Written Examination.
- *Estimated Number of Respondents:* 32,316.
- *Estimated Number of Responses:* 32,316.
- *Average Hours Per Response:* 20 minutes (⅓ hour).
- *Total Estimated Burden:* 10,772 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 26, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *kastrich@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

[18] 17 CFR 200.30–3(a)(12).

• Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
• Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Margaret Dean, HR/REE/BEX, SA–1, 2401 E Street, H–518, Washington, DC 20522, who may be reached on 202–261–8898 or at *deanmm@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Individuals registering for the Foreign Service Written Examination will provide information about their name, age, Social Security Number, contact information, ethnicity, and very brief information on their education and work history. The information will be used to prepare and issue admission to the examination, to help improve future examinations, and to conduct research studies based on the examination results.

Methodology

Responses can be submitted via the online registration option or by telephone contact with the test contractor.

Dated: June 26, 2006.

Raphael Mirabal,

Deputy Director, Bureau of Human Resources, Department of State.

[FR Doc. E6–11937 Filed 7–25–06; 8:45 am]

BILLING CODE 4710–15–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 06–04]

Notice of Sunshine Act Meetings

TIME AND DATE: 10 a.m., July 28, 2006. TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Old Business

Approval of minutes of June 28, 2006, Board Meeting.

New Business

1. Report of the Finance, Strategy, and Rates Committee
   A. FY 2007 Budget proposal.
   B. Proposed Rate Adjustment, including fuel cost adjustment (FCA).
   C. Proposed notice of termination and other actions regarding Variable Price Interruptible Power.
2. Report of the Audit and Ethics Committee.
   A. Selection of PwC as external auditor.
3. Report of the Operations, Environment, and Safety Committee.
   A. *Contract*—two term coal contracts for Kingston Fossil Plant with Trinity Coal Marketing LLC, and with Alpha Coal Sales Company LLC.
   B. *Contract*—one term coal contract extension for Allen Fossil Plant with COALSALES LLC as agent for Powder River Coal Company.
   C. *Contract*—uranium enrichment services for Sequoyah Unit 1 and Watts Bar Unit 1 with Louisiana Energy Services, L.P.
   D. *Contract supplement*—for nuclear fuel fabrication and related engineering services for Sequoyah Nuclear Plant with Areva NP, Inc.
   E. *Contract supplement*—for nuclear security services at all TVA nuclear sites with Pinkerton Government Services.
   F. *Contract*—purchase of uranium hexafluoride (UF6) for use in nuclear fuel from Areva NC, Inc.
4. Report of the Community Relations Committee.
5. President's Report.
6. Information items approved by the Board previously.
   A. *Long-Term Power Supply*—Approved price quote under arrangements with a directly served customer (Unnamed due to confidentiality provision with customer).
   B. Approved adjusted blended energy prices under the Time-of-Use Blended Pricing Program arrangements with Arnold Engineering Development Center.
   C. Approved extension and revision of existing interim delegations on personnel and compensation actions.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: July 21, 2006.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 06–6503 Filed 7–24–06; 10:30 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

National Surface Transportation Policy and Revenue Study Commission Request for Field Hearing Proposals

AGENCY: National Surface Transportation Policy and Revenue Study Commission, DOT.

ACTION: Notice; request for field hearing proposals.

SUMMARY: The National Surface Transportation Policy and Revenue Study Commission (''Commission'') is conducting a study of the needs and financing of surface transportation as described in sections 1909(b)(5), (6), and (7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005). The Commission will conduct field hearings to receive views from interested parties and obtain public input to the study. The purpose of this notice is to request that organizations interested in co-hosting a field hearing submit proposals to the Commission. The hearings will be open to the public.

DATES: Requests from members of the public to participate as a co-host in these hearings must be received by the Commission not later than August 25, 2006. The hearings will be held on September 20–21, 2006, November 15–16, 2006, February 21–22, 2007, and April 18–19, 2007 in various locations throughout the country.

ADDRESSES: Submissions should be captioned ''Hearing Proposals'' and e-mailed to *info@surfacecommission.gov.* Submissions may also be mailed to Mr. Robert A. Mariner, Environmental Protection Specialist, Office of the Assistant Secretary for Transportation Policy, (202) 493–0064, 400 Seventh

Street, SW., Room 10228, Washington, DC 20590. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For further information about the Commission and the upcoming field hearings, contact Mr. Robert A. Mariner, Environmental Protection Specialist (*info@surfacecommission.gov*), Office of the Assistant Secretary for Transportation Policy, (202) 493–0064, 400 Seventh Street, SW., Room 10228, Washington, DC 20590. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*. Further information on the Commission is available on its Web site at *http://www.surfacecommission.gov.*

Background

Section 1909(b) of SAFETEA–LU established the National Transportation Revenue and Policy Study Commission to address the needs and financing of surface transportation as described in sections 1909(b)(5), (6), and (7). In carrying out its responsibilities, the Commission is authorized to hold hearings to take relevant testimony and receive relevant evidence at such times and places the Commission deems appropriate. The Commission intends to conduct at least four hearings to receive views from interested parties and obtain public input into its study.

Organizations interested in submitting a proposal to co-host one of the Commission's field hearings, should do so no later than August 25, 2006. While there is no template for the submissions, each proposal should at the least address the following issues:

(i) Preferred date (out of those listed) for the hearing;

(ii) Proposed location of the hearing, and the location's relevance to the Commission's work (field hearing locations will be determined based on proposals received);

(iii) Organization(s) that will co-host the hearing;

(iv) Recommendations on key topics and themes to be addressed at the hearing. Please use the Commission's authorizing statute, specifically sections 1909(b)(5), (6), and (7), as a guide to the matters the Commission is required to study and address;

(v) Costs of the hearing to be borne by the Commission; and

(vi) Full contact information for the organization(s).

The Executive Director of the Commission will contact each organization submitting a proposal that is selected by the Commission. All interested organizations are encouraged to attend the field hearings, the details of which will be announced in future **Federal Register** notices.

(Authority: Section 1909(b) of Pub. L. 109–59.)

Issued on: July 20, 2006.

Quintin Kendall,

Executive Director, National Surface Transportation Policy and Revenue Study Commission.

[FR Doc. E6–11904 Filed 7–25–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Opinion on the Transferability of Interim Operating Authority Under the National Parks Air Tour Management Act

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed opinion; extension of comment period.

SUMMARY: This action extends the comment period for a notice of proposed opinion that was published on June 28, 2006 (71 FR 36874). In that document, the FAA set forth a proposed decision on the transferability of interim operating authority under the National Parks Air Tour Management Act.

DATES: Send your comments on or before September 13, 2006.

ADDRESSES: You may send comments [identified as ''Comments on the Transferability of IOA''] using any of the following methods:

- Sending your comments electronically to *james.whitlow@faa.gov.*
- Mail: Office of the Chief Counsel; FAA, 800 Independence Ave., SW., Washington, DC 20591.
- Fax: 1–202–267–3227.

FOR FURTHER INFORMATION CONTACT: James Whitlow, Deputy Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3773.

SUPPLEMENTARY INFORMATION:

Extension of Comment Period

On June 28, 2006, a notice of proposed opinion, Proposed Opinion on the Transferability of Interim Operating Authority Under the National Parks Air Tour Management Act, was published in the **Federal Register** with a comment due date of July 28, 2006. On July 14, 2006, the FAA received a request from the U.S. Air Tour Association, through legal counsel, to extend the comment period until September 13, 2006. In response to that request, the FAA is extending the comment period to September 13, 2006.

Issued in Washington, DC, on July 20, 2006.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 06–6468 Filed 7–25–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Allegheny County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the Notice of Intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued April, 2000) to prepare an Environmental Impact Statement for a proposed highway project in Allegheny County.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411; or, Cheryl Moon-Sirianni, Assistant District Executive, Pennsylvania Department of Transportation, District 11–0, 45 Thoms Run Road, Bridgeville, PA 15017, Telephone (412) 429–5001.

SUPPLEMENTARY INFORMATION: Additional public meetings and environmental analysis have indicated that all project alternatives can be down-scoped with little or no significant impact to the environment. An Environmental Assessment will be pursued, based on a revised project scoping.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program)

James A. Cheatham,

FHWA Division Administrator, Harrisburg, PA.

[FR Doc. 06–6474 Filed 7–25–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Availability of Grant Funds for the Thermal Imaging Inspection System Project

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: This document announces the availability of grant funding under FMCSA's FY2006 Research Grants program as specified in the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users*. The program provides one-time funding for a demonstration project that uses a thermal imaging inspection system that leverages state-of-the-art thermal imagery technology, integrated with signature recognition software, providing the capability to identify, in real time, faults and failures in tires, brakes, and bearings mounted on commercial motor vehicles. The period of performance for this project is 24 months from the date of award.

DATES: Applications for grant funding should be sent to FMCSA Headquarters no later than August 25, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Loftus, Federal Motor Carrier Safety Administration, Office of Research and Analysis, Technology Division (MC–RRT), 202–385–2363, 202–385–2422 (fax), *jeff.loftus@dot.gov*, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024. Office hours are from 9:30 a.m. to 6 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 5513(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU) [Pub. L. 109–59, August 10, 2005, 119 Stat. 1829] authorizes the thermal imaging inspection system (TIIS) project for FY2006 only. The authorized funding for the program is $2 million. Funding is subject to reductions resulting from obligation limitations, recisions, and takedowns as specified in SAFETEA–LU or other legislation. The actual amount available for this project after these reductions is $1,412,044. FMCSA anticipates making one award to one recipient. Incremental payments will be made at intervals corresponding to performance milestones agreed upon by the parties.

Funds are available to public nonprofit institutions/organizations, profit organizations, private nonprofit institutions/organizations, other private institutions/organizations, and institutions of higher education including public, private, or state colleges and universities who are eligible recipients of Federal assistance.

The Federal share of the funds is established by SAFETEA–LU as 80 percent. The 20 percent match may be in the form of dedicated funding, equipment, or in-kind services for this project. Allocations remain available for expenditure until fully spent.

Additional information on the TIIS project and its application process is available from the Catalog of Federal Domestic Assistance (CFDA) on the Internet at *http://www.cfda.gov*. The TIIS project is listed as CFDA number 20.236.

TIIS Project Objectives

The objectives of this project are to:

- Employ a TIIS in a field environment, along the interstate, to further assess the system's ability to identify faults in tires, brakes, and bearings mounted on commercial motor vehicles (CMVs);
- Establish, through statistical analysis, the probability of failure for each component; and
- Develop and integrate a predictive tool into the TIIS, which identifies an impending tire, brake, or bearing failure and provides a timeframe in which this failure may occur.

Application and Selection Process

The Secretary may enter a grant agreement with a public or private organization including an institution of higher education that has the most responsive grant application to the objectives of this project.

The applicant must submit an application form (SF–424, SF–424A, and SF–424B) and proposal to FMCSA Office of Research and Analysis, Technology Division no later than August 25, 2006.

The application must include sections on relevant past performance, technical and management approach, budget, schedule, and personnel. Additionally, it must address the following project tasks:

- Develop a project work plan,
- Develop a concept of operations document,
- Conduct technology trade-off analyses,
- Develop a test and evaluation plan,
- Conduct analyses of component failures,
- Develop a predictive decision support tool,
- Integrate the tool into the TIIS,
- Conduct a demonstration of the TIIS with the predictive tool along the interstate,
- Write an annual report of progress and activities, and
- Write a final report.

To receive consideration for award, an applicant must submit its budget along with adequate documentation that supports the factors listed below. The documentation must demonstrate a clear understanding of and the ability to accomplish the project objectives.

Factor 1: Past Performance

The past performance data must not exceed one page for each grant or contract referenced.

To substantiate its past performance, each applicant is requested to submit information on at least three of the Government grants or contracts or commercial contracts it performed within the past three years. The applicant must provide demonstrated experience in work effort similar in size, scope, magnitude, complexity, and cost to the project objectives. The past performance data can include information on grants or contracts on which the applicant, or any proposed subgrantee or subcontractor, has performed or is performing. The applicant must include the following on each grant or contract referenced in its proposal:

- Project statistical information
  - Name and address of the activity;
  - Grant or contract number;
  - Agreement type;
  - Place of performance;
  - Date of project and period of performance;
  - Total project value;
  - Government Sponsor's name, telephone number, and e-mail address;
  - Program Manager's name, telephone number, and e-mail address; and
  - List of major subgrantees or subcontractors.
- The applicant must include a description of the projects cited in order to demonstrate relevance to the requirements outlined in the project objectives. The applicant must also identify and state the reasons for any terminations.

Note: In the event that an applicant has no past performance history, e.g., a new firm,

this rating factor will be considered neutral and will neither increase an applicant's overall rating nor decrease it.

Factor 2: Technical and Management Approach

This section cannot exceed 30 pages.

The applicant's proposed approach must include adequate documentation to clearly demonstrate a thorough understanding of the project objectives. Each applicant must:

- Describe in sufficient detail the technical capability of its proposed resources to meet the project objectives, including projects completed and current training completed that are applicable to the functions to be performed;
- Provide a proposed matrix that demonstrates that it possesses the capability to manage and the staff to perform the work;
- Provide an unpriced matrix that includes labor category/skill level and labor category descriptions;
- List the skills of the Program Manager, including relative experience and expertise; and
- Describe its proposed quality control measures in sufficient detail to demonstrate that established procedures would adequately recognize substandard performance and document corrective actions.

Factor 3: Budget

The applicant must provide budget information as required in SF–424, SF–424A, and SF–424B as well as all associated budget supplemental documentation.

As an alternative, an applicant can apply for the TIIS project funding by using the grants.gov electronic application process. To use this process, the applicant must have a DUNS number and be registered with grants.gov. To obtain a DUNS number or register with grants.gov, go to *http://www.grants.gov/GetStartedRoles?type=aor.*

To apply for a grant using the grants.gov process, the applicant must download, complete, and submit the grant application package. This can be done on the Internet at *http://www.grants.gov/Apply?campaignid=tabnavtracking081105.*

The grants.gov application process will be available for use by the TIIS project on July 26, 2006.

Grant Evaluation Criteria

Upon receipt, the applications will be evaluated by FMCSA for potential funding. Selection of a successful applicant will be made based upon the evaluation criteria stated below.

Factor 1: Past Performance

FMCSA will conduct a performance risk assessment based upon the applicant's past performance, as well as that of its proposed subgrantees and subcontractors, as it relates to the probability of successful accomplishment of the project. When assessing performance risk, FMCSA will focus its inquiry on the past performance of the applicant and its proposed subgrantees and subcontractors as to cost, schedule, and performance—including the applicant's adherence to project schedules and administrative aspects of performance as well as its history for reasonable and cooperative commitment to Federally-assisted programs.

The assessment of performance risk is not intended to be the product of a mechanical or mathematical analysis of an applicant's performance on a list of grants but rather the product of subjective judgment of the evaluation team after it considers all available information. FMCSA's definitions of performance risk are:

- High Performance Risk: Based on the applicant's performance record, or lack of related experience on which past performance may be measured, significant doubt exists that the applicant can successfully complete the project within the estimated cost and schedule.
- Moderate Performance Risk: Based on the applicant's performance record, some doubt exists that the applicant can successfully complete the project within the estimated cost and schedule.
- Low Performance Risk: Based on the applicant's performance record, little doubt exists that the applicant can successfully complete the project within the estimated cost and schedule.
- Neutral Rating: There is no evidence that past performance information exists for the applicant.

Factor 2: Technical and Management Approach

FMCSA will evaluate the applicant's:

- Proposed technical and management approach to ensure that it clearly demonstrates a thorough understanding of the project,
- Information to determine the technical capability of its proposed resources to meet the requirements outlined in the project objectives,
- Proposed personnel matrix to determine if sufficient resources exist that demonstrate that the applicant possesses the capability to manage and the staff to carry out the project,
- Unpriced personnel matrix to ensure it includes the right mix of labor category/skill level, and
- Proposed quality control measures to determine if established procedures will adequately recognize problems and employ appropriate corrective actions.

Factor 3: Budget

Budget information will be analyzed for reasonableness and completeness to include the 24-month period of the project. This evaluation may include a comparison of the applicant's proposed prices to those of other applicants and to prices paid under similar grants.

The applicant who has been approved for funding will enter into a grant agreement with FMCSA. The grant agreement must be in accordance with OMB Circulars A–21, A–110, A–122, and A–133.

Issued on: July 18, 2006.

David H. Hugel,

Acting Administrator.

[FR Doc. E6–11875 Filed 7–25–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34894]

Rail + Transload, Inc.—Acquisition and Operation Exemption—Rail Line of Tower Investments, LLC

Rail + Transload, Inc. (RTI), a noncarrier, has filed a verified notice of exemption [1] under 49 CFR 1150.31 to acquire from Tower Investments, LLC (TIL), and to operate approximately 1,100 feet (0.208 miles) of railroad track that extends from a point of connection with the Waterloo Spur of Canadian Pacific Railway Company (CPR) to a terminus approximately 200 feet northeast of the plant site of Specialty Ingredients, LLC (SIL), at Watertown, Jefferson County, Wisconsin.[2]

RTI certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

The transaction was scheduled to be consummated on or after July 3, 2006, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

[1] While initially filed on June 19, 2006, the notice has been corrected by filings on June 22, 2006, and June 26, 2006.

[2] RTI and SIL are commonly controlled by TIL. The track is currently private track owned by TIL and used by CPR to provide rail service to SIL. Because this acquisition is RTI's initial rail acquisition and operation, RTI filed this notice.

a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34894, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 19, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–11817 Filed 7–25–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two newly-designated persons whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: The designation by the Secretary of the Treasury of the two persons identified in this notice pursuant to Executive Order 13382 is effective on July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On July 18, 2006, the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, designated two persons whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees follows:

1. SANAM INDUSTRIAL GROUP (a.k.a. SANAM INDUSTRIES GROUP), Pasdaran Road 15, Tehran, Iran.

2. YA MAHDI INDUSTRIES GROUP (a.k.a. YA MAHDI INDUSTRIAL COMPLEX; a.k.a. YA MAHDI INDUSTRIAL RESEARCH COMPLEX; a.k.a. ''YMA''), PO Box 19395–4731, Tehran, Iran.

Dated: July 18, 2006.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E6–11934 Filed 7–25–06; 8:45 am]

BILLING CODE 4811–37–P

Federal Register

Wednesday,
July 26, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Hine's Emerald Dragonfly; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU74

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Hine's Emerald Dragonfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Hine's emerald dragonfly (*Somatochlora hineana*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 27,689 acres (ac) (11,205 hectares (ha)) fall within the boundaries of the proposed critical habitat designation in 49 units located in Cook, DuPage, and Will Counties in Illinois; Alpena, Mackinac, and Presque Isle Counties in Michigan; Dent, Iron, Morgan, Phelps, Reynolds, Ripley, Shannon, Washington, and Wayne Counties in Missouri; and Door and Ozaukee Counties in Wisconsin. We are, however, considering excluding all 26 units in Missouri and 2 units in Michigan from the critical habitat designation. If made final, this proposal may result in additional requirements under section 7 of the Act for Federal agencies. No additional requirements are expected for non-Federal actions. The Service seeks comments on all aspects of this proposal from the public.

DATES: *Comments:* We will accept comments from all interested parties until September 25, 2006. *Public Hearing:* We have scheduled one informational meeting followed by a public hearing for August 15, 2006. The informational meeting will be held from 6 to 7 p.m., followed by a public hearing from 7:15 to 9 p.m.

ADDRESSES: *Comments:* 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 John Rogner, Field Supervisor, U.S. Fish and Wildlife Service, Chicago, Illinois Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, Illinois 60010.

2. You may hand-deliver written comments to our office, at the above address.

3. You may send your comments by electronic mail (e-mail) directly to the Service at *hedch@fws.gov* or to the Federal eRulemaking Portal at *http://www.regulations.gov.*

4. You may fax your comments to (847) 381–2285.

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 Chicago, Illinois Ecological Services Field Office at the above address (telephone (847) 381–2253 extension 233).

Public Hearing: The August 15, 2006, informational meeting and public hearing will be held in Romeoville, Illinois at the Drdak Senior/Teen Center at the Romeoville Recreation Center at 900 West Romeo Road.

FOR FURTHER INFORMATION CONTACT: John Rogner, Field Supervisor, Chicago Illinois Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, Illinois 60010 (telephone (847) 381–2253, extension 233; facsimile (847) 381–2285).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We are seeking public comments on all aspects of this proposed rule. 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 Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat.

(2) Specific information on the amount and distribution of Hine's emerald dragonfly habitat; what areas should be included in the designations that were occupied at the time of listing and that contain the features essential for the conservation of the species; and what areas that were not occupied at the time of listing are essential to the conservation of the species. Information submitted should include a specific explanation as to why any area is essential to the conservation of the species;

(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;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) Comments or information that would add further clarity or specificity to the physical and biological features determined to be essential for the conservation of the Hine's emerald dragonfly (i.e., primary constituent elements);

(7) We are considering excluding areas under the jurisdiction of the Hiawatha National Forest in Michigan, the Mark Twain National Forest in Missouri, and the Missouri Department of Conservation and units under private ownership in Missouri from the final designation of critical habitat under section 4(b)(2) of the Act on the basis of conservation programs and partnerships. We will also review other relevant information for units being proposed in this rule as we receive it to determine whether other units may be appropriate for exclusion from the final designation under section 4(b)(2) of the Act. We specifically solicit comment on the inclusion or exclusion of such areas and:

(a) Whether these areas have features that are essential to the conservation of the species or are otherwise essential to the conservation of the species;

(b) Whether these, or other areas proposed, but not specifically addressed in this proposal, warrant exclusion;

(c) Relevant factors that should be considered by us when evaluating the basis for not designating these areas as critical habitat under section 4(b)(2) of the Act;

(d) Whether management plans in place adequately provide conservation measures and protect the Hine's emerald dragonfly and its habitat;

(e) Whether designation would assist in the regulation of any threats not addressed by existing management plans; and

(f) Whether designating these lands may result in an increased degree of threat to the species on these lands;

(8) Whether lands not currently occupied by the species should be included in the designation, and if so, the basis for such an inclusion (this rule proposes to designate only lands currently occupied by the Hine's emerald dragonfly);

(9) Whether the methodology used to map critical habitat units captures all of the biological and physical features

essential to the conservation of the Hine's emerald dragonfly;

(10) Whether the benefit of exclusion in any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act;

(11) Whether the primary constituent elements as described fulfill the needs for the various life stages of the Hine's emerald dragonfly. Specifically, whether old fields adjacent to and in near proximity to larval areas are essential features; and

(12) Whether the small areas of private land within the Hiawatha National Forest, which is proposed for exclusion, are essential for the conservation of the Hine's emerald dragonfly.

When submitting electronic comments, your submission must include ''Attn: Hine's emerald dragonfly'' in the beginning of your message, and you must not use special characters or any form of encryption. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Also, please include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described in the **ADDRESSES** section. In the event that our internet connection is not functional, please submit your comments by one of the alternate methods mentioned in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments, and we will make all comments available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address in the **ADDRESSES** section.

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 section 4(b)(2) ofthe Act, there are significant limitations on the regulatory effect of designation under the Act, 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 470 species, or 36 percent of the 1,311 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 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.* 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 proposed 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.

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 our already 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 gravely imperiled species, and final listing determinations on existing proposals are all significantly delayed.

Because of the risks associated with failing to comply with court orders, the accelerated schedules imposed by the courts 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. 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 Hine's emerald dragonfly, refer to the final listing rule published in the **Federal Register** on January 26, 1995 (60 FR 5267), or the final recovery plan for the species (U.S. Fish and Wildlife Service 2001), which is available on the Internet at *http://www.fws.gov/midwest/Endangered/insects/hed/hed-recplan.html*, or by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The Hine's emerald dragonfly is in the family Corduliidae (''emeralds'') and in the genus *Somatochlora*. The adult Hine's emerald dragonfly has brilliant green eyes. It is distinguished from all other species of *Somatochlora* by its dark metallic green thorax with two distinct creamy-yellow lateral lines, and distinctively-shaped male terminal appendages and female ovipositor (Williamson 1931, pp. 1–8). Adults have a body length of 6065 millimeters (mm) (2.3–2.5 inches (in)) and a wingspan of 90–95 mm (3.5–3.7 in).

The current distribution of the Hine's emerald dragonfly includes Illinois, Michigan, Missouri, and Wisconsin. It is believed to be extirpated from Alabama, Indiana, and Ohio. In the current List of Endangered and Threatened Wildlife in § 17.11(h), the historic range for this taxon is listed as Illinois, Indiana, Ohio, and Wisconsin. A more accurate historic range for Hine's emerald dragonfly includes Alabama, Michigan, and Missouri in addition to the aforementioned States. We are proposing to amend the table such that the ''Historic Range'' for Hine's emerald dragonfly reads U.S.A. (AL, IL, IN, MI, MO, OH, and WI).

No one characteristic has been found that easily and reliably differentiates female and early instar Hine's emerald dragonfly larvae from other similar species. Final instar male Hine's emerald dragonfly larvae can be readily identified by the terminal appendage (segment 10). Hine's emerald dragonfly larval specimens can typically be distinguished from most other *Somatochlora* by the presence of a small middorsal hook on segment three. Other characteristics include head width, metatibial length, palpal crenulation setae, and total length. A detailed discussion is presented in Cashatt and Vogt (2001, pp. 94–96). Soluk *et al.* (1998a, p. 8) described the distinguishing features of Hine's emerald dragonfly larvae from other larval dragonfly species in Door County, Wisconsin, as ''the size of the dorsal hooks on the abdomen, general hairiness, shape of head, and lack of stripes on the legs.'' However, these characteristics would not be definitive in Michigan, Missouri, and Wisconsin where there is potential confusion with other species of *Somatochlora* such as ski-tailed emerald (*S. elongata*), ocellated emerald (*S. minor*), and clamp-tipped emerald (*S. tenebrosa*).

Hine's emerald dragonfly habitat consists predominantly of wetland systems used for breeding and foraging. The larval stage is aquatic, occupying rivulets and seepage areas within these wetland systems. The Hine's emerald dragonfly occupies marshes and sedge meadows fed by calcareous groundwater seepage and underlain by dolomite bedrock. In general, these areas are characterized by the presence of slowly flowing water, sedge meadows and prairies, and nearby or adjacent forest edges. The adult habitat includes the wetland systems as well as a mosaic of upland plant communities and corridors that connect them. Areas of open vegetation serve as places to forage. Foraging flights for reproductive adults may be 1–2 km (0.6–1.2 mi) from breeding sites, and may last 15 to 30 minutes. Forest edges, trees, and shrubs provide protected, shaded areas for the dragonflies to perch. Limited information is available on the species' dispersal capabilities. The average distance traveled by dispersing adults was documented to be 2.5 miles (mi) (4.0 kilometers (km)) in a study in Illinois (Mierzwa *et al.* 1995a, pp. 17–19; Cashatt and Vogt 1996, pp. 23–24).

Many of the areas with Hine's emerald dragonflies in Missouri are surrounded by large tracts of contiguous, 100 percent closed canopy forest. The species generally does not travel more than 328 feet (ft) (100 meters (m)) into the interior of the forest. Foraging by adults occurs within the fen proper and in adjacent old fields, pastures, and forest edge (Landwer 2003, p. 10; Walker and Smentowski 2002, pp. 5–8; 2003, pp. 8–10; 2004, pp. 8–10; 2005, pp. 4–5). Although the importance of old fields and pastures in meeting foraging needs in Missouri has not yet been determined, such areas may be a more significant factor than elsewhere within the range of the species because of a relative lack of open areas at many sites.

Hine's adults emerge in late spring, mate, and lay eggs in water. The eggs overwinter. After hatching the larvae prey upon aquatic invertebrates, occupy rivulets and seepage areas, and take refuge in crayfish burrows. The larvae live 3 to 5 years before adult emergence takes place (Soluk 2005; Soluk and Satyshur 2005, p. 4). Adults live for only a few weeks.

Previous Federal Actions

On February 4, 2004, we received a complaint from The Center for Biodiversity *et al.*, for failure to designate critical habitat for the Hine's emerald dragonfly. On September 13, 2004, we reached a settlement agreement with the plaintiff requiring us to submit for publication in the **Federal Register** a proposed rule to designate critical habitat for the Hine's emerald dragonfly by July 7, 2006, and a final rule by May 7, 2007. For more information on previous Federal actions concerning the Hine's emerald dragonfly, refer to the final listing rule published in the **Federal Register** on January 26, 1995 (60 FR 5267), or the final recovery plan for the species (U.S. Fish and Wildlife Service 2001). This proposed designation is being published in compliance with the above settlement agreement.

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, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are 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 may 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. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2) of the Act.) 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 which 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, 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 subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of the Hine's emerald dragonfly with the assistance of the Hine's Emerald Dragonfly Recovery Team and other species experts. We reviewed the approach to conservation of the species undertaken by local, State, and Federal agencies operating within the species' range since its listing, as well as the actions necessary for Hine's emerald dragonfly conservation identified in the final Recovery Plan for the species (U.S. Fish and Wildlife Service 2001).

To identify features that are essential to the conservation of the Hine's emerald dragonfly, we reviewed available information that pertains to the habitat requirements, current and historic distribution, life history, threats, and population biology of the Hine's emerald dragonfly and other dragonfly species. This information includes: data in reports submitted during section 7 consultations and as a requirement from section 10(a)(1)(B) incidental take permits or section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; information provided by species experts and the Hine's Emerald Dragonfly Recovery Team; aerial photography; land use maps; National Wetland Inventory maps; and Natural Resource Conservation Service soil survey maps. We also reviewed our own site-specific species and habitat information, recent biological surveys, and reports and communication with other qualified biologists or experts.

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) 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 (PCEs) required for the Hine's emerald dragonfly are derived from the biological needs of the species as described in the Background section of this proposal and the Hine's Emerald Dragonfly Recovery Plan (U.S. Fish and Wildlife Service 2001), and additional detail is provided below.

Space for Individual and Population Growth, and for Normal Behavior

Hine's emerald dragonfly habitat consists predominantly of wetland systems used for breeding and foraging. The larval stage is aquatic, occupying rivulets and seepage areas within these wetland systems. The species' habitat includes a mosaic of upland and wetland plant communities and corridors that connect them. Known Hine's emerald dragonfly larval sites include shallow, organic soils (histosols, or with organic surface horizon) overlying calcareous substrate (predominantly dolomite and limestone bedrock), calcareous water from intermittent seeps and springs, shallow small channels and/or sheetflow (Cashatt and Vogt 2001, pp. 96–98). The wetlands are fed by groundwater discharge and often dry out for a few weeks during the summer months, but otherwise have thermal regimes that are relatively moderate and are comparatively warmer in winter and cooler in summer than nearby sites without groundwater influence (Soluk *et al.* 1998a, pp. 83, 85–86; 2004, pp. 15–16; Cashatt and Vogt 2001, pp. 96–98). Vegetation is predominantly herbaceous; natural communities include marshes, sedge meadows, and fens. Marsh communities usually are dominated by graminoid plants such as cattails and sweetflag, while sedge meadows tend to be dominated by sedges and grasses (Cashatt *et al.* 1992, p. 4; Vogt and Cashatt 1994, p. 600; Soluk *et al.* 1996, pp. 5–8; 1998a, pp. 6–10, 76; Mierzwa *et al.* 1998, pp. 20–34; Cashatt and Vogt 2001, pp. 96–98; Vogt 2001, p. 1). Some sites do include trees and shrubs scattered throughout the habitat. Emergent herbaceous and woody vegetation is essential for emergence of larvae (Soluk *et al.* 2003b, pp. 1–3; Foster and Soluk 2004, p. 16). All known sites have forested areas and/or scattered shrubs within a close proximity (Cashatt and Vogt 2001, p. 97; Vogt 2001, p. 1).

Hine's emerald dragonfly larval habitat typically includes small flowing streamlet channels within cattail marshes and sedge meadows; water that flows between hummocks; and occupied, maintained crayfish burrows (Cashatt *et al.* 1992, p. 4; Vogt and Cashatt 1994, p. 600; Soluk *et al.* 1996, pp. 5–9; 1998a, pp. 6–10; 1999, pp. 5–10, 44–47; 2003a, p. 6, 27; Mierzwa *et al.* 1998, pp. 20–34; Landwer and Vogt 2002, p. 1–2; Vogt 2001, p. 1; 2004, p. 1; 2005, p. 1, 3; Soluk 2004, pp. 1–3). To date, the only crayfish identified in association with burrows used by Hine's emerald dragonfly is the devil crayfish (*Cambarus diogenes*) (Pintor and Soluk 2006, pp. 584–585; Soluk *et al.* 1999, p. 46; Soluk 2004, pp. 1–3); however, other crayfish may also provide the same refuge. These burrows are an integral life requisite for the species because they are essential for overwintering and drought survival (Soluk *et al.* 2004, p. 17; Pintor and Soluk 2006, pp. 584–585).

Components of adult habitat are used for breeding, foraging, roosting, and protective cover. While adult Hine's emerald dragonflies can fly over and among trees, they have been consistently observed to follow open corridors through forested areas rather than fly through forests. Hine's emerald dragonfly corridors include trails, streams, forest edges, roadways, shorelines, and other structural breaks in the forest canopy (Soluk *et al.* 1999, pp. 61–64; Steffens 1997 pp. 5, 7; 1999 p. 6, 9; 2000 pp. 2, 4, 6; Smith 2006; Soluk 2006). Roadways, highways, and railroad tracks are used as corridors but expose adults to vehicle-related mortality (Soluk *et al.* 1998a, pp. 61–62; 1998b, pp. 3–4; Soluk and Moss 2003, pp. 2–4, 6–11). Preferred foraging habitat consists of various plant communities including marsh, sedge meadow, dolomite prairie, shorelines, and the fringe of bordering shrubby areas (Vogt and Cashatt 1994, p. 600; 1999, pp. 6, 23; Nuzo 1995, pp. 50–75; Soluk *et al.* 1996, pp. 8–9; 1998a, p. 76; 2003a; Mierzwa *et al.* 1997, pp. 11, 25; 1998, pp. 20–34; Steffens 1997, pp. 5–6, 8; 1999 pp. 6, 9; 2000 pp. 4, 6, 8–10; Thiele and Mierzwa 1999, pp. 3–4, 9–12; Mierzwa and Copeland 2001, pp. 7–8, appendix 2; Vogt 2001, p. 1; Zuehls 2003, pp. iii-iv, 14–15, 19, 21, 38, 43, 60–65).

Females lay eggs (oviposit) in the rivulets and seepage areas described as larval habitat (Cashatt and Vogt 1992, pp. 4–5; Ross and Mierzwa 1995, pp. 77–78; Soluk *et al.* 1996, pp. 8–9; 1998a, p. 76; Vogt and Cashatt 1997, pp. 3, 14; 1999, pp. 6, 23; Vogt *et al.* 1999, pp. 5, 11).

The ability of adult Hine's emerald dragonflies to travel among breeding sites is considered important for the species to maintain genetic variation and fitness. Based on a mark-resighting study conducted in Illinois, Hine's emerald dragonflies that did disperse moved an average distance of 2.5 mi (4.1 km) (Mierzwa *et al.* 1995a, pp. 17–19; Cashatt and Vogt 1996, pp. 23–24). Land use and habitat conditions between breeding sites likely influence dispersal distances and frequencies. However, most adults do not move far from emergence sites. For example, the mark-resighting study conducted in Illinois, found that 44 of 48 adults were resighted within the same wetland in which they were marked (Mierzwa *et al.* 1995a, pp. 17–19; Cashatt and Vogt 1996, pp. 23–24). A mark-release-recapture study conducted in Wisconsin resulted in the marking of 937 adults at three locations within or near breeding habitat, indicating that many adults are found close to breeding areas (Kirk and Vogt 1995, pp. 13–15). In addition, Hine's emerald dragonfly swarms in Wisconsin are generally found within ½ to 1 mile of larval areas (Zuehls 2003, pp. 21, 43). Daily movements and dispersal distances for Hine's emerald dragonfly in Missouri have not yet been studied, but it is generally believed that they are less than what has been reported elsewhere for the species because the sites are much smaller and more isolated in that State (Vogt 2006).

Although adult Hine's emerald dragonflies have been observed foraging over areas modified by anthropogenic influences (*e.g.*, pastures, hay meadows, fallow crop fields, and manicured lawns) in Missouri (Landwer 2003, pp. 26, 39; Walker and Smentowski 2003, pp. 8–10; 2005, p. 4) and Wisconsin (Vogt and Cashatt 1990, p. 3; Grimm 2001, pp. 7, 13–14; Meyer 2001, p. 1), the importance of such habitats in meeting the daily dietary needs of the Hine's emerald dragonfly is still unknown. Because of this uncertainty, old fields and pastures were not included as part of the primary constituent elements outlined below.

Although most adults do not move far from emergence sites, the ability to move among emergence sites, foraging habitat of sufficient quality and quantity, and breeding habitat is important to the Hine's emerald dragonfly. Furthermore, because the species tends to occur in fragmented, loosely-connected local subpopulations, the limited dispersing that does occur is necessary to maintain robust populations.

Food and Water

Larval Hine's emerald dragonflies are generalist predators that feed on macroinvertebrates found within or near the rivulet or seepage systems. Soluk *et al.* (1998a, p. 10) analyzed larval fecal

pellets, and their results suggest that the Hine's emerald dragonfly is a generalist predator. Larval food was found to include many invertebrate taxa in their habitat including mayflies (Ephemeroptera), aquatic isopods (Arthropoda, order Isopoda), caddisflies (Trichoptera), midge larvae (Diptera), and aquatic worms (Oligochaetes). Amphipods are common in their habitat and are likely diet components (Soluk 2005). In general, dragonfly larvae commonly feed on smaller insect larvae, including mosquito and dragonfly larvae, worms, small fish, and snails (Pritchard 1964, pp. 789–793; Corbet 1999, pp. 105–107). Hine's emerald dragonfly larvae have been documented to be cannibalistic in laboratory situations (Soluk 2005).

Adult Hine's emerald dragonflies require a sufficient prey base of small flying insects (Vogt and Cashatt 1994, p. 600; Zuehls 2003, pp. iii-iv, 60–62, 75–84). Adult Hine's emerald dragonflies feed on the wing, sometimes in swarms, primarily mid-morning to midday and late evening (Zuehls 2003, pp. iii, 58–65). Foraging behavior is the dominant behavior within swarms, with over 99 percent of dragonflies observed within swarms foraging and swarms are generally found within ½ to 1 mile of breeding sites (Zuehls 2003, pp. 21, 43, 60). Adults will use nearly any natural habitat for foraging near the breeding/larval habitat except open water ponds and closed-canopy forested areas. Preferred foraging habitat consists of various plant communities including marsh, sedge meadow, dolomite prairie, and the fringe of bordering shrubby and forested areas (Mierzwa *et al.* 1995a, p. 31; 1995b, pp. 13–14; 1997, pp. 11, 25; 1998, pp. 20–34; Mierzwa and Copeland 2001, pp. 7–8, appendix 2; Soluk *et al.* 1996, pp. 8–9; 1998a, p. 76; Steffens 1997 pp. 5–6, 8; 1999; 2000 p. 4, 6, 8–10; Thiele and Mierzwa 1999, pp. 3–4, 9–12; Vogt and Cashatt 1994, p. 600; 1999, pp. 6, 23; Vogt 2001, p. 1). Dragonflies are believed to get water from their food (whose water content is 60 to 80 percent (Fried and May 1983)), although some dragonflies have been observed drinking surface water found in their habitat (Corbet 1999, pp. 284–291).

Cover or Shelter

Detritus is used by larvae for cover, and it also provides food for larval prey. Crayfish burrows provide Hine's emerald dragonfly larvae refuge from drought conditions in the summer and for overwintering (Cashatt *et al.* 1992, pp. 3–4; Soluk *et al.* 1999, pp. 40 and 46; Soluk 2005; Pintor and Soluk 2006, pp. 584–585).

Predatory dragonflies (such as the dragonhunter (*Hagenius brevistylus*), gray petaltail (*Tachopteryx thoreyi*), and common green darner (*Anax junius*)), and avian predators (such as cedar waxwings (*Bambycilla cedrorum*)), have been documented chasing and attacking Hine's emerald dragonflies and other *Somatochlora* species (Zuehls 2003, p. 63; McKenzie and Vogt 2005, p. 19; Landwer 2003, p. 62). Scattered trees and shrubs or forest edges (up to 328 ft (100 m) into the forest) are needed for escape cover from predators and are also used for roosting, resting, and perching. Typically, trees and shrubs also provide shelter from weather. Dragonflies are known to perch and roost in vegetation that provides shade or basking sites as a means of ectothermic thermoregulation (Corbet 1980, Corbet 1999). This tree and shrub cover is provided in Hine's emerald dragonfly habitat by any woody vegetation that is not closed-canopy forest.

Habitat segregation by sex among Hine's emerald dragonflies and other dragonflies has been documented. Females spend more of their time foraging away from breeding habitat than males (Vogt and Cashatt 1997, pp. 11, 14; 1999, pp. 6, 15, 23; Foster and Soluk 2006, pp. 162–164). It is believed that habitat segregation by sex may be the result of females avoiding males, possibly as a defense mechanism against unsolicited mating attempts (Zuehls 2003, pp. 65–67; Foster and Soluk 2006, pp. 163–164). There is some evidence that females spend time in upland habitat during non-breeding times to avoid interactions with males (Foster and Soluk 2006, pp. 162–164).

Sites for Breeding, Reproduction, and Development of Offspring

Adult females lay eggs or oviposit by repeatedly dipping their abdomens in shallow water or saturated soft soil or substrate. Females have been observed with muck or mud residue on their abdomens, suggesting they had oviposited in soft muck and/or shallow water (Vogt and Cashatt 1990, p. 3; Cashatt and Vogt 1992, pp. 4–5). Female Hine's emerald dragonflies have been observed ovipositing in groundwater that discharges and forms rivulets and seepage areas within cattail marshes, sedge meadows, and fens that typically have crayfish burrows (Cashatt and Vogt 1992, pp. 4–5; Mierzwa *et al.* 1995a, p. 31; 1995b, p. 12; Soluk *et al.* 1996, pp. 8–9; 1998a, p. 76; Vogt 2003, p. 3; 2004, p. 2; 2005, p. 3; Vogt and Cashatt 1994, p. 602; 1997, pp. 3, 14; 1999, pp. 6, 23; Vogt *et al.* 1999, pp. 5, 11; Walker and Smentowski 2002, pp. 17–18; McKenzie and Vogt 2005, p. 18). All observations of oviposition by Soluk *et al.* (1998a, p. 76) occurred in more permanent waters (streamlet and cattail/meadow borders). In addition, male territorial patrols have been observed over the type of habitat where oviposition has been documented (Cashatt and Vogt 1992, p.4; Vogt and Cashatt 1994, pp. 601–602; 1999, pp. 6, 23; Soluk *et al.* 1998a, p. 76). All known larval habitat receives slowly (often barely perceptible) moving groundwater discharge that is typically calcareous (Cashatt *et al.* 1992, pp. 3–4; Vogt and Cashatt 1994, p. 602; Soluk *et al.* 1996, pp. 5–8; Mierzwa *et al.* 1998, pp. 30–34; 2003a; Landwer and Vogt 2002, p. 1; Vogt 2003, p. 1; 2004, p. 1; 2005, p. 1). This groundwater discharge also moderates water temperatures, though water flows and temperatures can be variable over seasons and years. Since groundwater that comes to the surface in Hine's emerald dragonfly habitat is an essential component of larval habitat, regulatory protection of groundwater quantity and quality that contributes to this essential feature is vital.

Hine's emerald dragonfly eggs overwinter and hatch in water or saturated soil during spring (Soluk and Satyshur 2005, p. 4). After an egg has hatched, Hine's emerald dragonfly larvae spend approximately 4 years in cool, shallow, slowly moving water flowing between hummocks, in streamlets, and in nearby crayfish burrows foraging and molting as they grow (Cashatt *et al.* 1992, p. 4; Vogt and Cashatt 1994, p. 602; Soluk *et al.* 1996, pp. 5–8; 1998a, pp. 6–10; 1999, pp. 5–10, 44–47; 2005; Cashatt and Vogt 2001, 96–98; Soluk 2004, pp. 1–3). The microhabitat typically contains decaying vegetation. After completing larval development, the larvae use herbaceous or woody vegetation to crawl out of the aquatic environment and emerge as adults (Vogt and Cashatt 1994, p. 602; Foster and Soluk 2004, p. 16).

Primary Constituent Elements for the Hine's Emerald Dragonfly

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of the Hine's emerald dragonfly. All areas proposed as critical habitat for Hine's emerald dragonfly are occupied, within the 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 that the physical and

biological features essential to the conservation of Hine's emerald dragonfly's are:

(1) For egg deposition and larval growth and development:

(a) Shallow, organic soils (histosols, or with organic surface horizon) overlying calcareous substrate (predominantly dolomite and limestone bedrock);

(b) Calcareous water from intermittent seeps and springs and associated shallow, small, slow flowing streamlet channels, rivulets, and/or sheet flow within fens;

(c) Emergent herbaceous and woody vegetation for emergence facilitation and refugia;

(d) Occupied, maintained crayfish burrows for refugia; and

(e) Prey base of aquatic macroinvertebrates, including mayflies, aquatic isopods, caddisflies, midge larvae, and aquatic worms.

2. For adult foraging; reproduction; dispersal; and refugia necessary for roosting, resting and predator avoidance (especially during the vulnerable teneral stage):

(a) Natural plant communities near the breeding/larval habitat which may include marsh, sedge meadow, dolomite prairie, and the fringe (up to 328 ft (100m)) of bordering shrubby and forested areas with open corridors for movement and dispersal; and

(b) Prey base of small, flying insect species (*e.g.*, dipterans).

Critical habitat does not include human-made structures existing on the effective date of a final rule not containing one or more of the primary constituent elements, such as buildings, lawns, old fields and pastures, piers and docks, aqueducts, airports, and roads, and the land on which such structures are located. In addition, critical habitat does not include open-water areas (i.e., areas beyond the zone of emergent vegetation) of lakes and ponds.

This proposed designation is designed for the conservation of the PCEs necessary to support the life history functions which are the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs. 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 species. 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

We are proposing to designate critical habitat on lands that were occupied at the time of listing and contain sufficient PCEs to support life history functions essential to the conservation of the Hine's emerald dragonfly. We are also proposing to designate areas that were not known to be occupied at the time of listing, but which were subsequently identified as being occupied, and which we have determined to be essential to the conservation of the Hine's emerald dragonfly.

To identify features that are essential to the conservation of Hine's emerald dragonfly and areas essential to the conservation of the species, we considered the natural history of the species and the science behind the conservation of the species as presented in literature summarized in the Recovery Plan (U.S. Fish and Wildlife Service 2001).

We began our analysis of areas with features that are essential to the conservation of the Hine's emerald dragonfly by identifying currently occupied breeding habitat. We developed a list of what constitutes occupied breeding habitat with the following criteria: (a) Adults and larvae documented; (b) Larvae, exuviae (skin that remains after molt), teneral (newly emerged) adults, ovipositing females, and/or patrolling males documented; or (c) multiple adults sighted and breeding conditions present. We determined occupied breeding habitat through a literature review of data in: Reports submitted during section 7 consultations and as a requirement from section 10(a)(1)(B) incidental take permits or section 10(a)(1)(A) recovery permits; published peer-reviewed articles; academic theses; and agency reports. We then determined which areas were known to be occupied at the time of listing.

After identifying the core occupied breeding habitat, our second step was to identify contiguous habitat containing one or more of the PCEs within 2.5 mi (4.1 km) of the outer boundary of the core area (Mierzwa *et al.* 1995a, pp.17–19; Cashatt and Vogt 1996, pp. 23–24). This distance—the average adult dispersal distance measured in one study—was selected as an initial filter for determining the outer limit of unit boundaries in order to ensure that the dragonflies would have adequate foraging and roosting habitat, corridors among patches of habitat, and the ability to disperse among subpopulations. However, based on factors discussed below, unit boundaries were significantly reduced in most cases based on the contiguous extent of PCEs and the presence of natural or manmade barriers. When assessing wetland complexes in Wisconsin and Michigan it was determined that features that fulfill all of the Hine's emerald dragonfly's life history requirements are often within 1 mi (1.6 km) of the core breeding habitat; therefore, the outer boundary of those units is within 1 mi (1.6 km) of the core breeding habitat. In Missouri, essential habitat was identified as being limited around the core breeding habitat as a result of a closed canopy forest around most units, and the outer boundary of those units extends only 328 ft (100 m) into the closed canopy.

Areas not documented to be occupied at the time of listing but that are currently occupied are considered essential to the conservation of the species due to the limited numbers and small sizes of extant Hine's emerald dragonfly populations. Recovery criteria established in the recovery plan for the species (U.S. Fish and Wildlife Service 2001, pp. 31–32) call for a minimum of three populations, each containing at least three subpopulations, in each of two recovery units. Within each subpopulation there should be at least two breeding areas, each fed by separate seeps and springs. Management and protection of all known occupied areas are necessary to meet these goals.

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 and features that lack the PCEs for the species. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of all 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 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 and/or primary constituent elements in critical habitat.

We propose to designate critical habitat on lands that we have determined were occupied at the time of listing and contain sufficient primary constituent elements to support life history functions essential for the conservation of the species or are currently occupied and are determined to be essential to the conservation of the species. We do not propose to designate

as critical habitat any areas outside the geographical area presently occupied by the species.

Units were identified based on sufficient PCEs being present to support Hine's emerald dragonfly life processes. Some units contain all PCEs and support multiple life processes. Some units contain only a portion of the PCEs necessary to support the Hine's emerald dragonfly's particular use of that habitat. Where a subset of the PCEs was present it has been noted that only PCEs present at designation will be protected.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and that contain the primary constituent elements may require special management considerations or protections. At the time of listing, the Hine's emerald dragonfly was known to occur in Illinois and Wisconsin.

Fragmentation and destruction of suitable habitat are believed to be the main reasons for this species' Federal endangered status and continue to be the primary threats to its recovery. Hine's emerald dragonfly habitat is closely associated with surface dolomite deposits, an extractable resource that is often quarried. Developing commercial and residential areas, quarrying, creating landfills, constructing pipelines, and filling of wetlands could decrease the area of suitable habitat available and continue to fragment populations of the Hine's emerald dragonfly. Direct loss of breeding or foraging habitat could potentially reduce both adult and larval population sizes.

Changes in surface and sub-surface hydrology could be detrimental to the Hine's emerald dragonfly. Alteration of water regimes could affect surface water flow patterns, cause loss of seep heads, and reduce larval habitat. Permanent loss of appropriate hydrology would reduce the amount of suitable breeding and larval habitat. Road construction; channelization; and alteration of water impoundments, temperature, discharge quantity, water quality, and lake levels have the potential to affect important hydrologic characteristics of Hine's emerald dragonfly larval habitat that could be necessary for the continued survival of this species. For example, a study to predict hydrologic changes to a spring near Black Partridge Creek in Illinois from a proposed interstate highway suggested that an 8 to 35 percent reduction in spring discharge may occur after the construction of the highway (Hensel *et al.* 1993, p. 290). Hensel *et al.* (1993, pp. 290–292) suggested that the highway could cause a loss of recharge water for the spring and lower the water table, reducing the discharge of the spring. Pumping of groundwater for industrial and agricultural use also has the potential to lower the water table and change the hydrology, which may affect larval habitat. Dye-tracing indicates the fens (a type of wetland characterized by calcareous spring-fed marshes and sedge meadows overlaying dolomite bedrock) at a site in Missouri are fed by springs originating south of the natural area in the Logan Creek valley (Aley and Adel 1991, p. 4).

Loss of important habitat within suitable wetland systems may also threaten this species. Wetland systems with wet prairie, sedge meadow, cattail marsh, and/or hummock habitat, interspersed with native shrubs, appear to be an important part of the overall habitat requirements of the Hine's emerald dragonfly. The combination of these habitat types within the wetland systems may be important to the survival of this species. Destruction and degradation of Hine's emerald dragonfly habitat can result from threats such as succession and encroachment of invasive species, feral pigs, illegal all terrain vehicles and beaver dams (McKenzie and Vogt 2005, pp. 19–20).

Contamination from landfills, transportation, agriculture and other past or present applications of habitat-altering chemicals may be harmful to this species. The species long aquatic larval stage makes it vulnerable to contamination of groundwater and surface water. Because groundwater moves relatively slowly through sediments, contaminated water may remain toxic for long periods of time and may be difficult or impossible to treat. High water quality may be an important component of this species' habitat.

Adult mortality from direct impacts with vehicles or trains may reduce Hine's emerald dragonfly population sizes (Steffens 1997, pp. 1, 4, 5, 6, 7, 8, 9; Soluk *et al.* 1998a, pp. 59, 61–64). Because Hine's emerald dragonflies are known to be killed by vehicles and they have been observed flying over railroad tracks, it is believed that trains may also be a source of mortality for this species (Soluk *et al.* 1998b, pp. 3–4; 2003, pp. 1–3; Soluk and Moss 2003, pp. 2–4, 6–11). A unit-by-unit description of threats can be found in the individual unit descriptions below.

Proposed Critical Habitat Designation

We are proposing to designate 49 units as critical habitat for the Hine's emerald dragonfly. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, that contain the primary constituent elements essential for the conservation of the species, and that may require special management, and those additional areas not occupied at the time of listing but that have been determined to be essential to the conservation of the Hine's emerald dragonfly. Management and protection of all the areas is necessary to achieve the conservation biology principles of representation, resiliency, and redundancy (Shaffer and Stein 2000) as represented in the recovery criteria established in the recovery plan for the species. The areas proposed as critical habitat are identified in Tables 1 and 2 below.

Table 1 below lists the units (with approximate area) determined to meet the definition of critical habitat for the Hine's emerald dragonfly, but which are being considered for exclusion under section 4(b)(2) of the Act from the final critical habitat designation by State (see discussion under the Exclusion Under Section 4(b)(2) of the Act section below). We are considering the exclusion of all 26 units in Missouri and 2 units in Michigan from the critical habitat designation.

TABLE 1.— AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE HINE'S EMERALD DRAGONFLY (DEFINITIONAL AREA) AND THE AREAS CONSIDERED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION (AREA BEING CONSIDERED FOR EXCLUSION)

State	Definitional area (ac/ha)	Area being considered for exclusion (ac/ha)
Michigan Unit 1	9,452/3,825	All.
Michigan Unit 2	3,511/1,421	All.
Missouri Unit 1	90/36	All.
Missouri Unit 2	34/14	All.
Missouri Unit 3	18/7	All.
Missouri Unit 4	14/6	All.
Missouri Unit 5	50/20	All.
Missouri Unit 6	22/9	All.
Missouri Unit 7	33/13	All.
Missouri Units 8, 9, and 10	333/135	All.
Missouri Unit 11	113/46	All.
Missouri Unit 12	50/20	All.
Missouri Unit 13	30/12	All.
Missouri Unit 14	14/5	All.
Missouri Unit 15	11/4	All.
Missouri Unit 16	4/2	All.
Missouri Units 17 and 18	224/91	All.
Missouri Units 19 and 20	115/47	All.
Missouri Unit 21	6/2	All.
Missouri Unit 22	32/13	All.
Missouri Units 23 and 24	75/31	All.
Missouri Unit 25	33/13	All.
Missouri Unit 26	5/2	All.
Total	14,269/5,774	14,269/5,774

All the units listed in Table 1 were not known to be occupied at the time of listing. Most Missouri units are much smaller in both overall area and estimated population size than those elsewhere within the species' range. Additionally, the overwhelming majority of Missouri units are completely surrounded by contiguous tracts of 100 percent closed canopy forest.

The failure to confirm the presence of adults at some sites that were surveyed during suitable flight conditions (i.e., correct flight season and time of day, and weather conditions optimal for potential observation of the species) and during multiple visits provides strong evidence that population sizes at Missouri sites are much less than those in Illinois, Michigan, and Wisconsin. Nonetheless, all the units are considered occupied because larvae are found at all Missouri sites and all of the units have the primary constituent elements identified for the species.

Table 2 below provides the approximate area encompassed by each of the remaining proposed critical habitat units.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR THE HINE'S EMERALD DRAGONFLY, AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES

Critical habitat unit	Land ownership	Area (ac/ha)
Illinois Unit 1	Metropolitan Water Reclamation District of Greater Chicago; Elgin, Joliet, and Eastern Railway Company; Commonwealth Edison Company.	419/170
Illinois Unit 2	Material Service Corporation; Elgin, Joliet, and Eastern Railway Company; Commonwealth Edison Company.	439/178
Illinois Unit 3	Forest Preserve District of Will County, Commonwealth Edison Company, Others.	337/136
Illinois Unit 4	Forest Preserve District of Will County, Forest Preserve District of Cook County, Commonwealth Edison Company, Others.	607/246
Illinois Unit 5	Forest Preserve District of DuPage County, Commonwealth Edison Company, Santa Fe Railroad.	326/132
Illinois Unit 6	Forest Preserve District of Cook County	387/157
Illinois Unit 7	Illinois Department of Natural Resources, Material Service Corporation, Illinois Central Gulf Railroad.	480/194
Michigan Unit 3	Michigan Department of Natural Resources, The Nature Conservancy, other Private Individuals.	50/20

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR THE HINE'S EMERALD DRAGONFLY, AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES—Continued

Critical habitat unit	Land ownership	Area (ac/ha)
Michigan Unit 4	Michigan Department of Natural Resources, Private Individuals.	959/388
Michigan Unit 5	Michigan Department of Natural Resources	156/63
Michigan Unit 6	Private Individuals	220/89
Wisconsin Unit 1	Wisconsin Department of Natural Resources and Private Individuals.	503/204
Wisconsin Unit 2	The Nature Conservancy and other Private Individuals	814/329
Wisconsin Unit 3	The Nature Conservancy and other Private Individuals	66/27
Wisconsin Unit 4	The Nature Conservancy and other Private Individuals	407/165
Wisconsin Unit 5	Wisconsin Department of Natural Resources; University of Wisconsin; Ridges Sanctuary, Inc.; other Private Individuals.	3,093/1,252
Wisconsin Unit 6	Wisconsin Department of Natural Resources and Private Individuals.	230/93
Wisconsin Unit 7	The Nature Conservancy and other Private Individuals	352/142
Wisconsin Unit 8	The Nature Conservancy and other Private Individuals	70/28
Wisconsin Unit 9	Wisconsin Department of Natural Resources and Private Individuals.	1193/483
Wisconsin Unit 10	Wisconsin Department of Natural Resources, University of Wisconsin, Private Individuals.	2312/936
Total		13,420/5,432

We present brief descriptions of all units listed in Tables 1 and 2, and reasons why they meet the definition of critical habitat for the Hine's emerald dragonfly, below.

Illinois Unit 1—Will County, Illinois

Illinois Unit 1 consists of 419 ac (170 ha) in Will County, Illinois. This unit was known to be occupied at the time of listing and includes the area where the Hine's emerald dragonfly was first collected in Illinois as well as one of the most recently discovered locations in the State. All PCEs for the Hine's emerald dragonfly are present in this unit. Adults and larvae are found within this unit. The unit consists of larval and adult habitat with a mosaic of upland and wetland communities including fen, marsh, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small, flowing streamlet channels that contain crayfish burrows. Known threats to the primary constituent elements in this unit include ecological succession and encroachment of invasive species; illegal all terrain vehicles; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The majority of the unit is a dedicated Illinois Nature Preserve that is managed and leased by the Forest Preserve District of Will County. Although a current management plan is in place, it does not specifically address the Hine's emerald dragonfly. We are evaluating the protective measures in the plan to determine the benefits to the features essential for the conservation of the Hine's emerald dragonfly. We will continue to work with the land managers during the development of the final rule. This unit also consists of a utility easement that contains electrical transmission and distribution lines and a railroad line used to transport coal to a power plant. In addition, a remaining small portion of this unit is located between a sewage treatment facility and the Des Plaines River. This unit is planned to be incorporated in a Habitat Conservation Plan that is being pursued by a large partnership that includes the landowners of this unit.

Illinois Unit 2—Will County, Illinois

Illinois Unit 2 consists of 439 ac (178 ha) in Will County, Illinois. This unit was known to be occupied at the time of listing and has repeated adult and larval observations. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit consists of larval and adult habitat with a mosaic of plant communities including fen, marsh, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the primary constituent elements in this unit include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The unit is privately owned and includes a utility easement that contains electrical transmission and distribution lines and a railroad line used to transport coal to a power plant. This unit is planned to be incorporated in a Habitat Conservation Plan that is being pursued by a large partnership that includes the landowners of this unit.

Illinois Unit 3—Will County, Illinois

Illinois Unit 3 consists of 337 ac (136 ha) in Will County, Illinois. This unit was known to be occupied at the time of listing and includes one of the first occurrences of Hine's emerald dragonfly known after the discovery of the species in Illinois. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit consists of larval and adult habitat with a mosaic of upland and wetland communities including fen, sedge meadow, marsh, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the primary constituent elements in this unit include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The majority of the unit is a dedicated Illinois Nature Preserve that is owned and managed by the Forest Preserve District of Will County. Although a

current management plan is in place, it does not specifically address the Hine's emerald dragonfly. We are evaluating the protective measures in the plan to determine the benefits to the features essential for the conservation of the Hine's emerald dragonfly. We will continue to work with the land managers during the development of the final rule. This unit also consists of a utility easement that contains electrical transmission and distribution lines. This unit is planned to be incorporated in a Habitat Conservation Plan that is being pursued by a large partnership that includes the landowners of this unit.

Illinois Unit 4—Will and Cook Counties, Illinois

Illinois Unit 4 consists of 607 ac (246 ha) in Will and Cook Counties in Illinois. This unit was known to be occupied at the time of listing and includes one of the first occurrences of Hine's emerald dragonfly that was verified after the discovery of the species in Illinois. All PCEs for the Hine's emerald dragonfly are present in this unit. Repeated observations of both adult and larval Hine's emerald dragonfly have been made in this unit. The unit consists of larval and adult habitat with a mosaic of upland and wetland communities including fen, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the primary constituent elements in this unit include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The unit is owned and managed by the Forest Preserve District of Will County and the Forest Preserve District of Cook County. Construction of the Interstate 355 extension began in 2005 and the corridor for this project intersects this unit at an elevation up to 67 ft (20 m) above the ground to minimize potential impacts to Hine's emerald dragonflies. This unit also consists of a utility easement that contains electrical transmission lines.

Illinois Unit 5—DuPage County, Illinois

Illinois Unit 5 consists of 326 ac (132 ha) in DuPage County, Illinois. This unit was known to be occupied at the time of listing and has repeated adult observations. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit consists of larval and adult habitat with a mosaic of upland and wetland plant communities including fen, marsh, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the primary constituent elements in this unit include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The majority of the unit is owned and managed by the Forest Preserve District of DuPage County. This unit also consists of a railroad line and a utility easement with electrical transmission lines.

Illinois Unit 6—Cook County, Illinois

Illinois Unit 6 consists of 387 ac (157 ha) in Cook County, Illinois. This unit was known to be occupied at the time Hine's emerald dragonfly was listed. All PCEs for the Hine's emerald dragonfly are present in this unit. There have been repeated adult observations as well as observations of teneral adults and male territorial patrols suggesting that breeding is occurring within a close proximity. The unit consists of larval and adult habitat with a mosaic of upland and wetland plant communities including fen, marsh, and sedge meadow. The wetlands are fed by groundwater that discharges into the unit from seeps that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the primary constituent elements in this unit include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. The area within this unit is owned and managed by the Forest Preserve District of Cook County.

Illinois Unit 7—Will County, Illinois

Illinois Unit 7 consists of 480 ac (194 ha) in Will County, Illinois. This unit was known to be occupied at the time of listing and includes one of the first occurrences of Hine's emerald dragonfly known after the discovery of the species in Illinois. All PCEs for the Hine's emerald dragonfly are present in this unit. Adults and larvae have been found within this unit. The unit consists of larval and adult habitat with a mosaic of upland and wetland communities including fen, marsh, sedge meadow, and dolomite prairie. The wetlands are fed by groundwater that discharges into the unit from seeps and upwelling that have formed small flowing streamlet channels that contain crayfish burrows. Known threats to the primary constituent elements in this unit include ecological succession and encroachment of invasive species; utility and road construction and maintenance; management and land use conflicts; and groundwater depletion, alteration, and contamination. A portion of the unit is a dedicated Illinois Nature Preserve that is managed and owned by the Illinois Department of Natural Resources. This unit also consists of a railroad line and a utility easement that contains electrical distribution lines. This unit is planned to be incorporated in a Habitat Conservation Plan that is being pursued by a large partnership that includes the landowners of this unit.

Michigan Unit 1—Mackinac County, Michigan

Michigan Unit 1 consists of 9,452 ac (3,825 ha) in Mackinac County in the Upper Peninsula of Michigan. This area was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit contains at least four breeding areas for Hine's Emerald dragonfly, with female oviposition or male territorial patrols observed at all breeding sites. Adults have also been observed foraging at multiple locations within this unit. The unit contains a mixture of fen, forested wetland, forested dune and swale, and upland communities that are important for breeding and foraging Hine's emerald dragonfly. The habitat is mainly spring fed rich cedar swamp or northern fen. The breeding areas are open with little woody vegetation or are sparsely vegetated with northern white cedar (*Thuja occidentalis*). Small shallow pools and seeps are common. Crayfish burrows are found in breeding areas. Corridors between the breeding areas make it likely that adult dragonflies could travel or forage between the breeding sites. Although the majority of this unit is owned by the Hiawatha National Forest and faces fewer threats than other units, threats (including non-native species invasion, woody encroachment, off-road vehicle use, logging, and utility and road right-of-way maintenance) have the potential to impact the habitat. Small portions of the unit are owned by the State of Michigan and private individuals. The Hiawatha National Forest, through their Land Use and Management Plan, will protect all known Hine's breeding areas and implement the Hine's Emerald

dragonfly recovery plan. We are considering excluding Michigan Unit 1 from our final designation.

Michigan Unit 2—Mackinac County, Michigan

Michigan Unit 2 consists of 3,511 ac (1,421 ha) in Mackinac County in the Upper Peninsula of Michigan. This area was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit contains at least four breeding areas for Hine's Emerald dragonfly, with female oviposition or male territorial patrols observed at all breeding sites. The unit contains a mixture of fen, forested wetland, forested dune and swale, and upland communities that are important for breeding and foraging Hine's emerald dragonfly. The breeding habitat varies in the unit. Most breeding areas are northern fen communities with sparse woody vegetation (northern white cedar) that are probably spring fed with seeps and marl pools present. One site is a spring-fed marl fen with sedge dominated seeps and marl pools. Crayfish burrows are found in breeding areas. Corridors between the breeding areas, including a large forested dune and swale complex, make it likely that adult dragonflies could travel or forage between the breeding sites. Although the majority of this unit is owned by the Hiawatha National Forest and is designated as a Wilderness Area, threats (including non-native species invasion, woody encroachment, and off-road vehicle use) have the potential to impact the habitat. About one percent of the unit is owned by private individuals. The Hiawatha National Forest, through their Land Use and Management Plan, will protect all known Hine's breeding areas and implement the Hine's Emerald dragonfly recovery plan. We are considering excluding Michigan Unit 2 from our final designation.

Michigan Unit 3—Mackinac County, Michigan

Michigan Unit 3 consists of 50 ac (20 ha) in Mackinac County on Bois Blanc Island in Michigan. This area was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit contains one breeding area for Hine's Emerald dragonfly with male territorial patrols and more than 10 adults observed in 1 year. The unit contains a small fen that is directly adjacent to the Lake Huron shoreline and forested dune and swale habitat that extends inland. The unit contains seeps and small fens, some areas with marl. Threats to the unit include maintenance of utility and road right of way, and development of private lots and septic systems. Road work and culvert maintenance could change the hydrology of the unit. Approximately half of the unit is owned by the State of Michigan, the remaining portion of the area is owned by The Nature Conservancy or is subdivided private land. We are currently obtaining and reviewing any management plans from the Michigan Department of Natural Resources and The Nature Conservancy to determine if adequate protection and management of the unit is provided. If an adequate management plan is in place, the State and/or Nature Conservancy owned portion of this unit may be excluded in the final designation.

Michigan Unit 4—Presque Isle County, Michigan

Michigan Unit 4 consists of 959 ac (388 ha) in Presque Isle County in the northern lower peninsula of Michigan. This area was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit contains one breeding area for Hine's Emerald dragonfly, with female oviposition and adults observed in more than 1 year. The unit contains a fen with seeps and crayfish burrows present. The fen has stunted, sparse white cedar and marl flats dominated by spike rush (*Eleocharis*). The threats to Hine's emerald dragonflies in this unit are unknown. The majority of this unit is a State park owned by the Michigan Department of Natural Resources, the remainder of the unit is privately owned. We are currently obtaining and reviewing any Michigan Department of Natural Resources management plans to determine if adequate protection and management of the unit is provided. If an adequate management plan is in place, the State-owned portion of this unit may be excluded in the final designation.

Michigan Unit 5—Alpena County, Michigan

Michigan Unit 5 consists of 156 ac (63 ha) in Alpena County in the northern lower peninsula of Michigan. This area was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit contains one breeding area for Hine's Emerald dragonfly, with adults observed in more than one year and crayfish burrows present. The unit contains a mixture of northern fen and wet meadow habitat that are used by breeding and foraging Hine's emerald dragonfly. Threats to this unit include possible hydrological modification due to outdoor recreational vehicle use and a nearby roadway. The unit is owned by the State of Michigan. We are currently obtaining and reviewing any Michigan Department of Natural Resources management plans to determine if adequate protection and management of the unit is provided. If an adequate management plan is in place, the State owned portion of this unit may be excluded in the final designation.

Michigan Unit 6—Alpena County, Michigan

Michigan Unit 6 consists of 220 ac (89 ha) in Alpena County in the northern lower peninsula of Michigan. This area was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit contains one breeding area for Hine's Emerald dragonfly, with male territorial patrols and adults observed. The unit contains a marl fen with numerous seeps and rivulets important for breeding and foraging Hine's Emerald dragonfly. In the area of this unit, trash dumping, home development, and outdoor recreational vehicles were observed impacting similar habitat. The unit is owned by a private group.

Missouri Unit 1—Crawford County, Missouri

Missouri Unit 1 consists of 90 ac (36 ha) in Crawford County, Missouri, and is under U.S. Forest Service ownership. This fen is in close proximity to the village of Billard and is associated with James Creek, west of Billard. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are present in this unit. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and an adjacent open pasture provide foraging habitat that is surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 2—Dent County, Missouri

Missouri Unit 2 is comprised of 34 ac (14 ha) in Dent County, Missouri, and is under U.S. Forest Service and private ownership. It is located north of the village of Howes Mill and in proximity to County Road (CR) 438. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are present in this unit. The fen provides surface flow, and includes

larval habitat and adjacent cover for resting and predator avoidance. The fen and an adjacent open old field provide foraging habitat and are surrounded by contiguous, closed canopy forest. Both adults and larvae have been documented from this locality. Threats identified for this unit include all terrain vehicles, feral hogs, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 3—Dent County, Missouri

Missouri Unit 3 is under private ownership and consists of 18 ac (7 ha) in Dent County, Missouri. It is located north-northeast of the village of Howes Mill and is associated with a tributary of Huzzah Creek. This area was not known to be occupied at the time of listing. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen and adjacent old fields provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this unit. Threats identified for this unit include all terrain vehicles, feral hogs, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 4—Dent County, Missouri

Missouri Unit 4 is owned and managed by the U.S. Forest Service, and consists of 14 ac (6 ha) in Dent County, Missouri. This fen is associated with a tributary of Watery Fork Creek in Fortune Hollow and is located east of the juncture of Highway 72 and Route MM. This area was not known to be occupied at the time of listing. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen and adjacent old fields provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 5—Iron County, Missouri

Missouri Unit 5 is comprised of 50 ac (20 ha) in Iron County, Missouri, and is under U.S. Forest Service ownership. This fen is adjacent to Neals Creek and Neals Creek Road, southeast of Bixby. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen consists of surface flow and is fed, in part, by a wooded slope north of Neals Creek Road. This small but high quality fen provides larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed canopy forest. Both adults and larvae have been documented from this unit. Threats identified for this unit include all terrain vehicles, feral hogs, road construction and maintenance, beaver dams, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 6—Morgan County, Missouri

Missouri Unit 6 is privately owned, and consists of 22 ac (9 ha) in Morgan County, Missouri. The fen borders Flag Branch Creek and is located near the small town of Barnett south southwest of Route N. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen consists of three, small, fen openings adjacent to one another. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen and adjacent open areas associated with the landowner's residence provide the only habitat for foraging and are surrounded by contiguous, closed canopy forest. Although only larvae have been documented from this locality, an unidentified species of *Somatochlora* was observed during an earlier visit (Vogt 2006). Threats identified for this unit include feral hogs, ecological succession, beaver dams, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 7—Phelps County, Missouri

Missouri Unit 7 consists of 33 ac (13 ha) in Phelps County, Missouri, and is owned and managed by the U.S. Forest Service. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. This fen is associated with Kaintuck Hollow and a tributary of Mill Creek, and is located south-southwest of the town of Newburg. This high quality fen provides larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed canopy forest. Despite repeated sampling for adults and larvae, only one exuviae has been documented from this unit. Threats identified for this unit include all terrain vehicles, feral hogs, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Units 8, 9, and 10—Reynolds County, Missouri

Missouri Units 8, 9, and 10 comprise the Bee Fork complex. The complex consists of 333 ac (135 ha), and includes U.S. Forest Service and private land in Reynolds County, Missouri. This locality is a series of three fens adjacent to Bee Fork Creek, extending from east-southeast of Bunker east to near the bridge on Route TT over Bee Fork Creek. These areas were not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided within this complex. The fen provides surface flow and is fed, in part, by a small spring that originates from a wooded ravine just north of the county road bordering the northern most situated fen. This complex is one of the highest quality representative examples of an Ozark fen in the State. The fen provides larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed canopy forest. Both adults and larvae have been documented from this unit. This complex is an extremely important focal area for conservation actions that benefit Hine's emerald dragonfly. It is likely that the species uses Bee Fork Creek as a connective corridor between adjacent components of the complex. Threats identified for this unit include feral hogs, ecological succession, utility maintenance, application of herbicides, and habitat fragmentation. We are considering excluding these units from our final critical habitat designation.

Missouri Unit 11—Reynolds County, Missouri

Missouri Unit 11 is under private and U.S. Forest Service ownership and consists of 113 ac (46 ha) in Reynolds County, Missouri. The unit is a series of small fen openings adjacent to a tributary of Bee Fork Creek, and is located east of the intersection of Route TT and Highway 72, extending north to the Bee Fork Church on County Road 854. This area was not known to be occupied at the time of listing. This unit is one of the highest quality representative examples of an Ozark fen in the State and incorporates much of

the valley within Grasshopper Hollow. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open path provide habitat for foraging and are surrounded by contiguous, closed canopy forest. Both adults and larvae have been documented from this unit. The majority of this unit is managed by The Nature Conservancy. Threats identified for this unit include feral hogs, beaver dams, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 12—Reynolds County, Missouri

Missouri Unit 12 is comprised of 50 ac (20 ha) in Reynolds County, Missouri and is under private ownership. This locality is near the town of Ruble and is closely associated with the North Fork of Web Creek. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. This fen is fed by surface flow and a few small springs. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and an adjacent open pasture provide foraging habitat and are surrounded by contiguous, closed canopy forest. Both adults and larvae have been documented from this locality. Threats identified for this unit include feral hogs, ecological succession, change in ownership, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 13—Reynolds County, Missouri

Missouri Unit 13 consists of 30 ac (12 ha) in Reynolds County, Missouri, and is under private ownership. This unit consists of a spring fed meadow and deep muck fen that is located north of the town of Centerville adjacent to Highway 21. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen is fed by two springs and surface flow that provide larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent open pasture and fields provide foraging habitat for adults. Unlike most localities in Missouri, this unit is unique in that the surrounding landscape consists of more open fields than closed canopy forest and the microhabitat is more marsh like than the typical surface water fed fens associated with the species. Both adults and larvae have been documented from this unit. Threats identified for this unit include feral hogs, road construction and maintenance, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 14—Reynolds County, Missouri

Missouri Unit 14 is under private ownership and consists of 14 acres (5 hectares) in Reynolds County, Missouri. The site was designated as a State Natural Area in December 1983 and is located north of Centerville, adjacent to Highway 21. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent open yards of rural residents provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this location. Threats identified for this unit include feral hogs, road construction and maintenance, utility maintenance, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 15—Reynolds County, Missouri

Missouri Unit 15 is a very small, privately owned fen, and is comprised of 11 acres (4 hectares), adjacent to South Branch fork of Bee Fork Creek, northeast of the intersection of Route B and Highway 72 in Reynolds County, Missouri. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent old field, and unmaintained county road provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs, ecological succession, all terrain vehicles, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 16—Reynolds County, Missouri

Missouri Unit 16 is the smallest known site for Hine's emerald dragonfly in Missouri and consists of 4 acres (2 hectares) in Reynolds County. It is owned and managed by the Missouri Department of Conservation (MDC) and is located southeast of the town of Ruble on a tributary to the North Fork of Web Creek. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent logging roads provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this unit. Threats identified for this unit include feral hogs, all terrain vehicles, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Units 17 and 18—Ripley County, Missouri

Missouri Units 17 and 18 comprise the Overcup Fen complex. It consists of 224 acres (91 hectares) in Ripley County, Missouri. This complex of fens and springs is located on Little Black Conservation Area and is owned by the MDC and private land owners. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this complex. This complex of fens and springs is associated with the Little Black River and provide larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent old field provide habitat for foraging and are surrounded by contiguous, closed canopy forest. Both adults and larvae have been documented from this locality. Threats identified for this unit include feral hogs, all terrain vehicles, management conflicts, and habitat fragmentation. We are considering excluding these units from our final critical habitat designation.

Missouri Units 19 and 20—Ripley County, Missouri

Missouri Units 19 and 20 comprise the Mud Branch complex. It consists of 115 acres (47 hectares) in Ripley County, Missouri and is under private ownership. The unit is located east of the village of Shiloh and is associated with Mud Branch, a tributary of the Little Black River. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this complex. This complex of fens provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent logging roads and nearby old field provide habitat for foraging and are surrounded

by contiguous, closed canopy forest. To date, only adults have been documented from this complex. Threats identified for this unit include feral hogs, all terrain vehicles, road construction and maintenance, ecological succession, and habitat fragmentation. We are considering excluding these units from our final critical habitat designation.

Missouri Unit 21—Ripley County, Missouri

Missouri Unit 21 is a very small fen and consists of 6 acres (2 hectares) in Ripley County, Missouri. It is under U.S. Forest Service ownership and is located west of Doniphan. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent open, maintained county road provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs, all terrain vehicles, equestrian use, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Unit 22—Shannon County, Missouri

Missouri Unit 22 is owned and managed by the MDC and is located south of the village of Delaware, in Shannon County, Missouri. This unit is comprised of 32 acres (13 hectares) and includes one small fen and an adjacent larger fen that was recently restored due to beaver damage along Mahans Creek. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. These adjacent fens provide surface flow and include larval habitat and adjacent cover for resting and predator avoidance. The open areas associated with the fens provide the only habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs, beaver dams, and habitat fragmentation. We are considering excluding this unit from our final critical habitat designation.

Missouri Units 23 and 24—Washington County, Missouri

Missouri Units 23 and 24 comprise the Towns Branch and Welker Fen complex and consist of 75 acres (31 hectares) near the town of Palmer in Washington County, Missouri. The complex consists of two fens that are owned and managed by the U.S. Forest Service. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. These fens provide surface flow and include larval habitat and adjacent cover for resting and predator avoidance. The fens and adjacent open, maintained county roads provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this complex. Threats identified for this unit include feral hogs, all-terrain vehicles, road construction and maintenance, and habitat fragmentation. We are considering excluding these units from our final critical habitat designation.

Missouri Unit 25—Washington County, Missouri

Missouri Unit 25 consists of 33 acres (13 hectares) and is located northwest of the town of Palmer in Washington County, Missouri. The fen is associated with Snapps Branch, a tributary of Hazel Creek, and is owned and managed by the U.S. Forest Service. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent old logging road with open canopy provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs, all-terrain vehicles, and habitat fragmentation. We are considering excluding these units from our final critical habitat designation.

Missouri Unit 26—Wayne County, Missouri

Missouri Unit 26 is owned and managed by the U.S. Forest Service and consists of 5 acres (2 hectares). This extremely small fen is located near Williamsville and is associated with Brushy Creek in Wayne County, Missouri. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent logging road with open canopy provide habitat for foraging and are surrounded by contiguous, closed canopy forest. To date, only larvae have been documented from this unit. Threats identified for this unit include feral hogs, all-terrain vehicles, and habitat fragmentation. We are considering excluding these units from our final critical habitat designation.

Wisconsin Unit 1—Door County, Wisconsin

Wisconsin Unit 1 consists of 503 acres (204 hectares) on Washington Island in Door County, Wisconsin. This unit was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. Three adults were observed at this site in July 2000, as well as male territorial patrols and female ovipositioning behavior; crayfish burrows, seeps, and rivulet streams are present. The unit consists of larval and adult habitat including boreal rich fen, northern wet-mesic forest, emergent aquatic marsh on marl substrate, and upland forest. Known threats to the primary constituent elements include loss of habitat due to residential development, invasive plants, alteration of the hydrology of the marsh (low Lake Michigan water levels can result in drying of the marsh), contamination of groundwater, and logging. One State Natural Area owned by the Wisconsin Department of Natural Resources occurs within the unit; the remainder of the unit is privately owned.

Wisconsin Unit 2—Door County, Wisconsin

Wisconsin Unit 2 consists of 814 acres (329 hectares) in Door County, Wisconsin. This unit was known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. The first adult recorded in Wisconsin was from this unit in 1987. Exuviae and numerous male and female adults have been observed in this unit. The unit, which encompasses much of the Mink River Estuary contains larval and adult habitat including wet-mesic and mesic upland forest (including white cedar wetlands), emergent aquatic marsh, and northern sedge meadows. Known threats to the primary constituent elements include loss of habitat due to residential development, invasive plants, alteration of the hydrology of wetlands, contamination of the surface and ground water, and logging. Land in this unit is owned by The Nature Conservancy and other private landowners. Forest areas with 100 percent canopy that occur greater than 328 ft (100 m) from the open forest edge of the unit are not considered critical habitat.

Wisconsin Units 3, 4, 5, 6, and 7—Door County, Wisconsin

Wisconsin Units 3 through 7 are located in Door County, Wisconsin and comprise the following areas: Unit 3 consists of 66 ac (27 ha); Unit 4 consists of 407 ac (165 ha); Unit 5 consists of 3,093 ac (1,252 ha); Unit 6 consists of 230 ac (93 ha); and Unit 7 consists of 352 ac (142 ha). Units 3, 5, 6 and 7 were known to be occupied at the time of listing. Unit 4 was not known to be occupied at the time of listing. All of the units are within 2.5 mi (4 km) of at least one other unit, making exchange of dispersing adults likely between units. All PCEs for the Hine's emerald dragonfly are present in all of the unist. Adult numbers recorded from these units varies. Generally fewer than 8 adults have been observed at Units 4, 6, and 7 during any one season. A study by Kirk and Vogt (1995, pp.13–15) reported a total adult population in the thousands in Units 3 and 5. Male and female adults have been observed in all the units. Adult dragonfly swarms commonly occur in Unit 5. Swarms ranging in size from 16 to 275 dragonflies and composed predominantly of Hine's emerald dragonflies were recorded from a total of 20 sites in and near Units 5 and 6 during 2001 and 2002 (Zuehls 2003, pp. iii, 19, 21, and 43). In addition, the following behaviors and life stages of Hine's emerald dragonflies have been recorded from the various units: Unit 3—mating behavior, male patrolling behavior, crayfish burrows, exuviae, and female ovipositioning (egg-laying); Unit 4—larvae and exuviae; Unit 5—teneral adults, mating behavior, male patrolling, larvae, female ovipositioning (egg-laying), and crayfish burrows; and Unit 6—mating behavior, evidence of ovipositioning, and crayfish burrows.

Unit 5 contains two larval areas, while Units 3, 4, 5, 6, and 7 each contain one larval area. Units 3 through 7 all include adult habitat, which varies from unit to unit but generally includes boreal rich fen, northern wet-mesic forest (including white cedar wetlands), upland forest, shrub-scrub wetlands, emergent aquatic marsh, and northern sedge meadow. Known threats to the primary constituent elements include loss of habitat due to residential and commercial development, ecological succession, invasive plants, utility and road construction and maintenance, alteration of the hydrology of wetlands (e.g., via quarrying or beaver impoundments), contamination of the surface and ground water (e.g., via pesticide use at nearby apple/cherry orchards (Unit 7)), agricultural practices, and logging. The majority of the land in the unit is conservation land in public and private ownership; the remainder of the land is privately owned. Forest areas with 100 percent canopy that occur greater than 328 ft (100 m) from the open forest edge of the unit but that are too small for us to map out are not considered critical habitat.

Wisconsin Unit 8—Door County, Wisconsin

Wisconsin Unit 8 consists of 70 ac (28 ha) in Door County, Wisconsin and includes Arbter Lake. This unit was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. Numerous male and female adults as well as ovipositing has been observed in this unit; crayfish burrows and rivulets are present. The unit consists of larval and adult habitat with a mix of upland and lowland forest, and calcareous bog and fen communities. Known threats to the primary constituent elements include encroachment of larval habitat by invasive plants and alteration of local groundwater hydrology (e.g., via quarrying activities), contamination of surface and groundwater, and logging. Land in this unit is owned by The Nature Conservancy and other private landowners.

Wisconsin Unit 9—Door County, Wisconsin

Wisconsin Unit 9 consists of 1,193 ac (483 ha) in Door County, Wisconsin associated with Keyes Creek. This unit was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. Numerous male and female adults have been seen in this unit; ovipositing females have been observed. Crayfish burrows are present. The unit consists of larval and adult habitat with a mix of upland and lowland forest, scrub-shrub wetlands, and emergent marsh. Known threats to the primary constituent elements are loss and/or degradation of habitat due to development, groundwater depletion or alteration, surface and groundwater contamination, alteration of the hydrology of the wetlands (e.g., via stream impoundment, road construction and maintenance, and logging). The majority of the land in this unit is a State Wildlife Area owned by the Wisconsin Department of Natural Resources with the remainder of the land privately owned. Forest areas with 100 percent canopy that occur greater than 328 ft (100 m) from the open forest edge of the unit are not considered critical habitat.

Wisconsin Unit 10—Ozaukee County, Wisconsin

Wisconsin Unit 10 consists of 2,312 ac (936 ha) in Ozaukee County, Wisconsin and includes much of Cedarburg Bog. This unit was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. Numerous male and female adults have been seen in this unit including teneral adults; ovipositing females have been observed. Crayfish burrows are present. The unit consists of larval and adult habitat with a mix of shrub-carr, ''patterned'' bog composed of forested ridges and sedge mats, wet meadow, and lowland forest. Known threats to the primary constituent elements are loss and/or degradation of habitat due to residential development, groundwater depletion or alteration, surface and groundwater contamination, invasive species, road construction and maintenance, and logging. The majority of area in the unit is State land and the remainder of the land is privately owned.

Wisconsin Sites Under Evaluation for Critical Habitat Designation

Three Wisconsin sites are being evaluated to determine if they provide essential habitat for the Hine's emerald dragonfly. Those sites are the Black Ash Swamp in southern Door County and northern Kewaunee County, Kellner's Fen in Door County, and the area in and around Ephraim Swamp in Door County. Currently adult Hine's emerald dragonflies have been observed in these areas, but breeding has not been confirmed. Surveys are planned for summer 2006. Information from those surveys will be used to determine whether any of the sites are appropriate for designation as critical habitat, and therefore may be considered for inclusion in the final designation.

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. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent

decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (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 current national policy and the statutory provisions of the Act, 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) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

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 proposed species become 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, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (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 may affect, but 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 Hine's emerald dragonfly or its designated critical habitat 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 Hine's Emerald Dragonfly and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for Hine's emerald dragonfly jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the Hine's emerald dragonfly. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the Hine's emerald dragonfly 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 core area population(s), inclusive of associated

habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting Hine's emerald dragonfly critical habitat. The key factor related to the adverse modification determination is 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 Hine's emerald dragonfly critical habitat units is to support viable core area populations.

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 to an extent that the conservation value of critical habitat for the Hine's emerald dragonfly is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the Hine's emerald dragonfly include, but are not limited to:

(1) Actions that would significantly increase succession and encroachment of invasive species. Such activities could include, but are not limited to, release of nutrients and road salt (NaCl, unless it would result in an increased degree of threat to human safety) into the surface water or connected groundwater at a point source or by dispersed release (non-point source), and introduction of invasive species through human activities in the habitat. These activities can result in conditions that are favorable to invasive species and would provide an ecological advantage over native vegetation, fill rivulets and seepage areas occupied by Hine's emerald dragonfly larva, reduce detritus that provides cover for larva, and reduce flora and fauna necessary for the species to complete its lifecycle. Actions that would increase succession and encroachment of invasive species could negatively impact the Hine's emerald dragonfly and the species' habitat.

(2) Actions that would significantly increase sediment deposition within the rivulets and seepage areas occupied by Hine's emerald dragonfly larva. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, all terrain vehicle use, equestrian use, feral pig introductions, maintenance of rail lines, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of Hine's emerald dragonflies and their prey base by increasing the sediment deposition to levels that would adversely affect their ability to complete their life cycles. Actions that would significantly increase sediment deposition within rivulets and seepage areas could negatively impact the Hine's emerald dragonfly and the species' habitat.

(3) Actions that would significantly alter water quantity and quality. Such activities could include, but are not limited to, groundwater extraction; alteration of surface and subsurface areas within groundwater recharge areas; and release of chemicals, biological pollutants, or heated effluents into the surface water or groundwater recharge area at a point source or by dispersed release (non-point source). These activities could alter water conditions such that they are beyond the tolerances of the Hine's emerald dragonfly and its prey base, and result in direct or cumulative adverse affects to these individuals and their life cycles. Actions that would significantly alter water quantity and quality could negatively impact the Hine's emerald dragonfly and the species' habitat.

(4) Actions that would significantly alter channel morphology or geometry. Such activities could include but are not limited to, all terrain vehicle use, equestrian use, feral pig introductions, channelization, impoundment, road and bridge construction, mining, and loss of emergent vegetation. These activities may lead to changes in water flow velocity, temperature, and quantity that would negatively impact the Hine's emerald dragonfly and their prey base and/or their habitats. Actions that would significantly alter channel morphology or geometry could negatively impact the Hine's emerald dragonfly and the species' habitat.

(5) Actions that would fragment habitat and impact adult foraging or dispersal. Such activities could include, but are not limited to, road construction, destruction or fill of wetlands, and high-speed railroad and vehicular traffic. These activities may adversely affect dispersal resulting in a reduction in fitness and genetic exchange within populations as well as direct mortality of individuals. Actions that would fragment habitat and impact adult foraging or dispersal could negatively impact the Hine's emerald dragonfly and the species' habitat.

All of the units proposed as critical habitat, as well as those that are being considered for exclusion, are determined to contain features essential to the conservation of the Hine's emerald dragonfly or to otherwise be essential to the conservation of the species . All units are within the geographical range of the species, all were occupied by the species at the time of listing (based on observations made within the last 23 years) or are currently occupied and are considered essential to the conservation of the species, and all are likely to be used by the Hine's emerald dragonfly. Federal agencies already consult with us on activities in areas currently occupied by the Hine's emerald dragonfly, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the Hine's emerald dragonfly.

Exclusion Under Section 4(b)(2) of the Act

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 the section the Secretary has discretion as to which factors 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 are considering.

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). Stein *et al.* (1995) 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; Crouse *et al.* 2002; James 2002). 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 from 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, Candidate Conservation Agreements with Assurances, and conservation challenge cost-share. 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; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). 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; Brook *et al.* 2003).

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. 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; Bean 2002; Brook *et al.* 2003). 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).

The Service believes that the judicious use of excluding specific areas 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 conservation agreement 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.

Cooperative conservation is the foundation of the Service's actions to protect species, and the Service has many tools by which it can encourage and implement partnerships for 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 landowners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (*e.g.*, HCPs, 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 other methods (61 FR 63854; December 2, 1996).

General Principles of Section 7 Consultations Used in the Section 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 only applies 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 only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure maintenance of the value of 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. Critical habitat designation alone, however, does not require specific steps toward recovery.

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 also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*), the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing HCPs or other habitat management plans is typically 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 or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit Court 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 the Hine's emerald dragonfly. 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.

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 the exclusion of Michigan Units 1 and 2 (Hiawatha National Forest lands), and all Missouri units (1–26) from the final designation of critical habitat for the Hine's emerald dragonfly because we believe that the benefits of excluding these specific areas from the designation outweigh the inclusion of the specific areas. We believe that the exclusion of these areas from the final designation of critical habitat will not result in the extinction of the Hine's emerald dragonfly. We specifically solicit comment, however, on the inclusion or exclusion of such areas in the final designation. We will also review other relevant information concerning units being proposed in this rule as we receive it to determine whether any other units, or portions thereof, should be excluded from the final designation.

Michigan Units

Michigan Unit 1 and Michigan Unit 2 are on Hiawatha National Forest lands. The Hiawatha National Forest (Hiawatha) contains 895,313 ac (362,320 ha) of land in the eastern portion of the Upper Peninsula of Michigan. Hiawatha is broken into an east and west unit and contains a diversity of upland and wetland community types. In 2006, Hiawatha revised its Land and Resource Management Plan (Forest Plan, U.S. Department of Agriculture 2006). We completed a section 7 consultation for the Hiawatha Forest Plan that addresses federally listed resources, including the Hine's emerald dragonfly. The Hiawatha Forest Plan guides Hiawatha's activities over the next 15 years. We determined in our biological opinion resulting from that section 7 consultation that the implementation of the Plan would not jeopardize the continued existence of the Hine's emerald dragonfly.

The Hiawatha Forest Plan contains management direction that would serve to protect and conserve Hine's emerald dragonfly breeding and foraging habitats. Several standards, guidelines, and objectives in the Hiawatha Forest Plan are pertinent to Hine's emerald dragonfly. Two key standards provide strong assurances that Hine's emerald dragonflies will be protected and managed on the Hiawatha National Forest. The standards are (1) all Hine's emerald dragonfly breeding sites will be protected, and (2) signed recovery plans for federally threatened and endangered species will be implemented (United States Department of Agriculture 2006, p. 26). Standards as listed in the Hiawatha Forest Plan are required courses of action. An amendment of the Hiawatha Forest Plan is required to change a standard and would trigger

consultation with us under section 7 of the Act.

In addition to Hiawatha's Forest Plan, several voluntary activities show Hiawatha's commitment to Hine's emerald dragonfly and other listed species conservation. Over the last 5 years the Hiawatha has completed several dragonfly surveys that have led to the identification of at least two new Hine's emerald dragonfly breeding areas. In 2005, the Hiawatha hosted a Hine's emerald dragonfly workshop that provided critical education and outreach to Federal, State, and private field staff. They are also actively managing or protecting lands in an effort to help in the recovery of several other federally listed species including the piping plover and Kirtland's warbler.

We believe that the standards and guidelines outlined in the Hiawatha Forest Plan and the Forest's commitment to protect and recover federally listed species through section 7(a)(1) and 7(a)(2), adequately address identified threats to the Hine's emerald dragonfly and its habitat. Thus the relative benefits of inclusion of these lands within designated critical habitat are diminished.

(1) Benefits of Inclusion

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us pursuant to section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. Absent critical habitat designation, Federal agencies remain obligated under section 7 to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The Forest Service routinely consults with us for activities on the Hiawatha National Forest that may affect federally listed species to ensure that the continued existence of such species is not jeopardized.

Designation of critical habitat may also provide educational benefits by informing land managers of areas essential to the conservation of the Hine's emerald dragonfly. In the case of Hiawatha National Forest, there is no appreciable educational benefit because the Forest managers have already demonstrated their knowledge and understanding of essential habitat for the species through their active recovery efforts, consultation, and workshops. Furthermore, the benefits of including the Hiawatha National Forest in designated critical habitat are minimal because the Forest managers are currently implementing conservation actions for the Hine's emerald dragonfly that equal or exceed those that would be realized if critical habitat were designated.

(2) Benefits of Exclusion

Designation of critical habitat on the Hiawatha National Forest would trigger a requirement for the U.S. Forest Service to consult on activities that may affect designated critical habitat. Designation of critical habitat would also require reinitiating consultation on ongoing activities where a consultation may have already been completed that assessed the effects to a federally listed species. The requirement to undertake additional consultations or revisit already completed consultations specifically to address the effects of activities on designated critical habitat could delay or impair the U.S. Forest Service's planned activities. If the area is not excluded, it might adversely impact the agency's willingness to devote limited resources to the voluntary conservation measures noted above, which exceed those that could be required from a critical habitat designation.

(3) Benefits of Proposed Exclusion Outweigh the Benefits of Inclusion

We anticipate that our final decision will make the following determination, unless information submitted in response to the proposal causes us to reach a different conclusion.

We find that the benefits of designating critical habitat for the Hine's emerald dragonfly on Hiawatha National Forest are small in comparison to the benefits of excluding these specific areas from the final designation. Exclusion would enhance the partnership efforts with the Forest Service focused on conservation of the species on the Hiawatha National Forest, and potentially reduce some of the administrative costs during consultation pursuant to section 7 of the Act.

(4) The Proposed Exclusion Will Not Result in Extinction of the Species

We anticipate that our final decision will make the following determination, unless information submitted in response to the proposal causes us to reach a different conclusion.

We believe that the proposed exclusion of Michigan Units 1 and 2 from critical habitat would not result in the extinction of Hine's emerald dragonfly because current conservation efforts under the Land and Resource Management Plan for the Hiawatha National Forest adequately protect essential Hine's emerald dragonfly habitat and go beyond this to provide appropriate management to maintain and enhance the primary constituent elements for the Hine's emerald dragonfly. Designation of critical habitat would not require the benefits of the current conservation efforts, but only that habitat not be destroyed or adversely modified. As such, there is no reason to believe that this proposed exclusion would result in extinction of the species.

Missouri Units

Federal Land

Missouri Units 1, 2, 3, 5, 7, 8 (in part), 11 (in part), 21, 23, 24, 25, and 26 are on U.S. Forest Service lands (Mark Twain National Forest). The Mark Twain National Forest (Mark Twain) contains approximately 1.5 million acres (607,028 hectares) of land in southern and central Missouri. In 2005, Mark Twain revised their Land and Resource Management Plan (Forest Plan; U.S. Department of Agriculture 2005, Chapter 2, pp. 1–14). That Plan, through implementation of the standards and guides established for the Hine's emerald dragonfly on the Mark Twain, addresses threats to the species on U.S. Forest Service lands in Missouri. We completed a section 7 consultation for the Mark Twain Forest Plan that addresses federally listed resources, including the Hine's emerald dragonfly. We determined in our biological opinion resulting from that section 7 consultation that the implementation of the Plan would not jeopardize the continued existence of the Hine's emerald dragonfly.

The 2005 Forest Plan contains specific direction for management of fen habitat and for fens with known or suspected populations of Hine's emerald dragonflies. The Plan also contains standards and guidelines to protect soil productivity and water quality while implementing all management actions. These standards and guidelines are required courses of action; a Forest Plan Amendment is required to change a standard. Standards and Guidelines may be modified only if site-specific conditions warrant the modification, and rationale for the modification is given in a National Environmental Policy Act (NEPA) document.

The fen standards and guidelines prohibit mechanical disturbance, and establish buffer zones around fen edges. Certain management activities are prohibited or modified within the buffer zones. The fen standards and guidelines require new road design to maintain

hydrologic functioning of fens and encourage relocation of roads or restoration of hydrology where existing roads interfere with natural water flow. The fen standards and guidelines encourage management of fire-dependent wetland communities with a fire regime similar to that with which the communities evolved. (U.S. Department of Agriculture 2005, Chapter 2, pp. 13–14).

The specific standards and guidelines (U.S. Department of Agriculture 2005, Chapter 2, p. 8) for the Hine's emerald dragonfly and its habitat include: (1) Control nonnative invasive and/or undesirable plant species in fen habitats through the most effective means possible while protecting water quality (Standard); (2) Restore local hydrology by eliminating old drainage ditches or other water diversionary structures when possible if such activities would not result in a loss of habitat (Guideline); (3) Fens that harbor known populations of Hine's emerald dragonfly should be prescribe burned to control invasion of woody species or as part of larger landscape restoration and enhancement projects (Guideline); (4) Prescribed burns on fens that harbor known or suspected populations of Hine's emerald dragonfly must be scheduled to occur from November through April (Standard); (5) Prohibit vehicle and heavy equipment use in fens, unless needed to improve Hine's emerald dragonfly habitat (Standard); and (6) Control unauthorized vehicle access to fens (Standard).

Implementing the Forest Plan's standards and guidelines will maintain the natural hydrology, restore natural fire regimes, and control undesirable plant species to maintain the PCEs identified for the Hine's emerald dragonfly on the Mark Twain National Forest. Additionally, prohibiting mechanical disturbance in fens will protect the integrity of crayfish burrows and maintain important larval habitat.

In addition to the 2005 Forest Plan, the Mark Twain National Forest completed a ''Threats Assessment of Fens Containing Hines' Emerald Dragonfly'' in September 2005. This assessment describes threats to individual fens and provides recommendations to eliminate or minimize those threats. Primary recommendations are to increase the use of prescribed fire at many of the fens, and construct fences to keep all terrain vehicles and feral hogs out of a few of the locations. Potential disturbance due to equestrian use will be minimized through coordination with the appropriate U.S. Forest Service District Office; signs and fencing will be used, if necessary, to alleviate this threat. Effective control measures will minimize threats from feral hogs and beavers. In 2005, beavers were effectively removed from Missouri Unit 5 where flood water associated with a beaver dam threatened the integrity of the adjacent fen.

We believe that the standards and guidelines outlined in the Mark Twain's National Forest Land Resource Management Plan, guidelines identified in the U.S. Forest Service's 2005 Threats Assessment, and the agency's commitment to manage and maintain important fen habitat through section 7(a)(1) and 7(a)(2) consultation, adequately address identified threats to the Hine's emerald dragonfly and its habitat. Thus the relative benefits of inclusion of these lands within designated critical habitat are diminished and limited.

State Land

We are considering the exclusion of all State-owned land in Missouri under section 4(b)(2) of the Act. We will review State management plans in Illinois, Wisconsin, and Michigan to determine their adequacy in protecting and managing Hine's emerald dragonfly habitat as they are made available.

Missouri Units 14, 16, 17, 18, and 22 are under MDC ownership. Threats identified on land owned and managed by the MDC are feral hogs, habitat fragmentation, road construction and maintenance, all terrain vehicles, beaver dams, and management conflicts. The MDC has developed management plans for the five conservation areas where the Hine's emerald dragonfly has been documented (Missouri Natural Areas Committee 2001, 2006; Missouri Department of Conservation 2006a, 2006b, 2006c). These plans provide for long-term management and maintenance of fen habitat essential for larval development and adjacent habitat that provides for foraging and resting needs for the species. Areas of management concern include the fen proper, adjacent open areas for foraging, adjacent shrubs, and a 328 ft (100 m) forest edge buffer to provide habitat for resting and predator avoidance. Based on initial groundwater recharge delineation studies by Aley and Aley (2004, p. 22), the 328 ft (100 m) buffer will also facilitate the maintenance of the hydrology associated with each unit. Actions outlined in area management plans will address threats to habitat by preventing the encroachment of invasive woody plants (ecological succession), and by maintaining open conditions of the fen and surrounding areas with prescribed fire and stand improvement through various timber management practices.

The potential impact of feral hogs on fens and any possible conflicts in management on MDC-owned lands will be accomplished through various control methods that will be coordinated among area managers, the MDC's Private Land Services (PLS) Division and Natural History biologists, MDC's Recovery Coordinator for the species, the Service, the Missouri Hine's Emerald Dragonfly Workgroup, and the Federal Hine's Emerald Dragonfly Recovery Team (Recovery Team). Effective control measures will minimize threats from feral hogs and beavers. We believe that management guidelines outlined in the conservation area plans and natural area plans and the close coordination among the various agencies mentioned above (plus other identified species experts as needed), will adequately address identified threats to Hine's emerald dragonfly and its habitat on MDC lands. Thus the relative benefits of inclusion of these lands within designated critical habitat are diminished and limited.

Private Land

We are considering the exclsuion of all private land in Missouri under section 4(b)(2) of the Act. We will continue to review management plans, partnerships, and conservation agreements in Illinois, Wisconsin, and Michigan to determine their adequacy in protecting and managing Hine's emerald dragonfly habitat as they are made available.

Missouri Units 2 (in part), 4, 6, 8 (in part), 9, 10, 11 (in part), 12, 13, 15, 19, and 20 are under private ownership. Threats identified on private land are feral hogs, habitat fragmentation, road construction and maintenance, ecological succession, all terrain vehicles, beaver dams, utility maintenance, application of herbicides, and change in ownership. All threats listed above for private property in Missouri will be addressed through close coordination among personnel with the MDC's PLS Division or Regional Natural History biologists and private landowners. Additionally, MDC personnel work closely and proactively with the National Resources Conservation Service (NRCS) and the Service's Partners for Fish and Wildlife Program to initiate management and maintenance actions on fens occupied by Hine's emerald dragonfly that will benefit the species and alleviate potential threats.

Effective control measures will be incorporated to minimize threats from feral hogs and beavers by providing

recommendations to private landowners through coordination with MDC's PLS Division or Regional Natural History biologists, the NRCS, and the Service's Partners for Fish and Wildlife Program. The Nature Conservancy manages Grasshopper Hollow (in Unit 11) in accordance with the Grasshopper Hollow Management Plan (The Nature Conservancy 2006, p. 1–4) to maintain fen habitat. Utility maintenance (Units 8 and 14) and herbicide application to maintain power line rights-of-way (Unit 8) were identified as potential threats at two units. Those potential threats will be minimized through close coordination among the MDC's PLS Division, MDC's Hine's emerald dragonfly recovery coordinator, and the appropriate utility maintenance company and its contractors. The potential change in ownership on private land in Missouri from cooperative landowners to ones who may not want to manage their land to benefit the species is a concern on some private lands. This threat will be addressed by continued close coordination between new landowners and MDC's PLS Division or their Hine's emerald dragonfly recovery coordinator. The landowner's access to multiple landowner incentive programs administered through the MDC, NRCS, and the Service's Partners for Fish and Wildlife Program will continue to be a main focus of outreach to any potential new private property owner. Unit 14 is under private ownership but is a designated State Natural Area (Missouri Natural Areas Committee 2006). A plan developed for the area ensures that the integrity of the fen is maintained (Missouri Natural Areas Committee 2006).

Because of the close coordination and excellent working partnership of all parties listed above, we believe that threats to Hine's emerald dragonfly and its habitat on private property in Missouri will be minimized. Thus, the relative benefits of inclusion of these lands within designated critical habitat are diminished and limited.

(1) Benefits of Inclusion

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. Absent critical habitat designation, Federal agencies remain obligated under section 7 to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The Forest Service routinely consults with us on activities on the Mark Twain National Forest that may affect federally listed species to ensure that the continued existence of such species is not jeopardized.

Designation of critical habitat may also provide educational benefits by informing land managers of areas essential to the conservation of the Hine's emerald dragonfly. In the case of Missouri, there is no appreciable educational benefit because the Mark Twain National Forest, MDC, and private conservation groups have already demonstrated their knowledge and understanding of essential habitat for the species through active recovery efforts and consultation. The Missouri public, particularly landowners with Hine's emerald dragonfly habitat on their lands, is also well informed about the Hine's emerald dragonfly.

Furthermore, the benefits of including the Mark Twain National Forest, State-managed lands, and several of the privately owned areas in Missouri in designated critical habitat are minimal because the land managers/landowners are currently implementing conservation actions for the Hine's emerald dragonfly and its habitat that are beyond those that would be realized if critical habitat were designated.

(2) Benefits of Proposed Exclusion

Designation of critical habitat on the Mark Twain National Forest would trigger a requirement for the U.S. Forest Service to consult on activities that may affect designated critical habitat. Designation of critical habitat would also require reinitiating consultation on ongoing activities where a consultation may have already been completed that assessed the effects to a federally listed species. The requirement to undertake additional consultations or revisit already completed consultations specifically to address the effects of activities on designated critical habitat could delay or impair the U.S. Forest Service's planned activities. If the area is not excluded, it might adversely impact the agency's willingness to devote limited resources to voluntary conservation measures exceeding those that could be required from a critical habitat designation.

Excluding State-owned lands in Missouri from the critical habitat designation will help to strengthen the already robust working relationship between the Service and MDC. The State has a strong history of conserving the Hine's emerald dragonfly and other federally listed species. The Service's willingness to work closely with MDC on innovative ways to manage federally listed species will continue to reinforce those conservation efforts.

The designation of critical habitat on private lands in Missouri would harm ongoing or future partnerships that have been or may be developed on those lands. Many private landowners in Missouri view critical habitat negatively and believe that such designation will impact their ability to manage their land. This is despite many attempts at public outreach and education to the contrary. Based on past experiences in Missouri, it is likely that the designation of critical habitat will hamper conservation actions that have been initiated for Hine's emerald dragonfly on private land through various landowner incentive programs. The MDC has had a longstanding history of working with private landowners in Missouri, especially regarding federally listed species. Of the 26 units being considered for exclusion in the State, 12 (46 percent) are on private land. The MDC has worked closely with the NRCS to implement various landowner incentive programs that are available through the Farm Bill.

To further facilitate the implementation of these and other landowner incentive programs on the ground, the MDC created the PLS Division and established 49 positions throughout the State. The PLS Division works with multiple landowners within the range of the Hine's emerald dragonfly in Missouri to undertake various conservation actions to maintain and/or enhance fen habitat. The MDC has also worked closely with the Service's Partners for Fish and Wildlife Program to implement various management actions on private lands. The designation of critical habitat for the Hine's emerald dragonfly on private land in Missouri would significantly hinder the ability to implement various landowner incentive programs with multiple landowners and would negate conservation benefits already initiated for the species.

The Hine's emerald dragonfly has become such a contentious issue in Missouri that the species is often viewed negatively by private landowners. Multiple private landowners have been contacted by MDC personnel to obtain permission to survey the species on their property. In many cases, access has been denied because of negative perceptions associated with the presence of federally listed species on private land and the perception that all fens currently occupied by the Hine's emerald dragonfly will be designated as critical habitat.

Although access to survey some private land has been denied, several landowners have conducted various management actions to benefit the Hine's emerald dragonfly, especially in Reynolds County where the largest amount of privately owned land with the species occurs. The designation of critical habitat on such sites might be expected to dissolve developing partnerships and prevent the initiation of conservation actions in the future.

Based on potential habitat identified by examining the Service's National Wetland Inventory maps, there are other areas with suitable Hine's emerald dragonfly habitat where the species may be found. Many of these sites occur on private land. Pending further research on currently occupied sites, especially related to population dynamics and the role Missouri populations may play in achieving the recovery objectives outlined in the Service's Recovery Plan (U.S. Fish and Wildlife Service 2001), the likely discovery of additional sites could provide significant contributions towards the range-wide recovery of the species. Thus, continued or additional denial of access to private property could hamper the recovery of the species.

(3) Benefits of Proposed Exclusion Outweigh the Benefits of Inclusion

We anticipate that our final decision will make the following determination, unless information submitted in response to the proposal causes us to reach a different conclusion.

We find that the benefits of designating critical habitat for the Hine's emerald dragonfly in Missouri are small in comparison to the benefits of the exclusions being considered. Exclusion would enhance the partnership efforts with the Forest Service and the MDC focused on conservation of the species in the State, and secure conservation benefits for the species beyond those that could be required under a critical habitat designation. Excluding these areas also would reduce some of the administrative costs during consultation under section 7 of the Act.

The benefits of designating critical habitat on private lands in Missouri are minor compared to the much greater benefits derived from exclusion, including the maintenance of existing, established partnerships and encouragement of additional conservation partnerships in the future. It is our strong belief that benefits gained through outreach efforts associated with critical habitat and additional section 7 requirements (in the limited situations where there is a Federal nexus), would be negated by the loss of current and future conservation partnerships, especially given that access to private property and the possible discovery of additional sites in Missouri could help facilitate recovery of the species.

(4) The Proposed Exclusion Will Not Result in Extinction of the Species

We anticipate that our final decision will make the following determination, unless information submitted in response to the proposal causes us to reach a different conclusion.

We believe that the exclusion from critical habitat under consideration (Missouri Units 1 through 26) would not result in the extinction of Hine's emerald dragonfly because current conservation efforts under the Land and Resource Management Plan for the Mark Twain National Forest, Conservation and Natural Area Plans by the Missouri Department of Conservation, and the TNC's Management Plan for Grasshopper Hollow adequately protect essential Hine's emerald dragonfly habitat and provide appropriate management to maintain and enhance the primary constituent elements for the Hine's emerald dragonfly. In addition, conservation partnerships on non-Federal lands are important conservation tools for this species in Missouri that could be negatively affected by the designation of critical habitat. As such, there is no reason to believe that this proposed exclusion would result in extinction of the species.

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 (or fewer) areas beyond those identified in this proposed rule 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.

Economic Analysis

An analysis of the potential economic impacts of proposing critical habitat for the Hine's emerald dragonfly 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/midwest/endangered,* or by contacting the Chicago, Illinois Ecological Services Field 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 public hearings on this proposed rule. We have scheduled a public hearing on this proposed rule on the date and at the address as specified above in the **DATES** and **ADDRESSES** sections. Public hearings are designed to gather relevant information that the public may have that we should consider in our rulemaking. Before the hearing, we will hold an informational meeting to present information about the proposed action. During the hearing, we invite the public to submit information and comments. Interested persons may also submit information and comments in writing during the open public comment period. Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and

written statements receive equal consideration. There are no limits on the length of written comments submitted to us. Additional details on the hearing, including a map, will be provided on our Web site at (*http://www.fws.gov/midwest/endangered*) and are available from the person in the **FOR FURTHER INFORMATION CONTACT** section.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact the Chicago, Illinois Ecological Services Field Office at 847–381–2253 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or 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. Once available, the draft economic analysis can be obtained from our Web site at *http://www.fws.gov/midwest/endangered* or by contacting the Chicago, Illinois Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT** 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 Act 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 as well. 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 the Hine's emerald dragonfly is a significant regulatory action under Executive Order 12866 in that it may raise novel legal and policy issues.

Utility easements with electrical transmission and distribution lines and a rail line used for transporting coal to a power plant occur in Illinois Units 1

through 5 and 7. The entities who own and maintain the electrical lines and rail lines are working on an agreement to manage and protect the Hine's emerald dragonfly. At this time it is unknown what effect designation of critical habitat in these locations would have on energy supply, distribution, or use. An analysis of the economic impacts of proposing critical habitat for the Hine's emerald dragonfly is being prepared. While we do not expect the designation of critical habitat for the Hine's emerald dragonfly to significantly affect energy supplies, distribution, or use, we will further examine this as we conduct our analysis of potential economic effects. We will announce the availability of the draft economic analysis as soon as it is completed and we will seek public review and comment.

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) Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the Hine's emerald dragonfly. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the Hine's emerald dragonfly does not pose significant takings implications.

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 Illinois, Michigan, Missouri and Wisconsin. The designation of critical habitat in areas currently occupied by the Hine's emerald dragonfly imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas 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. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Hine's emerald dragonfly.

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 manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of the Hine's emerald dragonfly. Therefore, designation of critical habitat for the Hine's emerald dragonfly has not been proposed on Tribal lands.

Revision of ''Historic Range'' in the Entry for ''Dragonfly, Hine's Emerald'' in § 17.11(h), the List of Endangered and Threatened Wildlife

The proposed regulation includes revision of the ''Historic Range'' of Hine's emerald dragonfly in § 17.11(h), the List of Endangered and Threatened Wildlife. In the current table, the historic range for this taxon is listed as Illinois, Indiana, Ohio, and Wisconsin. A more accurate historic range for Hine's emerald dragonfly includes Alabama, Michigan, and Missouri in addition to the aforementioned States. Thus, the ''Historic Range'' entry in the table is proposed to be revised to read U.S.A. (AL, IL, IN, MI, MO, OH, and WI).

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Chicago, Illinois Ecological Services Field Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Chicago, Illinois Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.11(h), the List of Endangered and Threatened Wildlife, revise the entry for ''Dragonfly, Hine's emerald'' under ''INSECTS'' 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							
*	*	*	*	*	*		*
Dragonfly, Hine's emerald.	*Somatochlora hineana*	U.S.A. (AL, IL, IN, MI, MO, OH, and WI).	NA	E	573	17.95(i)	NA.
*	*	*	*	*	*		*

3. In § 17.95(i), add an entry for ''Hine's emerald dragonfly (*Somatochlora hineana*),'' in the same alphabetical order in which this species appears in the table at 50 CFR 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) Insects.

* * * * *

Hine's emerald dragonfly (*Somatochlora hineana*)

(1) Critical habitat units are depicted for Cook, DuPage and Will Counties, Illinois; Alpena, Mackinac, and Presque Isle Counties, Michigan; Dent, Iron, Morgan, Phelps, Reynolds, Ripley, Shannon, Washington, and Wayne Counties, Missouri; and Door and Ozaukee Counties, Wisconsin, on the maps below.

(2) The primary constituent elements of critical habitat for the Hine's emerald dragonfly are:

(i) For egg deposition and larval growth and development:

(A) Shallow, organic soils (histosols, or with organic surface horizon) overlying calcareous substrate (predominantly dolomite and limestone bedrock);

(B) Calcareous water from intermittent seeps and springs and associated shallow, small, slow flowing streamlet channels, rivulets, and/or sheet flow within fens;

(C) Emergent herbaceous and woody vegetation for emergence facilitation and refugia;

(D) Occupied, maintained crayfish burrows for refugia; and

(E) Prey base of aquatic macroinvertebrates, including mayflies, aquatic isopods, caddisflies, midge larvae, and aquatic worms.

(ii) For adult foraging, reproduction, dispersal, and refugia necessary for roosting, resting and predator avoidance (especially during the vulnerable teneral stage):

(A) Natural plant communities near the breeding/larval habitat which may

include marsh, sedge meadow, dolomite prairie, and the fringe (up to 328 ft (100m)) of bordering shrubby and forested areas with open corridors for movement and dispersal; and

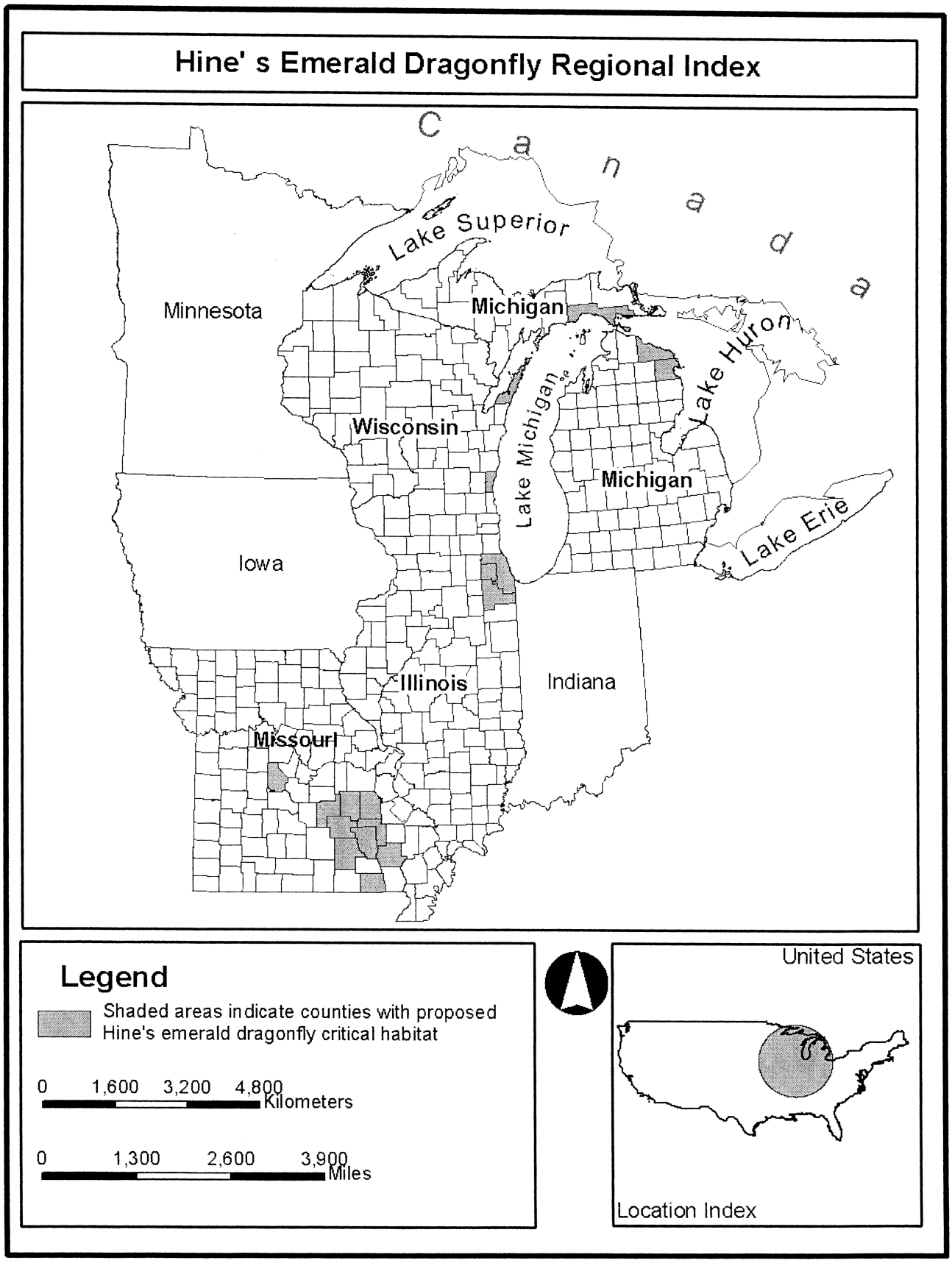
(B) Prey base of small, flying insect species (e.g., dipterans).

(3) Critical habitat does not include human-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, lawns, old fields and pastures, piers and docks, aqueducts, airports, and roads, and the land on which such structures are located. In addition, critical habitat does not include open-water areas (i.e., areas beyond the zone of emergent vegetation) of lakes and ponds.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Geographical Information Systems, Universal Transverse Mercator (UTM) coordinates. Critical habitat units are described using the public land survey system (township (T), range (R) and section (Sec.)).

(5) Note: Index map of critical habitat units (Index map) follows:

BILLING CODE 4310–55–P


Hine' s Emerald Dragonfly Regional Index
Canada
Lake Superior
Minnesota
Michigan
Lake Huron
Wisconsin
Lake Michigan
Michigan
Lake Erie
Iowa
Illinois
Indiana
Missouri
Legend
Shaded areas indicate counties with proposed Hine's emerald dragonfly critical habitat
0 1,600 3,200 4,800 Kilometers
0 1,300 2,600 3,900 Miles
United States
Location Index

(6) Illinois Units 1 through 7, Cook, DuPage, and Will Counties, Illinois.

(i) Illinois Unit 1: Will County. Located in T36N, R10E, Sec. 22, Sec. 27, SE¼ NE¼ Sec. 28, NE¼ SE¼ Sec. 28, NW¼ NW¼ Sec. 34 of the Joliet 7.5′ USGS topographic quadrangle. Land south of Illinois State Route 7, east of Illinois State Route 53, and west of the Des Plaines River.

(ii) Illinois Unit 2: Will County. Located in T36N, R10E, Sec. 3, NW¼ E½ Sec. 10, E½ Sec. 15 of the Romeoville and Joliet 7.5′ USGS topographic quadrangles. Land east of Illinois State Route 53, and west of the Des Plaines River.

(iii) Illinois Unit 3: Will County. Located in T37N, R10E, SW¼ Sec. 26, NW¼ SE¼ Sec. 26, E½ Sec. 34, W½ NW¼ Sec. 35 of the Romeoville 7.5′ USGS topographic quadrangle. Land west and north of the Des Plaines River and north of East Romeoville Road.

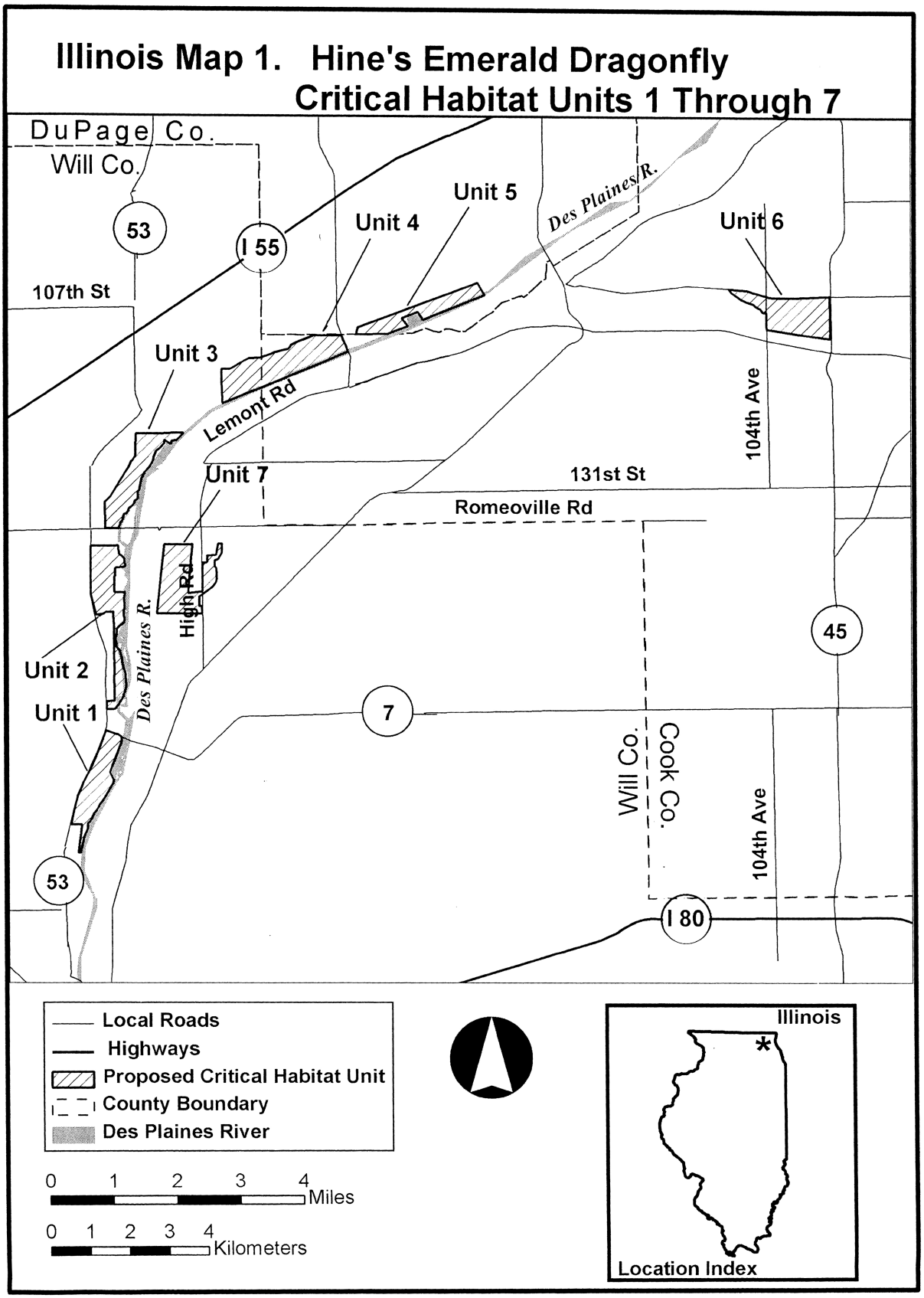
(iv) Illinois Unit 4: Will and Cook Counties. Located in T37N, R10E, S½ NE¼ Sec. 24, W½ SW¼ Sec. 24, SE¼ Sec. 24 and T37N, R11E, SW¼ SW¼ Sec. 17, Sec. 19, NW¼ Sec. 20 of the Romeoville 7.5′ USGS topographic quadrangle. Land to the south of Bluff Road, west of Lemont Road, and north of the Des Plaines River.

(v) Illinois Unit 5: DuPage County. Located in T37N, R11E, NW¼ Sec. 15, NW¼ SW¼ Sec. 15, S½ NE¼ Sec. 16, SW¼ Sec. 16, N½ SE¼ Sec. 16, SE¼ Sec. 17 of the Sag Bridge 7.5′ USGS topographic quadrangle. Land to the north of the Des Plaines River.

(vi) Illinois Unit 6: Cook County. Located in T37N, R12E, S½ Sec. 16, S½ NE¼ Sec. 17, N½ SE¼ Sec. 17, N½ Sec. 21 of the Sag Bridge and Palos Park 7.5′ USGS topographic quadrangles. Land to the north of the Calumet Sag Channel, south of 107th Street, and east of U.S. Route 45.

(vii) Illinois Unit 7: Will County. Located in T36N, R10E, W½ Sec. 1, Sec. 2, N½ Sec. 11 of the Romeoville and Joliet 7.5′ USGS topographic quadrangles. Land east of the Illinois and Michigan Canal.

(viii) Note: Map of Illinois proposed critical habitat Units 1 through 7 (Illinois Map 1) follows:

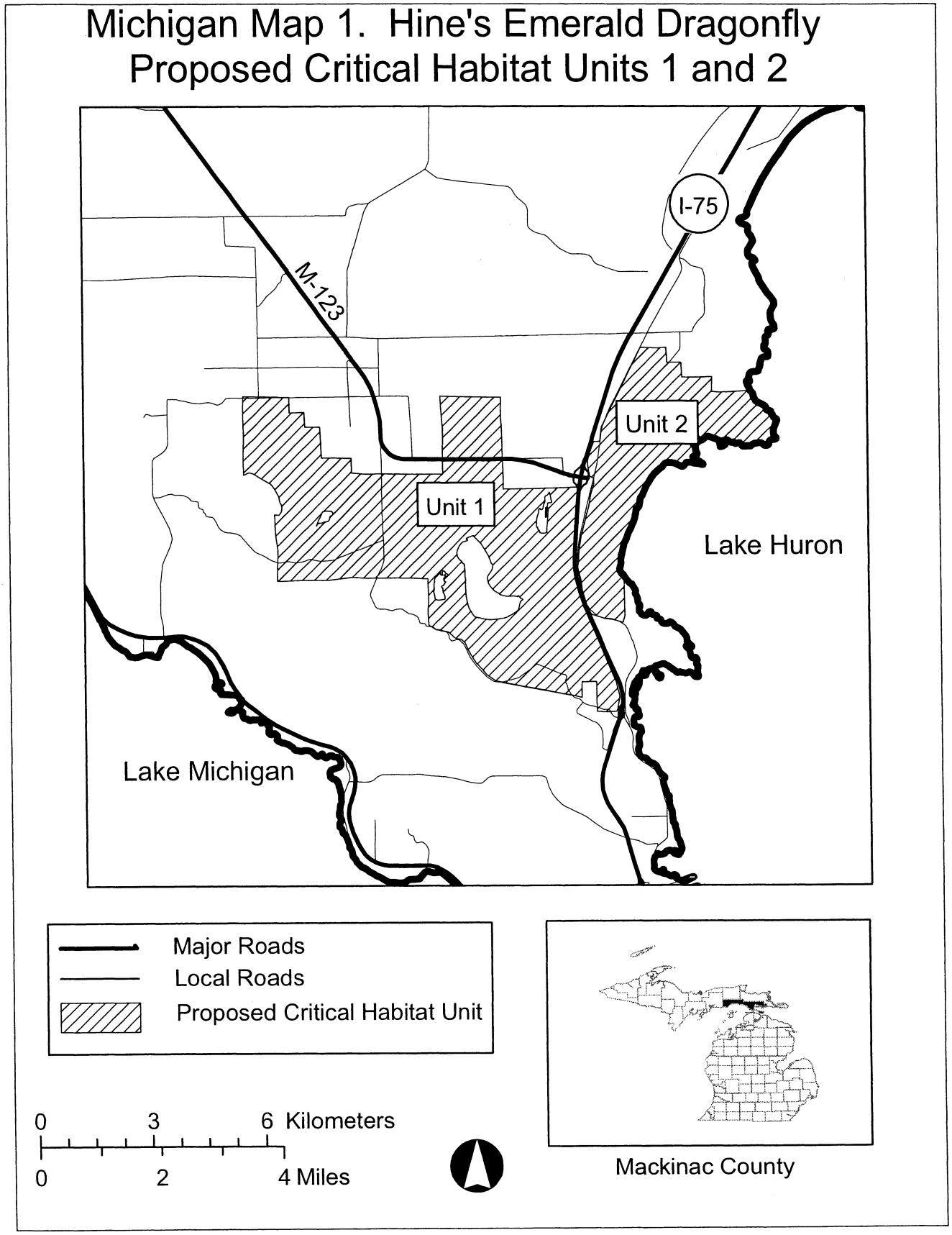

Illinois Map 1. Hine's Emerald Dragonfly
Critical Habitat Units 1 Through 7
DuPage Co.
Will Co.
53
I 55
107th St
Unit 5
Unit 4
Des Plaines R.
Unit 6
Unit 3
Lemont Rd
104th Ave
Unit 7
131st St
Romeoville Rd
High Rd
Des Plaines R.
45
Unit 2
Unit 1
7
Will Co.
Cook Co.
104th Ave
53
I 80
Local Roads
Highways
Proposed Critical Habitat Unit
County Boundary
Des Plaines River
0 1 2 3 4 Miles
0 1 2 3 4 Kilometers
Illinois
Location Index

(7) Michigan Units 1 and 2, Mackinac County, Michigan.

(i) Michigan Unit 1: Mackinac County. The unit is located approximately 2 miles north of the village of St. Ignace. The unit contains all of T41N, R4W, Secs. 3, 6, 8, 9, 10, 11, 14, 15, 16, 23; portions of T41N, R4W, Secs. 4, 7, 17, 18, 22, 24, 25, 26, 27; and T41N, R5W, Secs. 1 and 12 of the Moran and Evergreen Shores 7.5′ USGS topographic quadrangles. The unit is west of I–75, east of Brevort Lake, and north of Castle Rock Road.

(ii) Michigan Unit 2: Mackinac County. The unit is located approximately 2 miles north of the village of St. Ignace. The unit contains all of T41N, R3W, Sec. 6; portions of T41N, R4W, Secs. 1, 12, 13, 24; portions of T41N, R3W, Secs. 4, 5, 7; and portions of T42N, R3W, Sec. 31 of the Evergreen Shores 7.5′ USGS topographic quadrangle. The unit is west of Lake Huron and east of I–75.

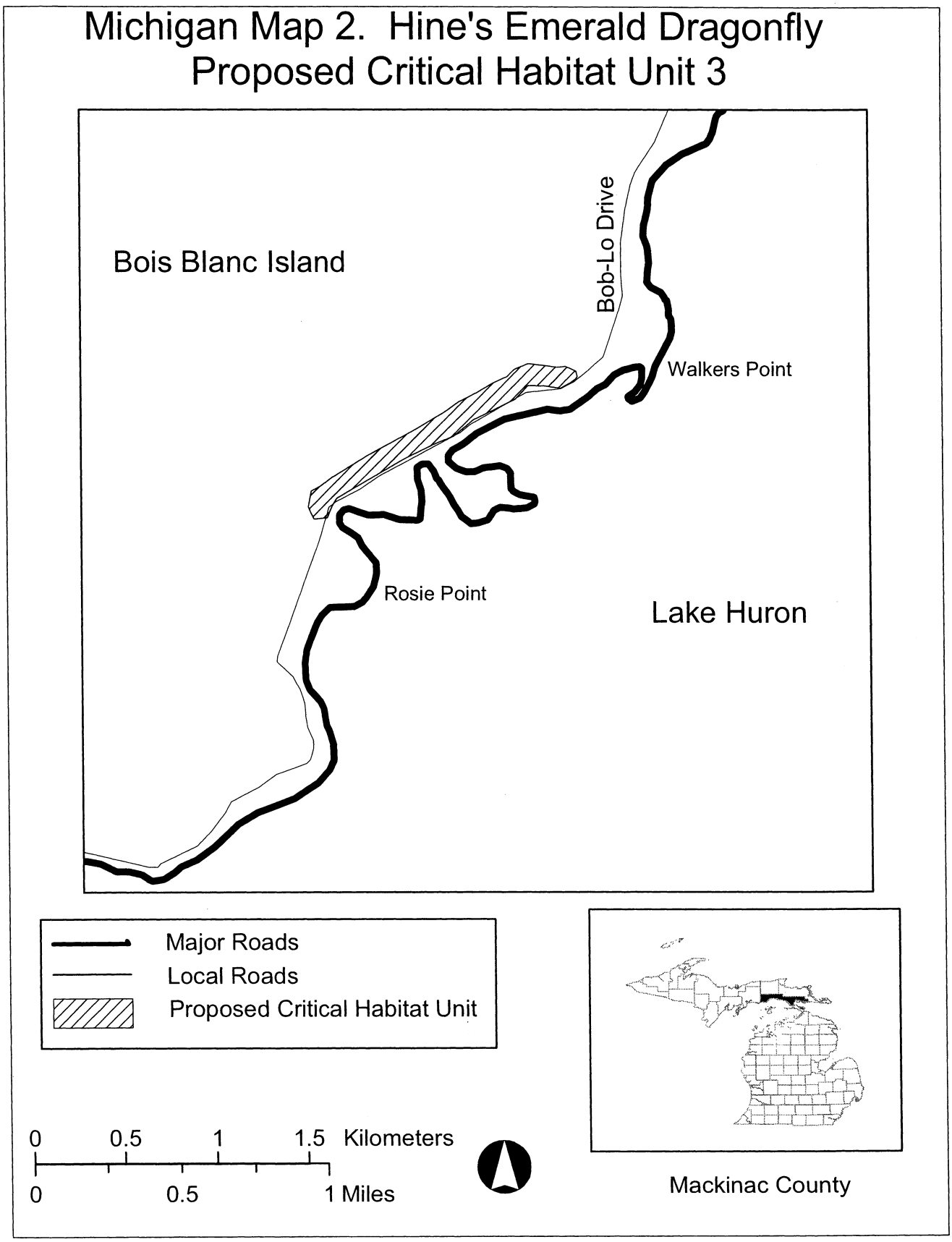
(iii) Note: Map of Michigan proposed critical habitat Units 1 and 2 (Michigan Map 1) follows:


Michigan Map 1. Hine's Emerald Dragonfly
Proposed Critical Habitat Units 1 and 2
I-75
M-123
Unit 2
Unit 1
Lake Huron
Lake Michigan
Major Roads
Local Roads
Proposed Critical Habitat Unit
0 3 6 Kilometers
0 2 4 Miles
Mackinac County

(8) Michigan Unit 3, Mackinac County, Michigan.

(i) Michigan Unit 3: Mackinac County. Located on the east end of Bois Blanc Island. Bois Blanc Island has not adopted an addressing system using the public land survey system. The unit is located in Government Lots 25 and 26 of the Cheboygan and McRae Bay 7.5′ USGS topographic quadrangles. The unit extends from approximately Walker's Point south to Rosie Point on the west side of Bob-Lo Drive. It extends from the road approximately 328 ft (100 m) to the west.

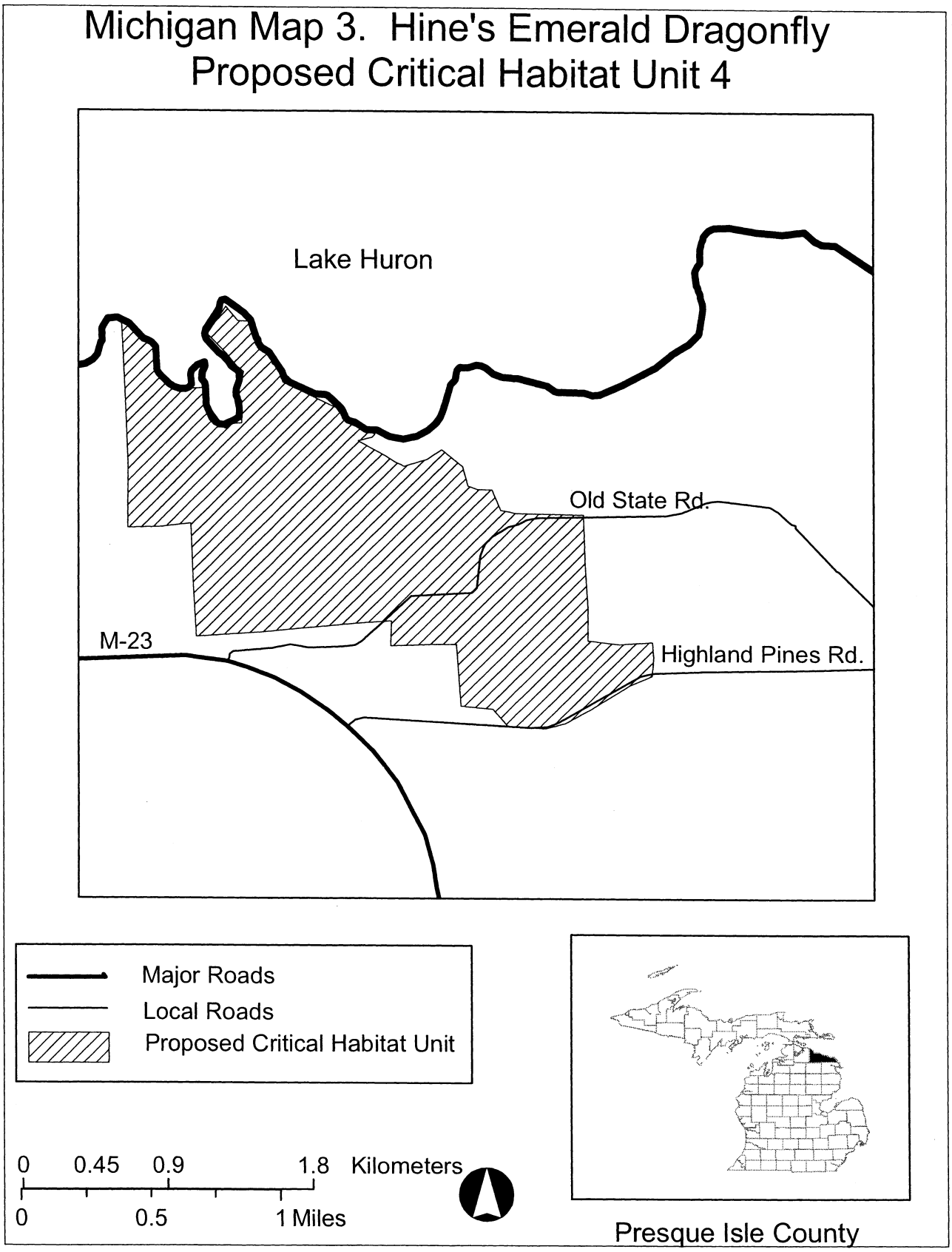
(ii) Note: Map of Michigan proposed critical habitat Unit 3 (Michigan Map 2) follows:


Michigan Map 2. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 3
Bois Blanc Island
Bob-Lo Drive
Walkers Point
Rosie Point
Lake Huron
Major Roads
Local Roads
Proposed Critical Habitat Unit
0 0.5 1 1.5 Kilometers
0 0.5 1 Miles
Mackinac County

(9) Michigan Unit 4, Presque Isle County, Michigan.

(i) Michigan Unit 4: Presque Isle County. Located approximately 12 miles southeast of the village of Rogers City. The unit contains all of T34N, R7E, SW¼ SW¼ Sec. 14, SW¼ NW¼ Sec. 15, NE¼ SW¼ Sec. 15, NW¼ SE¼ Sec. 15, NW¼ SW¼ Sec. 15, SE¼ SE¼ Sec. 15, NW¼ NE¼ Sec. 16, NE¼ NW¼ Sec. 16, SE¼ NE¼ Sec. 16, and NW¼ NW¼ Sec. 23. It also contains portions of T34N, R7E, all ¼ sections in Secs. 15, all ¼ sections in Sec. 16, SE¼ and SW¼ Sec. 9, SW¼ Sec. 10, SW¼ Sec. 14, NE¼ Sec. 22, NW¼ and NE¼ Sec. 23 of the Thompsons Harbor 7.5′ USGS topographic quadrangle. The northern boundary of the unit is Lake Huron and the southern boundary is north of M–23.

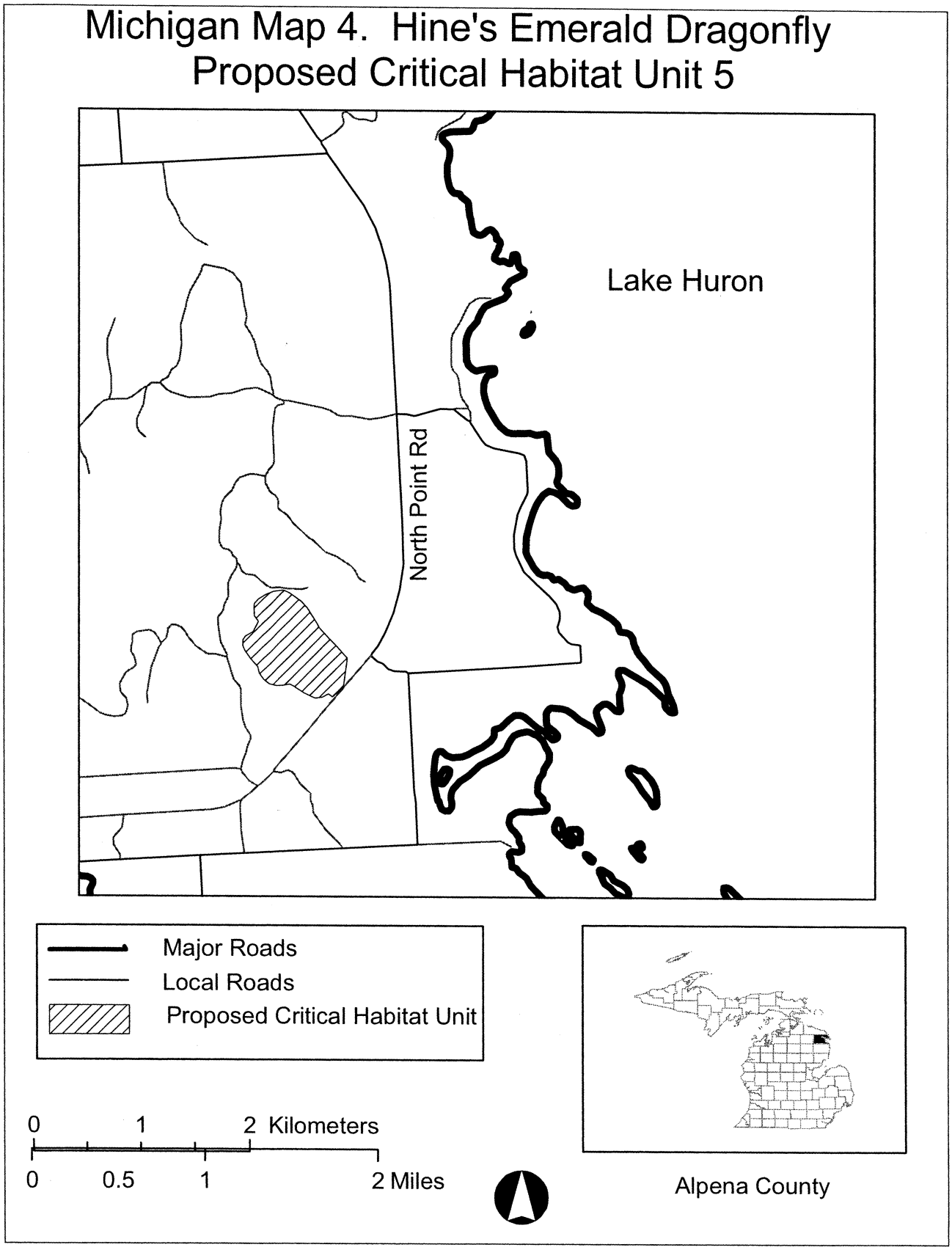
(ii) Note: Map of Michigan proposed critical habitat Unit 4 (Michigan Map 3) follows:


Michigan Map 3. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 4
Lake Huron
Old State Rd.
M-23
Highland Pines Rd.
Major Roads
Local Roads
Proposed Critical Habitat Unit
0 0.45 0.9 1.8 Kilometers
0 0.5 1 Miles
Presque Isle County

(10) Michigan Unit 5, Alpena County, Michigan.

(i) Michigan Unit 5: Alpena County. Located approximately 9 miles northeast of the village of Alpena. The unit contains all of T31N, R9E, SE¼ SW¼ Sec 9. It also contains portions of T31N, R9E, NW¼ SW¼ Sec. 9, NE¼ SW¼ Sec. 9, SW¼ SW¼ Sec. 9, SW¼ SE¼ Sec 9; and portions of T31N, R9E, NE¼ NW¼ Sec. 16, NW¼ NE¼ Sec. 16, NW¼ NW¼ Sec. 16 of the 7.5′ USGS topographic quadrangle North Point 7.5′ USGS topographic quadrangle. North Point Road is east of the area.

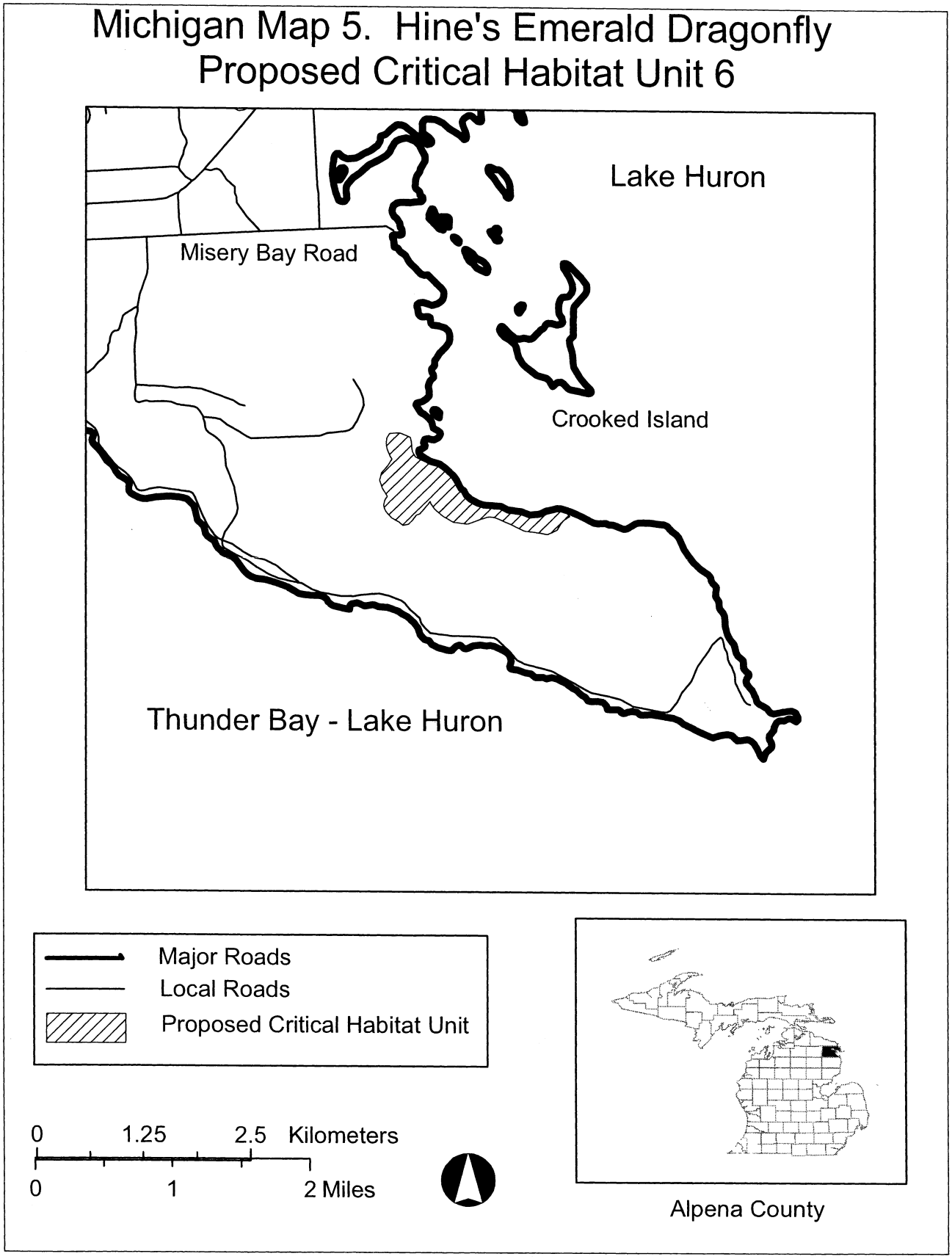
(ii) Note: Map of Michigan proposed critical habitat Unit 5 (Michigan Map 4) follows:


Michigan Map 4. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 5
Lake Huron
North Point Rd
Major Roads
Local Roads
Proposed Critical Habitat Unit
0 1 2 Kilometers
0 0.5 1 2 Miles
Alpena County

(11) Michigan Unit 6, Alpena County, Michigan.

(i) Michigan Unit 6: Alpena County. Located approximately 5 miles east of the village of Alpena. The unit contains all of T31N, R9E, SW¼ SE¼ Sec. 27. It also contains portions of T31N, R9E, NW¼ SE¼ Sec. 27, NE¼ SW¼ Sec. 27, SE¼ SW¼ Sec. 27, SE¼ SE¼ Sec. 27; portions of T31N, R9E, NE¼ NW¼ Sec. 34, NW¼ NE¼ Sec. 34, NE¼ NE¼ Sec. 34; and portions of T31N, R9E, NW¼ NW¼ Sec. 35, NE¼ NW¼, NW¼ NE¼ Sec. 35 of the North Point 7.5′ USGS topographic quadrangle. Lake Huron is the east boundary of the unit.

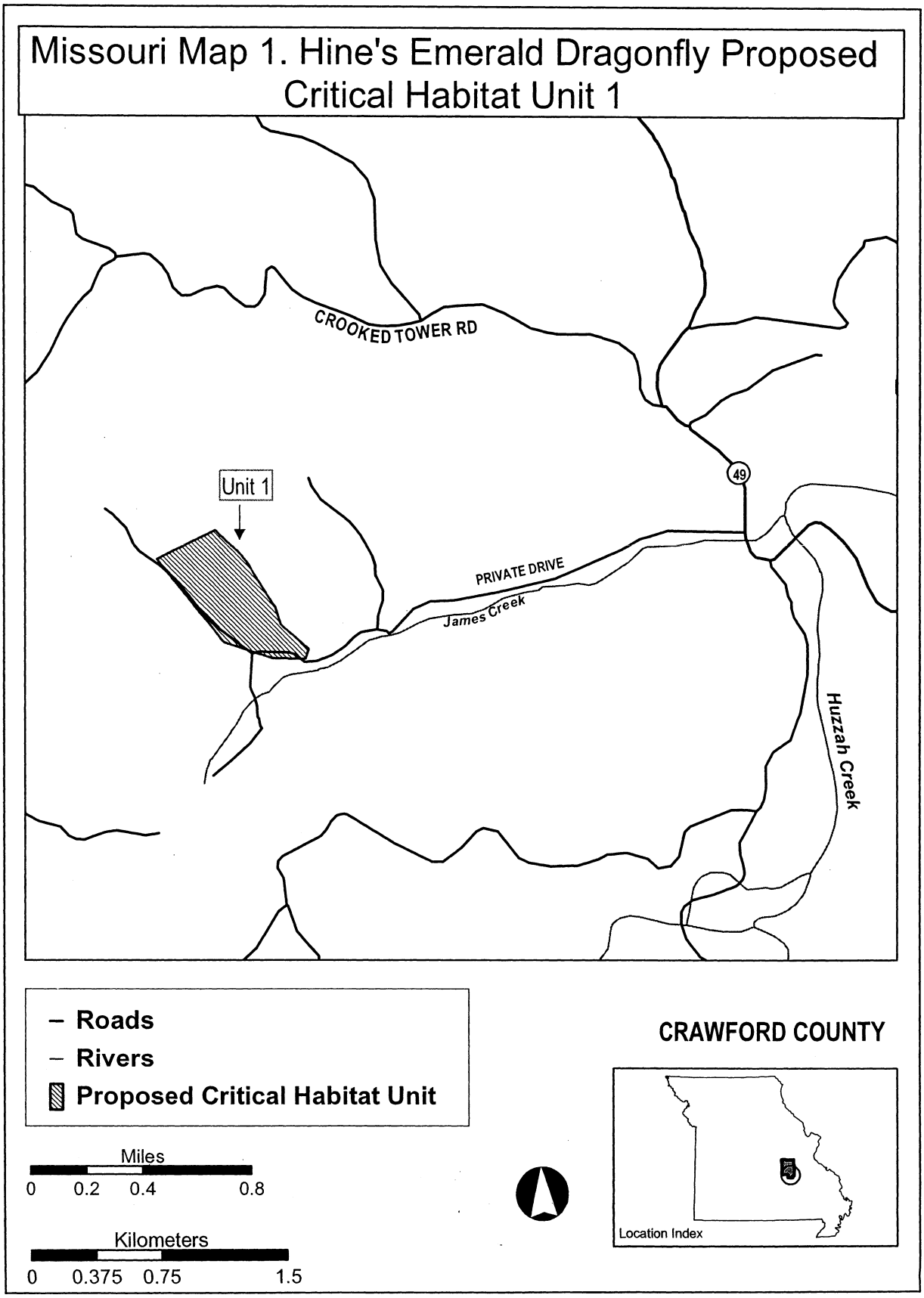
(ii) Note: Map of Michigan proposed critical habitat Unit 6 (Michigan Map 5) follows:


Michigan Map 5. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 6
Lake Huron
Misery Bay Road
Crooked Island
Thunder Bay - Lake Huron
Major Roads
Local Roads
Proposed Critical Habitat Unit
0 1.25 2.5 Kilometers
0 1 2 Miles
Alpena County

(12) Missouri Unit 1, Crawford County, Missouri.

(i) Missouri Unit 1: Crawford County. Located in T35N, R3W, Secs. 22 and 23 of the Viburnum West 7.5′ USGS topographic quadrangle. Missouri Unit 1 is associated with James Creek and is located approximately 1.5 miles west of Billard, Missouri.

(ii) Note: Map of Missouri proposed critical habitat Unit 1 (Missouri Map 1) follows:


Missouri Map 1. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 1
CROOKED TOWER RD
Unit 1
49
PRIVATE DRIVE
James Creek
Huzzah Creek
Roads
Rivers
Proposed Critical Habitat Unit
CRAWFORD COUNTY
Miles
0 0.2 0.4 0.8
Kilometers
0 0.375 0.75 1.5
Location Index

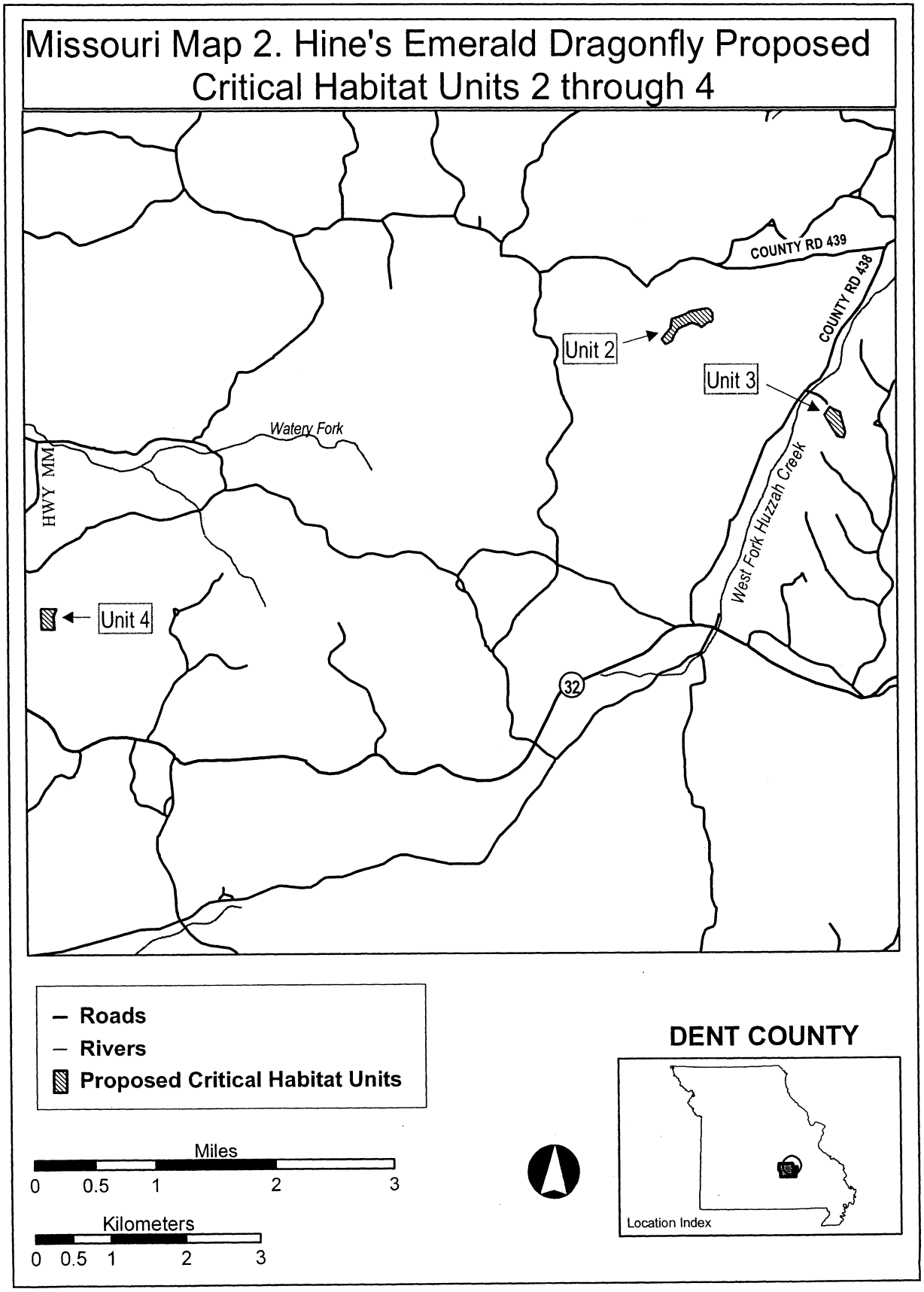
(13) Missouri Units 2 through 4, Dent County, Missouri.

(i) Missouri Unit 2: Dent County. Located in T34N, R3W, Secs. 3 and 4 of the Howes Mill Spring 7.5′ USGS topographic quadrangle. Missouri Unit 2 is associated with an unnamed tributary to West Fork Huzzah Creek and is located approximately 2.5 air miles north of the village of Howes Mill, Missouri adjacent to county road 438.

(ii) Missouri Unit 3: Dent County. Located in T34N, R3W, Sec. 11 of the Viburnum West 7.5′ USGS topographic quadrangle. Missouri Unit 3 is associated with a tributary of Huzzah Creek and is approximately 2 air miles north northeast of the village of Howes Mill.

(iii) Missouri Unit 4: Dent County. Located in T34N, R4W, Secs. 15 and 22 of the Howes Mill Spring 7.5′ USGS topographic quadrangle. Missouri Unit 4 is associated with a tributary of Hutchins Creek in Fortune Hollow and is located approximately 1 mile east of the juncture of Highway 72 and Route MM.

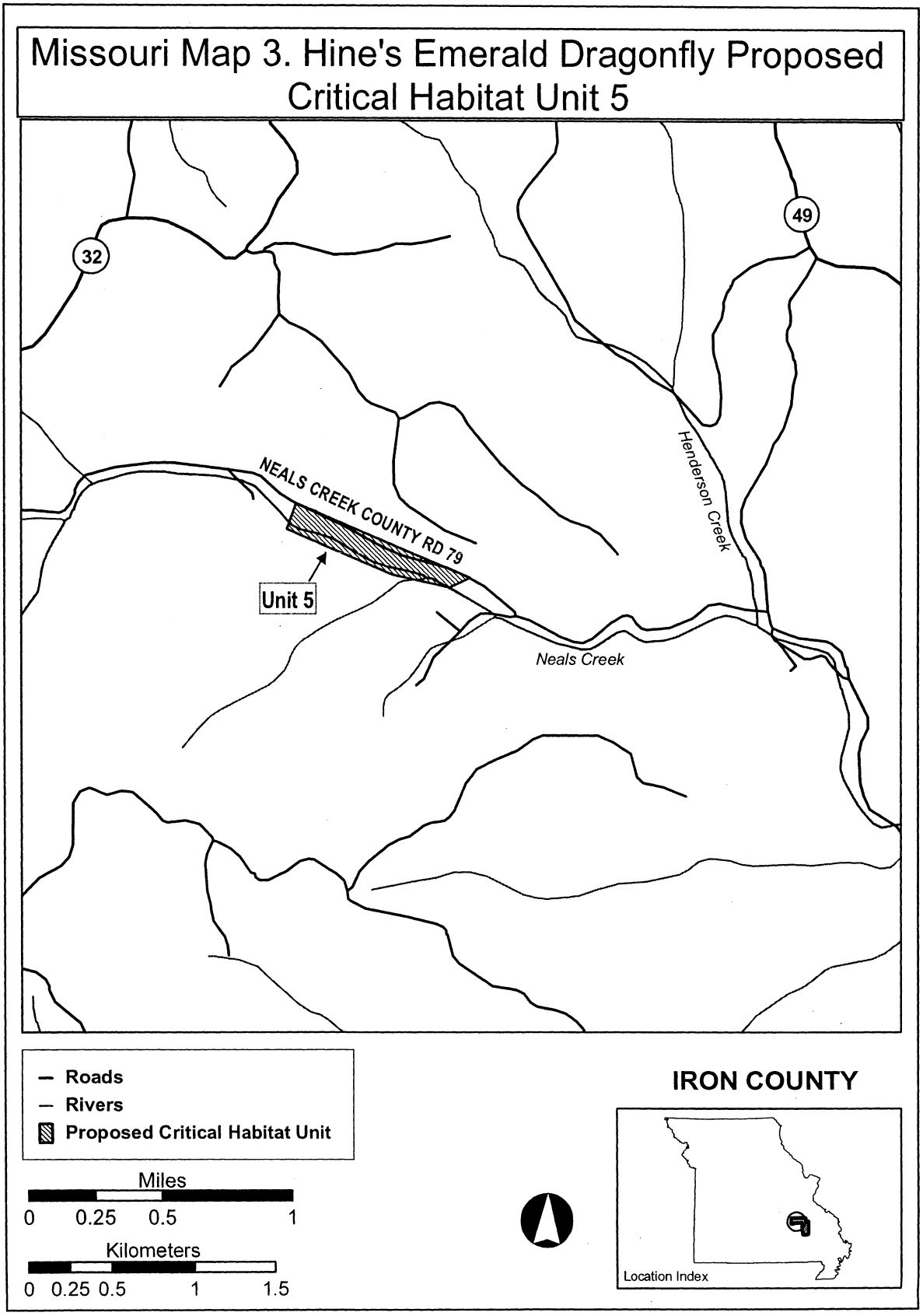
(iv) Note: Map of Missouri proposed critical habitat Units 2 through 4 (Missouri Map 2) follows:


Missouri Map 2. Hine's Emerald Dragonfly Proposed Critical Habitat Units 2 through 4
COUNTY RD 439
COUNTY RD 438
Unit 2
Unit 3
Unit 4
Watery Fork
HWY MM
West Fork Huzzah Creek
32
Roads
Rivers
Proposed Critical Habitat Units
Miles
0 0.5 1 2 3
Kilometers
0 0.5 1 2 3
DENT COUNTY
Location Index

(14) Missouri Unit 5, Iron County, Missouri.

(i) Missouri Unit 5: Iron County. Located in T34N, R1W, Sec. 17of the Viburnum East 7.5′ USGS topographic quadrangle. Missouri Unit 5 is located adjacent to Neals Creek and Neals Creek Road, approximately 2.5 miles southeast of Bixby.

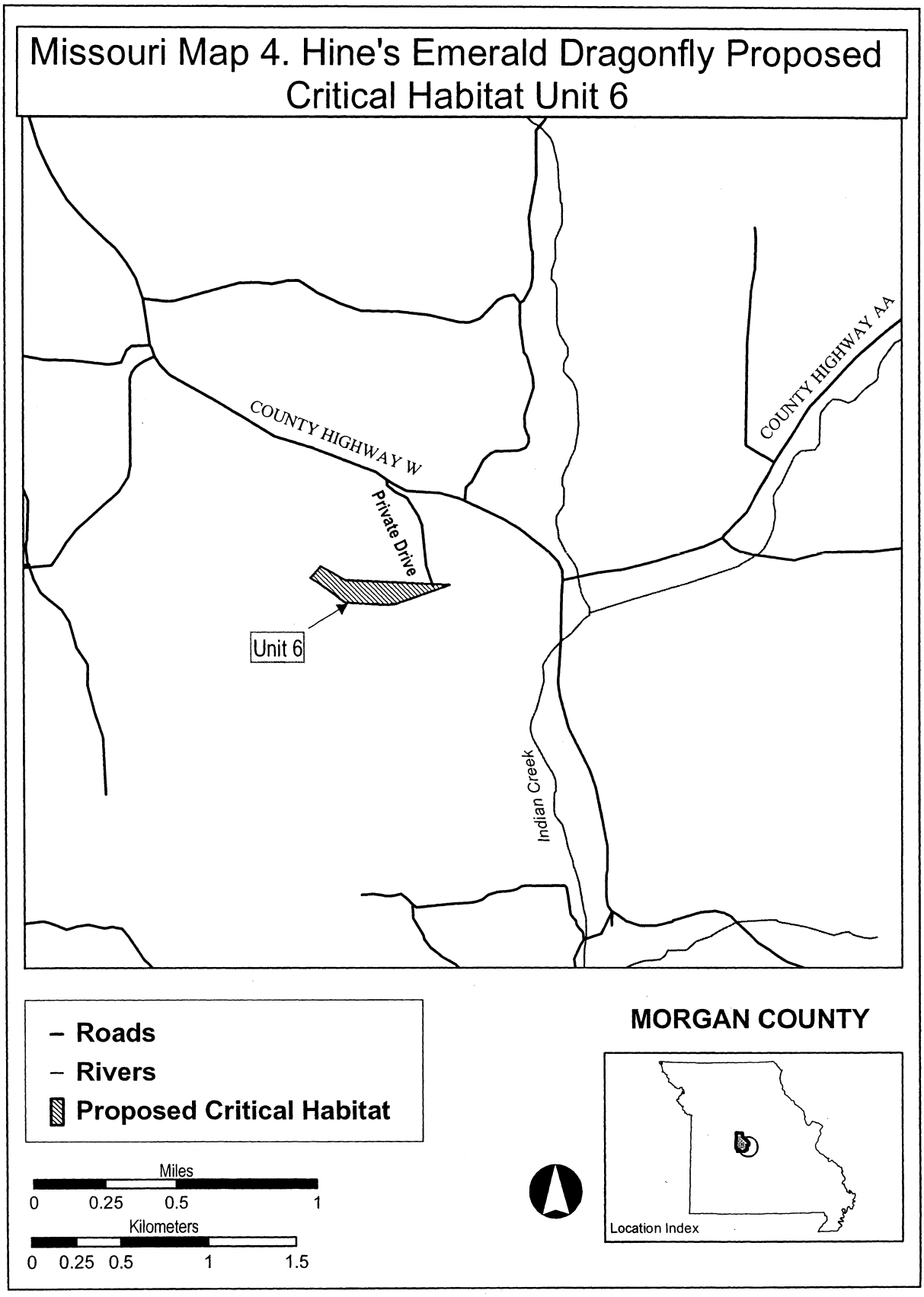
(ii) Note: Map of Missouri proposed critical habitat Unit 5 (Missouri Map 3) follows:


Missouri Map 3. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 5
32
49
NEALS CREEK COUNTY RD 79
Unit 5
Henderson Creek
Neals Creek
Roads
Rivers
Proposed Critical Habitat Unit
Miles
0 0.25 0.5 1
Kilometers
0 0.25 0.5 1 1.5
IRON COUNTY
Location Index

(15) Missouri Unit 6, Morgan County, Missouri.

(i) Missouri Unit 6: Morgan County. Located in T41N, R16W, Sec. 6 of the Rocky Mount 7.5′ USGS topographic quadrangle. Missouri Unit 6 is located near the small town of Barnett south of Route N.

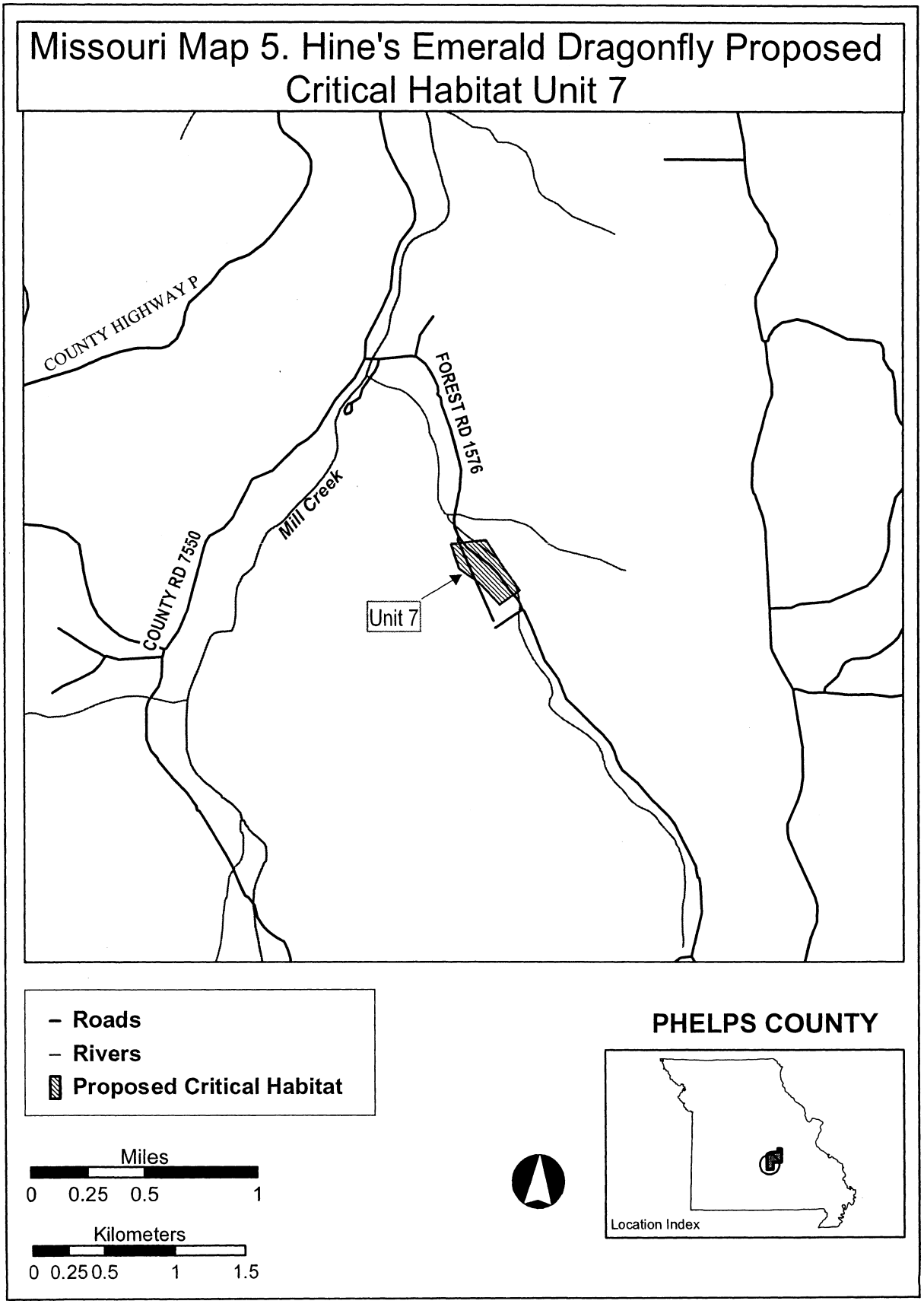
(ii) Note: Map of Missouri proposed critical habitat Unit 6 (Missouri Map 4) follows:


Missouri Map 4. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 6
COUNTY HIGHWAY W
Private Drive
COUNTY HIGHWAY AA
Unit 6
Indian Creek
– Roads
– Rivers
Proposed Critical Habitat
Miles
0 0.25 0.5 1
Kilometers
0 0.25 0.5 1 1.5
MORGAN COUNTY
Location Index

(16) Missouri Unit 7, Phelps County, Missouri.

(i) Missouri Unit 7: Phelps County, Missouri. Located in T36N, R9W, Sec. 9 of the Kaintuck Hollow 7.5′ USGS topographic quadrangle. Missouri Unit 7 is associated with Kaintuck Hollow and a tributary of Mill Creek, and is located approximately 4 miles south southwest of the town of Newburg.

(ii) Note: Map of Missouri proposed critical habitat Unit 7 (Missouri Map 5) follows:


Missouri Map 5. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 7
COUNTY HIGHWAY P
FOREST RD 1576
Mill Creek
COUNTY RD 7550
Unit 7
– Roads
– Rivers
Proposed Critical Habitat
Miles
0 0.25 0.5 1
Kilometers
0 0.25 0.5 1 1.5
PHELPS COUNTY
Location Index

(17) Missouri Units 8 through 11 and 13 through 15, Reynolds County, Missouri.

(i) Missouri Units 8, 9, and 10: Reynolds County. Located in T32N, R2W, Secs. 22 and 23 on the Bunker 7.5′ USGS topographic quadrangle. Missouri Units 8, 9, and 10 are located adjacent to Bee Fork Creek, extending from approximately 3.0 miles east southeast of Bunker and extending east to near the bridge on Route TT over Bee Fork Creek.

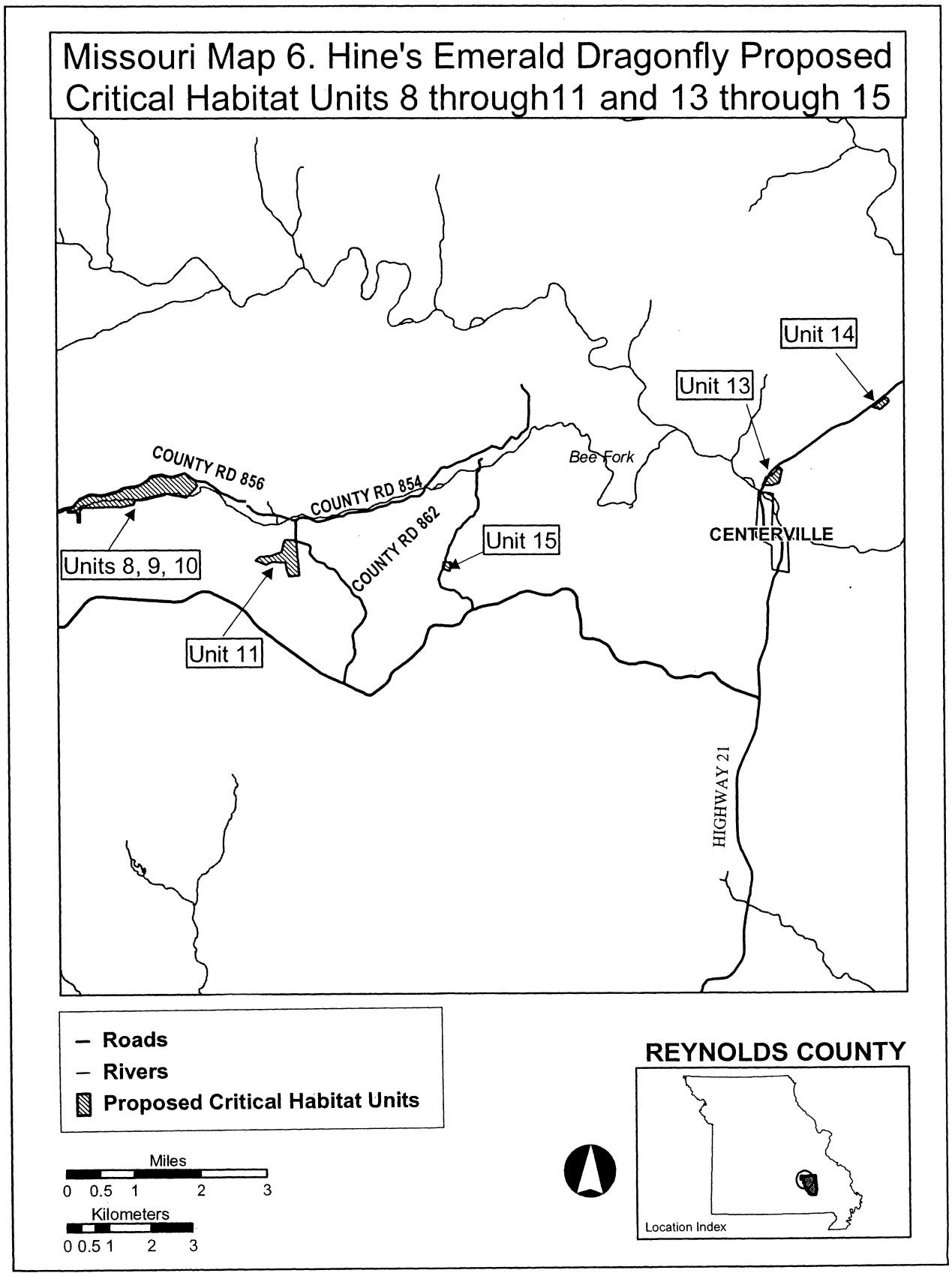
(ii) Missouri Unit 11: Reynolds County. Located in T32N, R1W, Sec. 30 of the Corridon 7.5′ USGS topographic quadrangle. Missouri Unit 11 is located approximately 1 mile east of the intersection of Route TT and Highway 72, extending north to the Bee Fork Church on County Road 854.

(iii) Missouri Unit 13: Reynolds County. Located in T32N, R1E, Sec. 20 of the Centerville 7.5′ USGS topographic quadrangle. Missouri Unit 13 is north of the town of Centerville adjacent to Highway 21.

(iv) Missouri Unit 14: Reynolds County. Located in T32N, R1E, Sec. 15 of the Centerville 7.5′ USGS topographic quadrangle. Missouri Unit 14 is located approximately 2 miles north of Centerville adjacent to Highway 21.

(v) Missouri Unit 15: Reynolds County. Located in T32N, R1W, Secs. 28 and 33 of the Corridon 7.5′ USGS topographic quadrangle. Missouri Unit 15 is adjacent to South Branch fork of Bee Fork Creek, and located approximately 2 miles northeast of the intersection of Route B and Highway 72.

(vi) Note: Map of Missouri proposed critical habitat Units 8 through 11 and 13 through 15 (Missouri Map 6) follows:

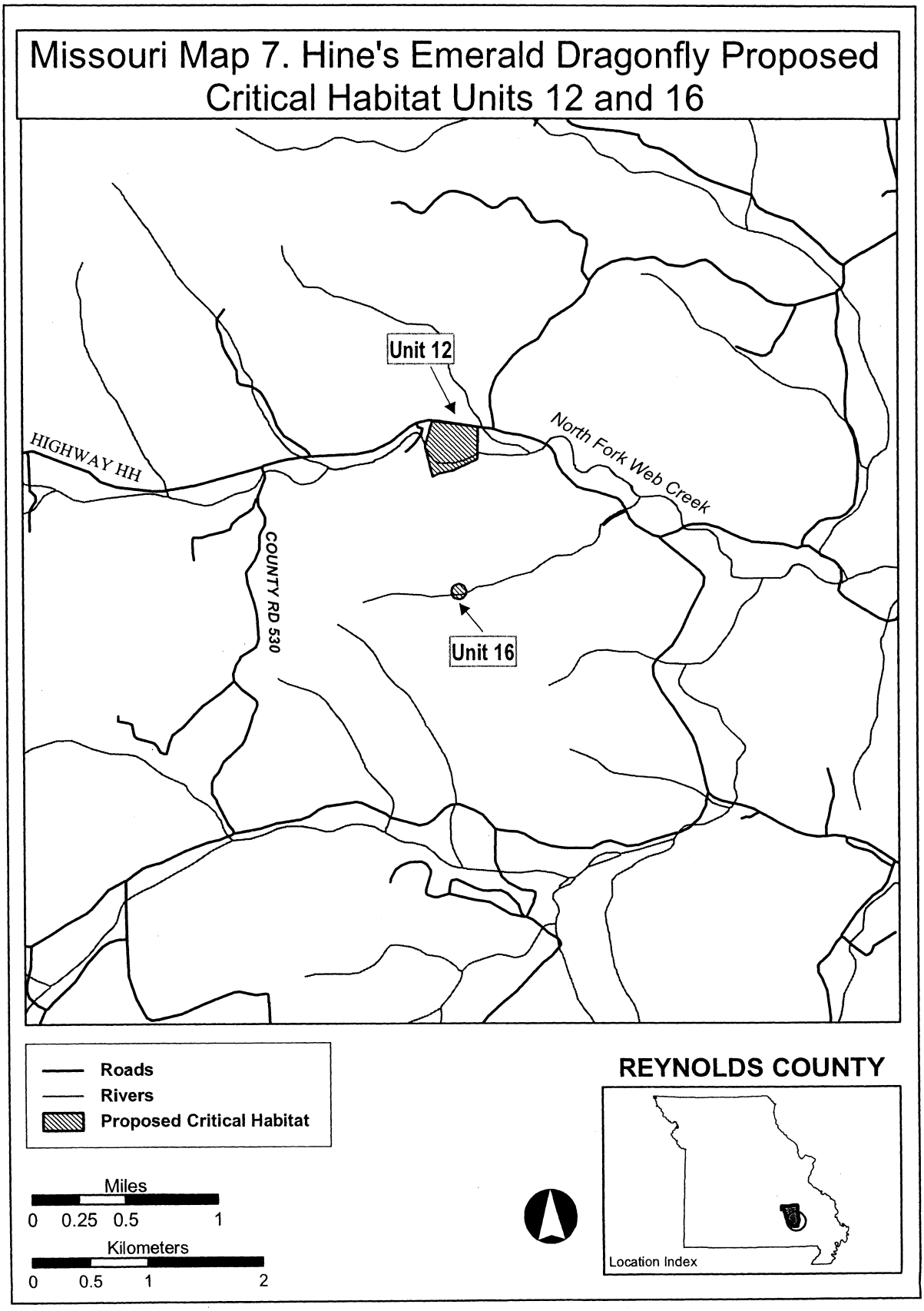

Missouri Map 6. Hine's Emerald Dragonfly Proposed Critical Habitat Units 8 through11 and 13 through 15
Unit 14
Unit 13
Bee Fork
COUNTY RD 856
COUNTY RD 854
COUNTY RD 862
Unit 15
CENTERVILLE
Units 8, 9, 10
Unit 11
HIGHWAY 21
Roads
Rivers
Proposed Critical Habitat Units
Miles
0 0.5 1 2 3
Kilometers
0 0.5 1 2 3
REYNOLDS COUNTY
Location Index

(18) Missouri Units 12 and 16, Reynolds County, Missouri.

(i) Missouri Unit 12: Reynolds County. Located in T29N, R1E, Sec. 36 of the Ellington 7.5′ USGS topographic quadrangle. Missouri Unit 12 is near the town of Ruble and is closely associated with the North Fork of Web Creek.

(ii) Missouri Unit 16: Reynolds County. Located in T29N, R1E, Sec. 1 of the Ellington 7.5′ USGS topographic quadrangle. Missouri Unit 16 is located southeast of the town of Ruble on a tributary to the North Fork of Web Creek.

(iii) Note: Map of Missouri proposed critical habitat Units 12 and 16 (Missouri Map 7) follows:

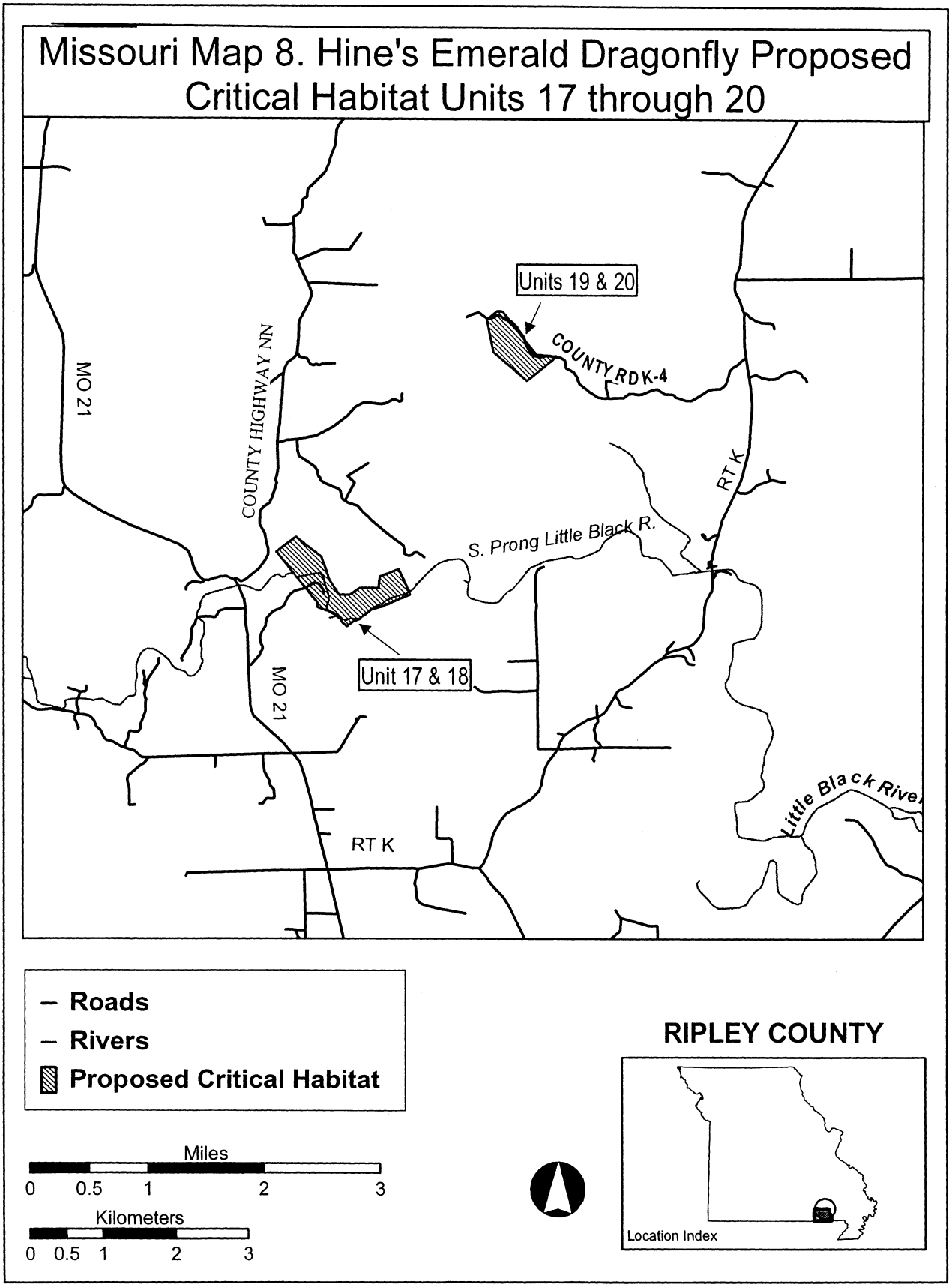

Missouri Map 7. Hine's Emerald Dragonfly Proposed Critical Habitat Units 12 and 16
Unit 12
Unit 16
HIGHWAY HH
COUNTY RD 530
North Fork Web Creek
Roads
Rivers
Proposed Critical Habitat
Miles
0 0.25 0.5 1
Kilometers
0 0.5 1 2
REYNOLDS COUNTY
Location Index

(19) Missouri Units 17 through 20, Ripley County, Missouri.

(i) Missouri Units 17 and 18: Ripley County. Located in T24N, R2E, Sec. 12 and T24N, R3E, Sec. 7 of the Doniphan North and Grandin 7.5′ USGS topographic quadrangles. Missouri Units 17 and 18 comprise the Overcup Fen complex and are associated with the Little Black River.

(ii) Missouri Units 19 and 20: Ripley County. Located in T25N, R3E, Sec. 32 of the Grandin 7.5′ USGS topographic quadrangle. Missouri Units 19 and 20 comprise the Mud Branch complex and are located approximately 1.5 miles east of the village of Shiloh. The complex is associated with Mud Branch, a tributary of the Little Black River.

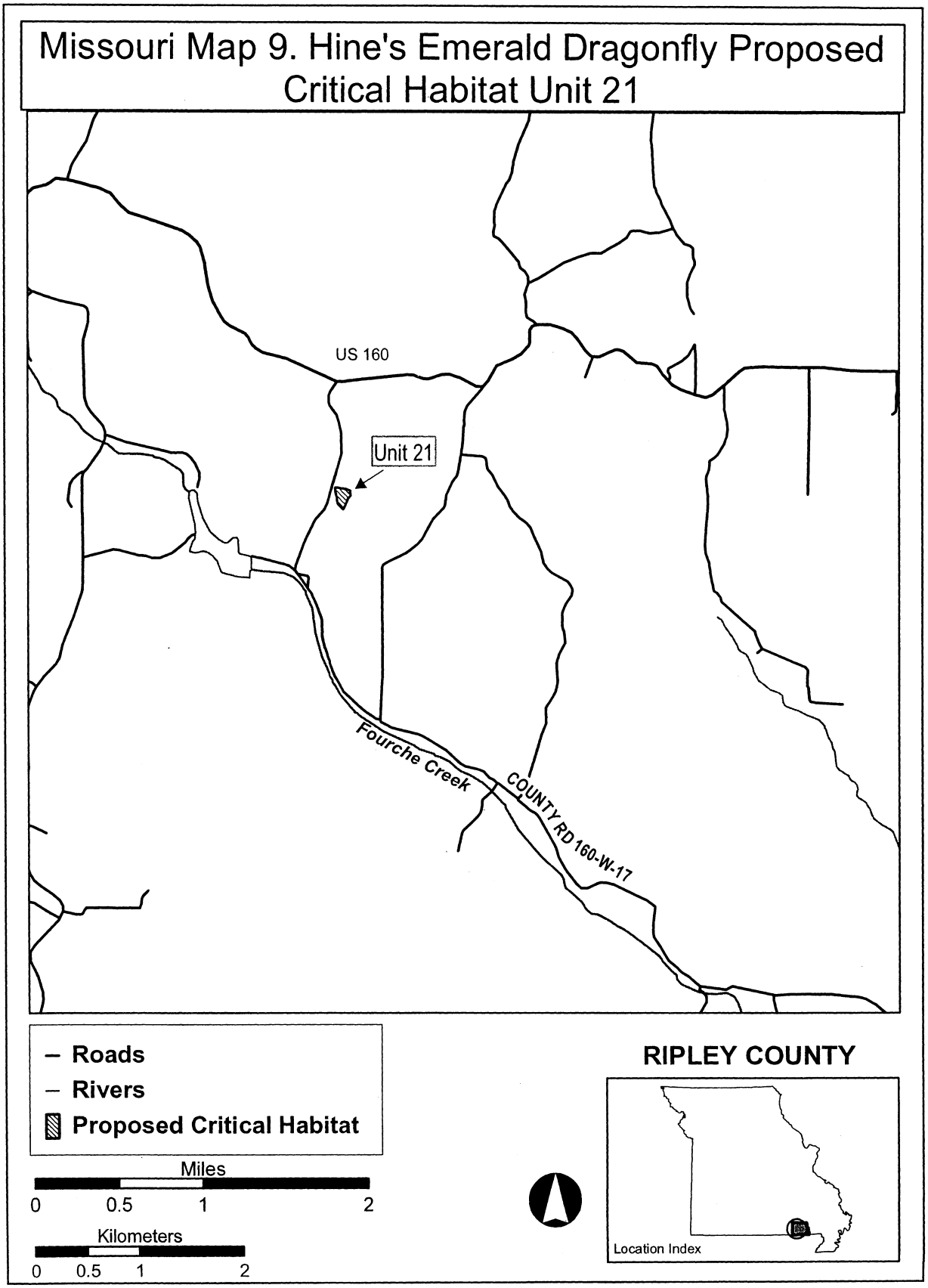
(iii) Note: Map of Missouri proposed critical habitat Units 17 through 20 (Missouri Map 8) follows:


Missouri Map 8. Hine's Emerald Dragonfly Proposed Critical Habitat Units 17 through 20
Units 19 & 20
COUNTY RD K-4
MO 21
COUNTY HIGHWAY NN
RT K
S. Prong Little Black R.
Unit 17 & 18
MO 21
RT K
Little Black River
Roads
Rivers
Proposed Critical Habitat
Miles
0 0.5 1 2 3
Kilometers
0 0.5 1 2 3
RIPLEY COUNTY
Location Index

(20) Missouri Unit 21, Ripley County, Missouri.

(i) Missouri Unit 21: Ripley County. Located in T23N, R1W, Sec. 23 of the Bardley 7.5′ USGS topographic quadrangle. Missouri Unit 21 is associated with an unnamed tributary of Fourche Creek and is located approximately 12 miles west of Doniphan.

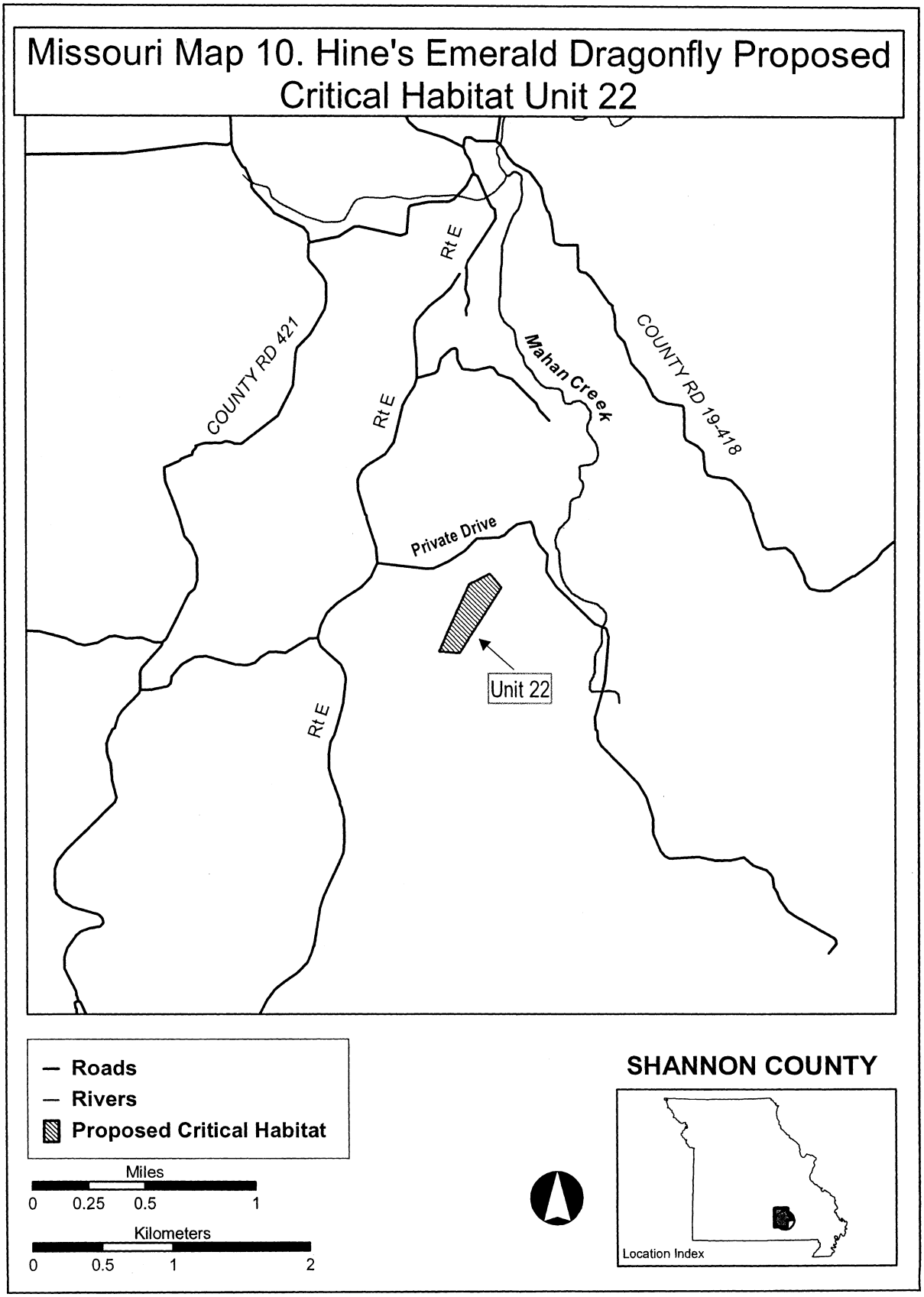
(ii) Note: Map of Missouri proposed critical habitat Unit 21 (Missouri Map 9) follows:


Missouri Map 9. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 21
US 160
Unit 21
Fourche Creek
COUNTY RD 160-W-17
Roads
Rivers
Proposed Critical Habitat
Miles
0 0.5 1 2
Kilometers
0 0.5 1 2
RIPLEY COUNTY
Location Index

(21) Missouri Unit 22, Shannon County, Missouri.

(i) Missouri Unit 22: Shannon County. Located in T28N, R4W, Sec. 20 and 29 of the Bartlett 7.5′ USGS topographic quadrangle. Missouri Unit 22 is associated with Mahans Creek and is located approximately two miles south of Delaware.

(ii) Note: Map of Missouri proposed critical habitat Unit 22 (Missouri Map 10) follows:

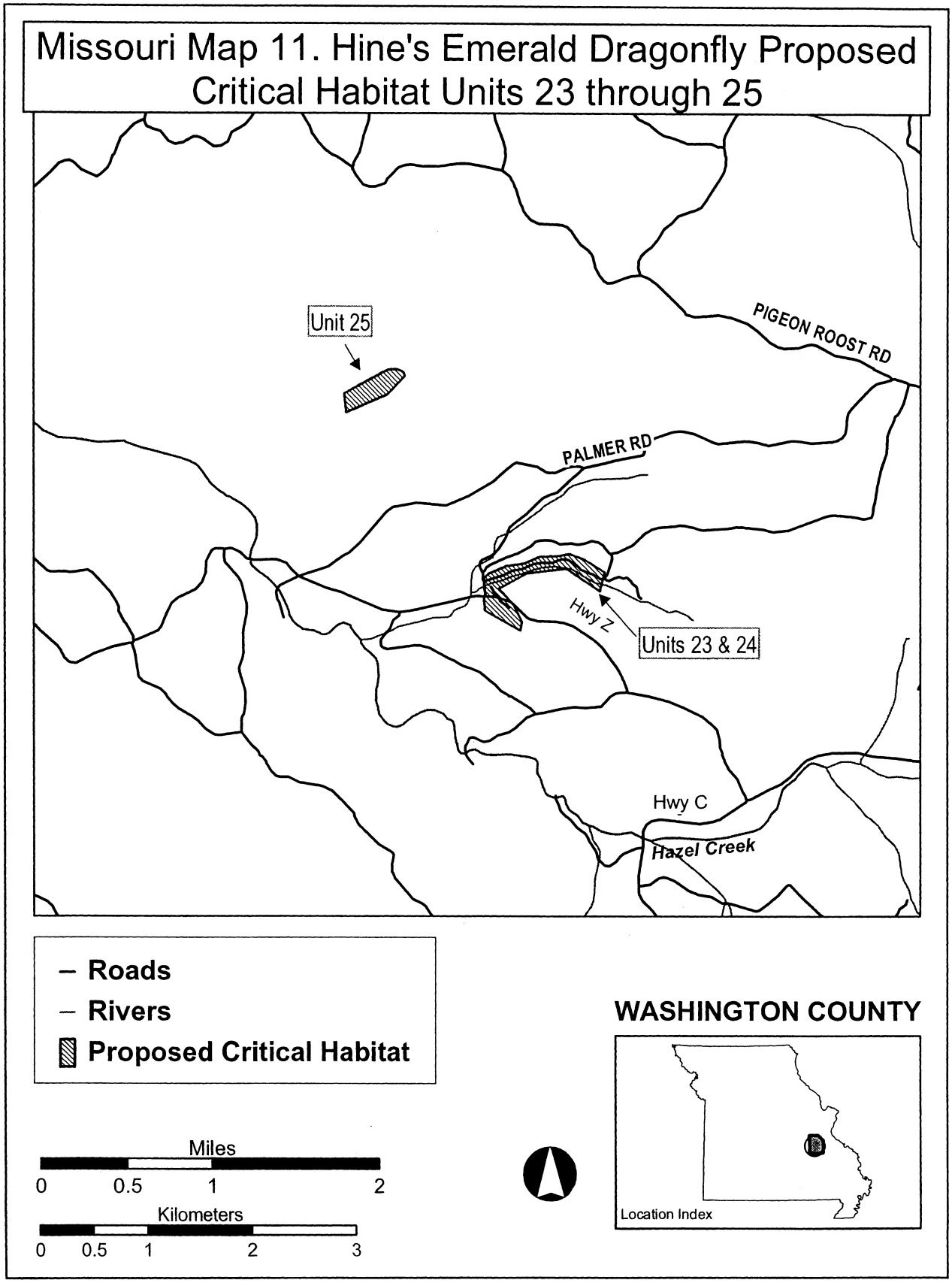

Missouri Map 10. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 22
Rt E
COUNTY RD 421
Mahan Creek
COUNTY RD 19-418
Rt E
Private Drive
Unit 22
Rt E
Roads
Rivers
Proposed Critical Habitat
Miles
0 0.25 0.5 1
Kilometers
0 0.5 1 2
SHANNON COUNTY
Location Index

(22) Missouri Units 23 through 25, Washington County, Missouri.

(i) Missouri Units 23 and 24: Washington County. Located in T36N, R1W, Sec. 13 of the Palmer 7.5′ USGS topographic quadrangle. Missouri Units 23 and 24 comprise the Towns Branch and Welker Fen complex and are located near the town of Palmer.

(ii) Missouri Unit 25: Washington County. Located in T36N, R1W, Secs. 2 and 11 of the Courtois 7.5′ USGS topographic quadrangle. Missouri Unit 25 is associated with a tributary of Hazel Creek and is located approximately 1.5 miles northwest of the town of Palmer.

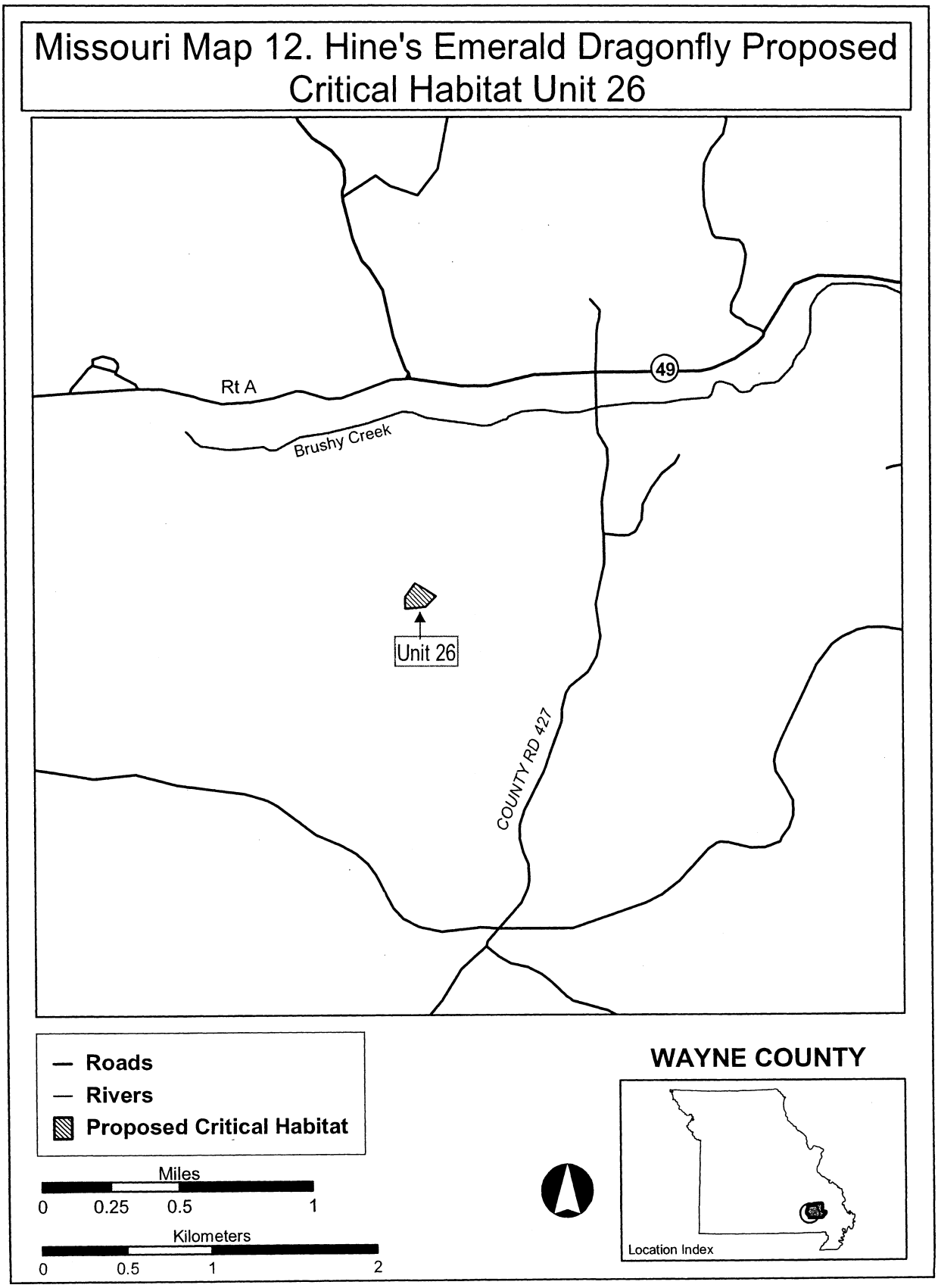
(iii) Note: Map of Missouri proposed critical habitat Units 23 through 25 (Missouri Map 11) follows:


Missouri Map 11. Hine's Emerald Dragonfly Proposed Critical Habitat Units 23 through 25
Unit 25
PIGEON ROOST RD
PALMER RD
Hwy Z
Units 23 & 24
Hwy C
Hazel Creek
Roads
Rivers
Proposed Critical Habitat
WASHINGTON COUNTY
Location Index
Miles
0 0.5 1 2
Kilometers
0 0.5 1 2 3

(23) Missouri Unit 26, Wayne County, Missouri

(i) Missouri Unit 26: Wayne County. Located in T27N, R4E, Sec. 33 of the Ellsinore 7.5′ USGS topographic quadrangle. Missouri Unit 26 is located near Williamsville and is associated with Brushy Creek.

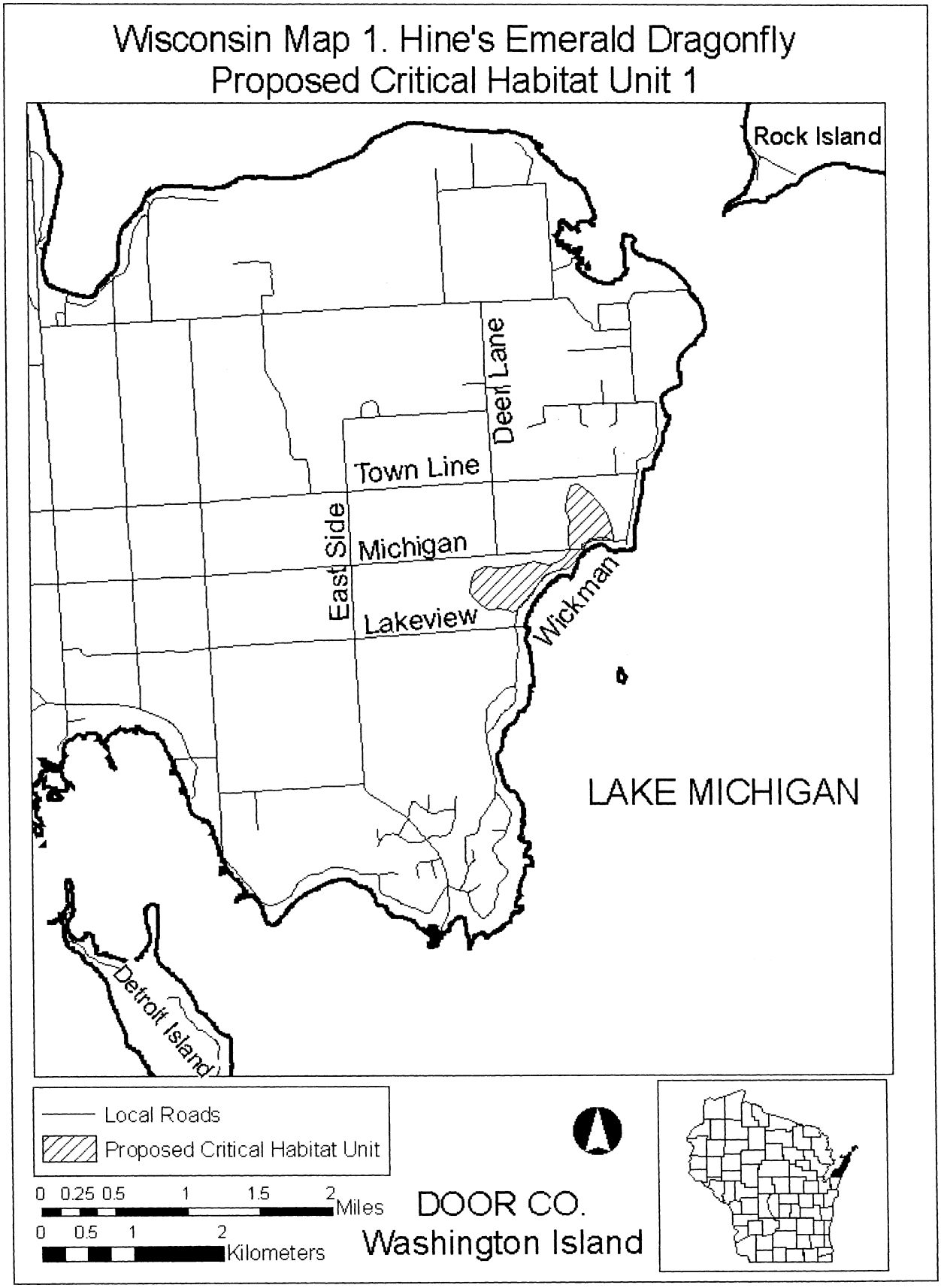
(ii) Note: Map of Missouri proposed critical habitat Unit 26 (Missouri Map 12) follows:


Missouri Map 12. Hine's Emerald Dragonfly Proposed Critical Habitat Unit 26
Rt A
49
Brushy Creek
Unit 26
COUNTY RD 427
Roads
Rivers
Proposed Critical Habitat
Miles
0
0.25
0.5
1
Kilometers
0
0.5
1
2
WAYNE COUNTY
Location Index

(24) Wisconsin Unit 1, Door County, Wisconsin.

(i) Wisconsin Unit 1: Washington Island, Door County. Located in T33N, R30E, W½ and NE¼ Sec. 4, SE¼ Sec. 5 of Washington Island SE and Washington Island NE 7.5′ USGS topographic quadrangles. Lands included are located adjacent to and west of Wickman Road, south of Town Line Road, East of Deer Lane and East Side Roads, north of Lake View Road and include Big Marsh and Little Marsh.

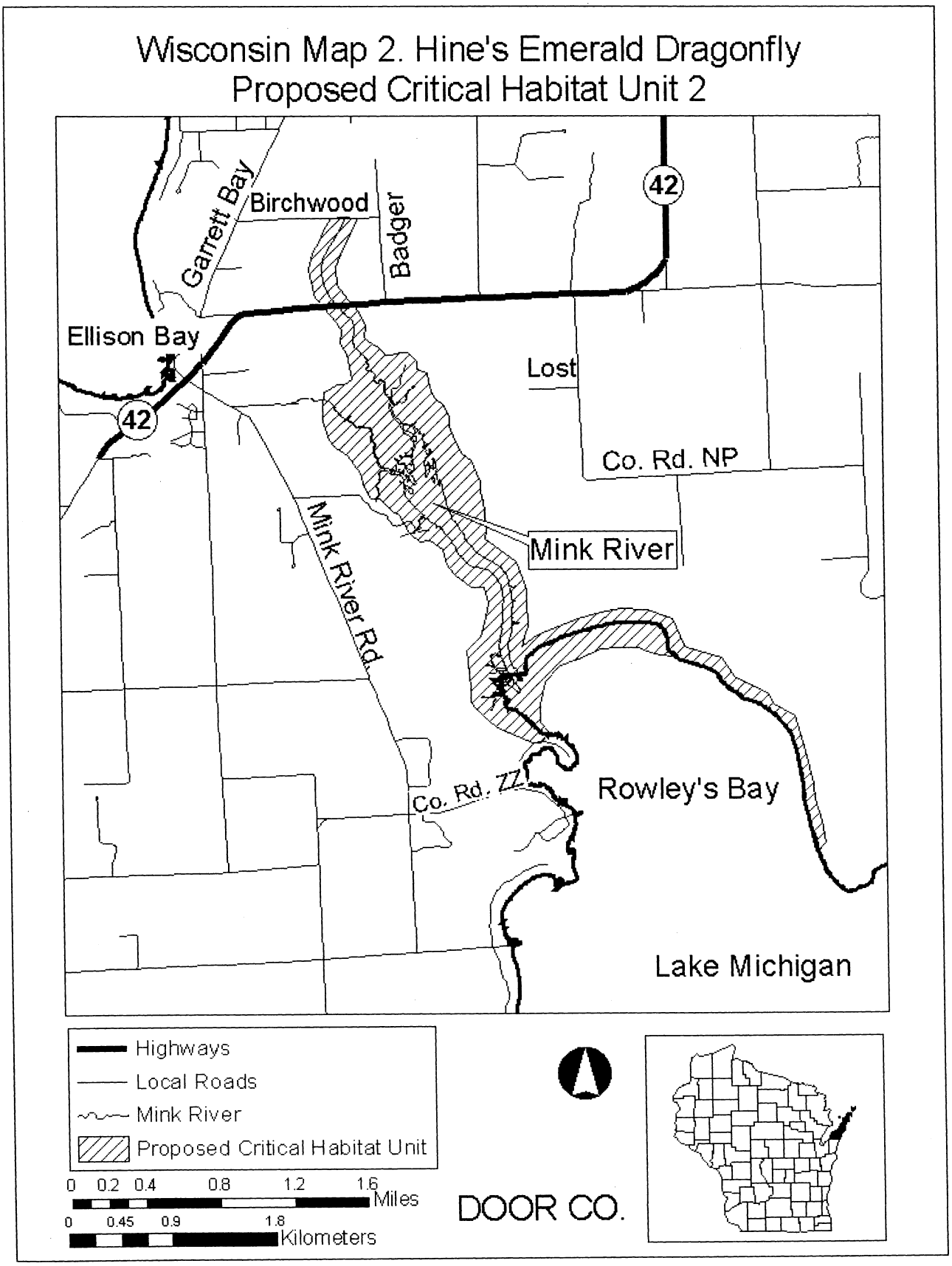
(ii) Note: Map of Wisconsin proposed critical habitat Unit 1 (Wisconsin Map 1) follows:


Wisconsin Map 1. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 1
Rock Island
Deer Lane
Town Line
East Side
Michigan
Lakeview
Wickman
LAKE MICHIGAN
Detroit Island
Local Roads
Proposed Critical Habitat Unit
0 0.25 0.5 1 1.5 2 Miles
0 0.5 1 2 Kilometers
DOOR CO.
Washington Island

(25) Wisconsin Unit 2, Door County, Wisconsin.

(i) Wisconsin Unit 2: Door County. Located in T32N, R28E, SE¼ Sec. 11, NW¼ Sec. 13, NE¼ Sec. 14 of the Ellison Bay 7.5′ USGS topographic quadrangle, and in T32N, R28E, W½ Sec. 13, E½ Sec. 14, NE¼ Sec. 23, portions of each ¼ of Sec. 24, N½ Sec. 25, and T32N, R29E, S½ Sec. 19, W½ Sec. 29, NE¼ Sec. 30 of Sister Bay 7.5′ USGS topographic quadrangle. Lands included are located east of the Village of Ellison Bay, south of Garrett Bay Road and Mink River Roads, North of County Road ZZ, west of Badger Road, County Road NP and Juice Mill Road, and includes the Mink River.

(ii) Note: Map of Wisconsin proposed critical habitat Unit 2 (Wisconsin Map 2) follows:


Wisconsin Map 2. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 2
Garrett Bay
Birchwood
Badger
42
Ellison Bay
Lost
42
Co. Rd. NP
Mink River
Mink River Rd.
Co. Rd. ZZ
Rowley's Bay
Lake Michigan
Highways
Local Roads
Mink River
Proposed Critical Habitat Unit
0 0.2 0.4 0.8 1.2 1.6 Miles
0 0.45 0.9 1.8 Kilometers
DOOR CO.

(26) Wisconsin Units 3 through 7, Door County, Wisconsin.

(i) Wisconsin Unit 3: Door County. Located in T31N R28E, S½ S10, NE¼ S15 of Sister Bay 7.5′ USGS topographic quadrangle. Lands included are located south of County Road ZZ, north of North Bay (Lake Michigan), west of North Bay Road, east of Old Stage Road and about two miles east of the Village of Sister Bay and include a portion of Three-Springs Creek.

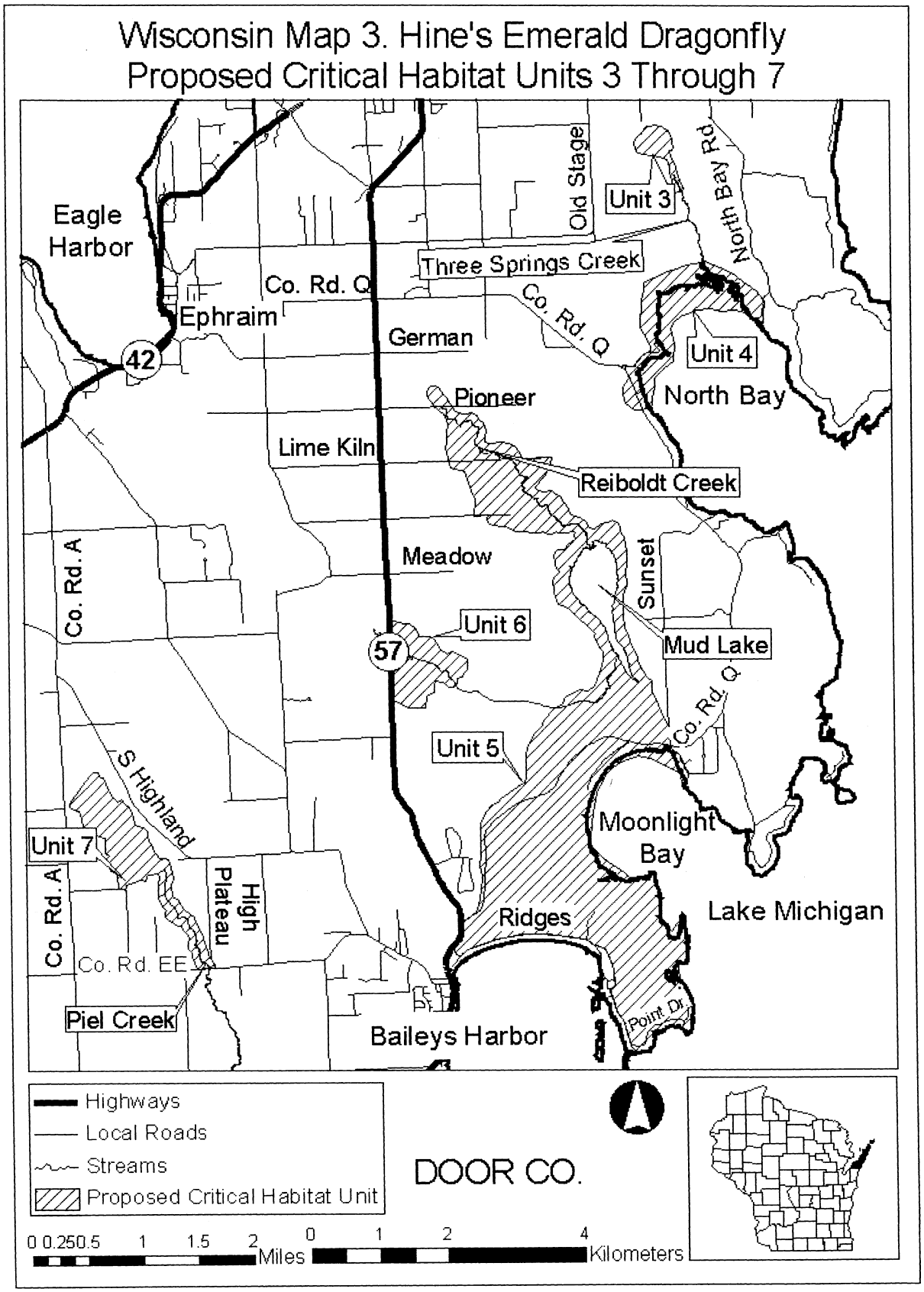
(ii) Wisconsin Unit 4: Door County. Located in T31N, R28E, SW¼ and S½ Sec. 15, portions of each ¼ of Sec. 22, and N½ of Sec. 23 of the Sister Bay 7.5′ USGS topographic quadrangle. Lands are located along the north and northwest sides of North Bay (Lake Michigan).

(iii) Wisconsin Unit 5: Door County. Located in T31N, R28E, S½ Sec. 20, E½ Sec. 29, NW¼ and S½ Sec. 28, N½ and SE¼ Sec. 33, and W½ Sec. 34. It also is located in T30N, R28E, W½ Sec. 3, E½ and SW¼ Sec. 4, SE¼ Sec. 8, Sec. 9, N½ Sec. 10, W½ and SE¼ Sec.15, Sec. 16, and Sec. 17 of the Baileys Harbor East, and Sister Bay 7.5′ USGS topographic quadrangles. Lands located south of German Road, east of State Highway 57, west of North Bay Drive, Sunset Drive and Moonlight Bay (Lake Michigan), north of Ridges Road and Point Drive and include Mud Lake and Reiboldt Creek.

(iv) Wisconsin Unit 6: Door County. Located in T30N, R28E, portions of each ¼ of Sec. 5 of the Baileys Harbor East 7.5′ USGS topographic quadrangle and Baileys Harbor West 7.5′ USGS topographic quadrangle. Lands are located about 2¼ miles north of the Town of Baileys Harbor, east of State Highway 57, south of Meadow Road and are associated with an unnamed stream.

(v) Wisconsin Unit 7: Door County. Located in T30N, R27E, Sec. 11, SW¼ Sec. 13, and N½ and SE¼ Sec. 14 of the Baileys Harbor West 7.5′ USGS topographic quadrangle. Lands are located north of County Road EE, east of County Road A and west of South Highland and High Plateau Roads, about two miles northeast of Town of Baileys Harbor and are associated with the headwaters of Piel Creek.

(vi) Note: Map of Wisconsin proposed critical habitat Units 3 through 7 (Wisconsin Map 3) follows:


Wisconsin Map 3. Hine's Emerald Dragonfly
Proposed Critical Habitat Units 3 Through 7
Eagle Harbor
Ephraim
42
Co. Rd. Q
Three Springs Creek
Old Stage
Unit 3
North Bay Rd.
Co. Rd. Q
German
Unit 4
North Bay
Pioneer
Lime Kiln
Reiboldt Creek
Co. Rd. A
Meadow
Sunset
Unit 6
57
Mud Lake
Co. Rd. Q
Unit 5
S Highland
Moonlight Bay
Unit 7
High Plateau
Co. Rd. A
Ridges
Lake Michigan
Co. Rd. EE
Piel Creek
Baileys Harbor
Point Dr.
Highways
Local Roads
Streams
Proposed Critical Habitat Unit
DOOR CO.
0 0.25 0.5 1 1.5 2 Miles
0 1 2 4 Kilometers

(27) Wisconsin Unit 8, Door County, Wisconsin.

(i) Wisconsin Unit 8: Door County. Located in T28N, R27E, S½ Sec. 16, N½ Sec. 21 of the Jacksonport 7.5′ USGS topographic quadrangle. Lands are located east of Bechtel Road, South of Whitefish Bay Road, west of Glidden Drive and include Arbter Lake.

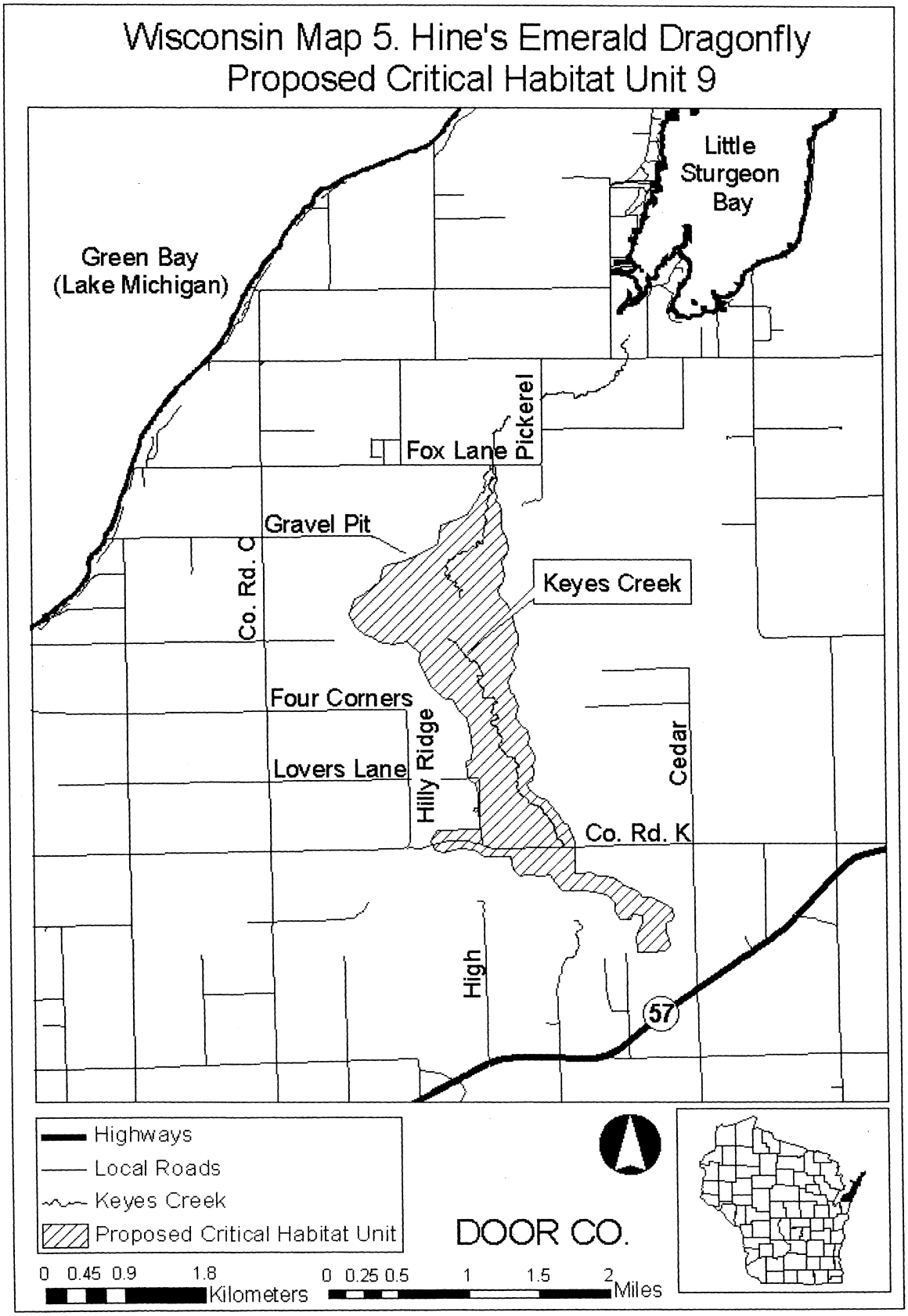
(ii) Note: Map of Wisconsin proposed critical habitat Unit 8 (Wisconsin Map 4) follows:

Wisconsin Map 4. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 8
57
Nelson
Whitefish Bay
Bechtel
Lake Michigan
Arbter Lake
Haberli
Glidden Drive
Highways
Local Roads
Proposed Critical Habitat Unit
0 0.25 0.5 1 1.5 2 Miles
0 0.5 1 2 Kilometers
DOOR CO.

(28) Wisconsin Unit 9, Door County, Wisconsin.

(i) Wisconsin Unit 9: Door County, Wisconsin. Located in T27N, R24E, SE¼ Sec. 16, E½ Sec. 20, portions of each ¼ of Secs. 21, 28 and 33, NW¼ and S½ Sec. 34. Also located in T26N, R24E, NW¼ Sec. 3 of the Little Sturgeon 7.5′ USGS topographic quadrangle. Lands are located west of Pickeral Road and Cedar Lane, north of State Highway 57, east of Hilly Ridge Road and County Road C, south of Fox Lane Road, about 1.5 miles southwest of Little Sturgeon Bay (Lake Michigan) and include portions of Keyes Creek and associated wetlands.

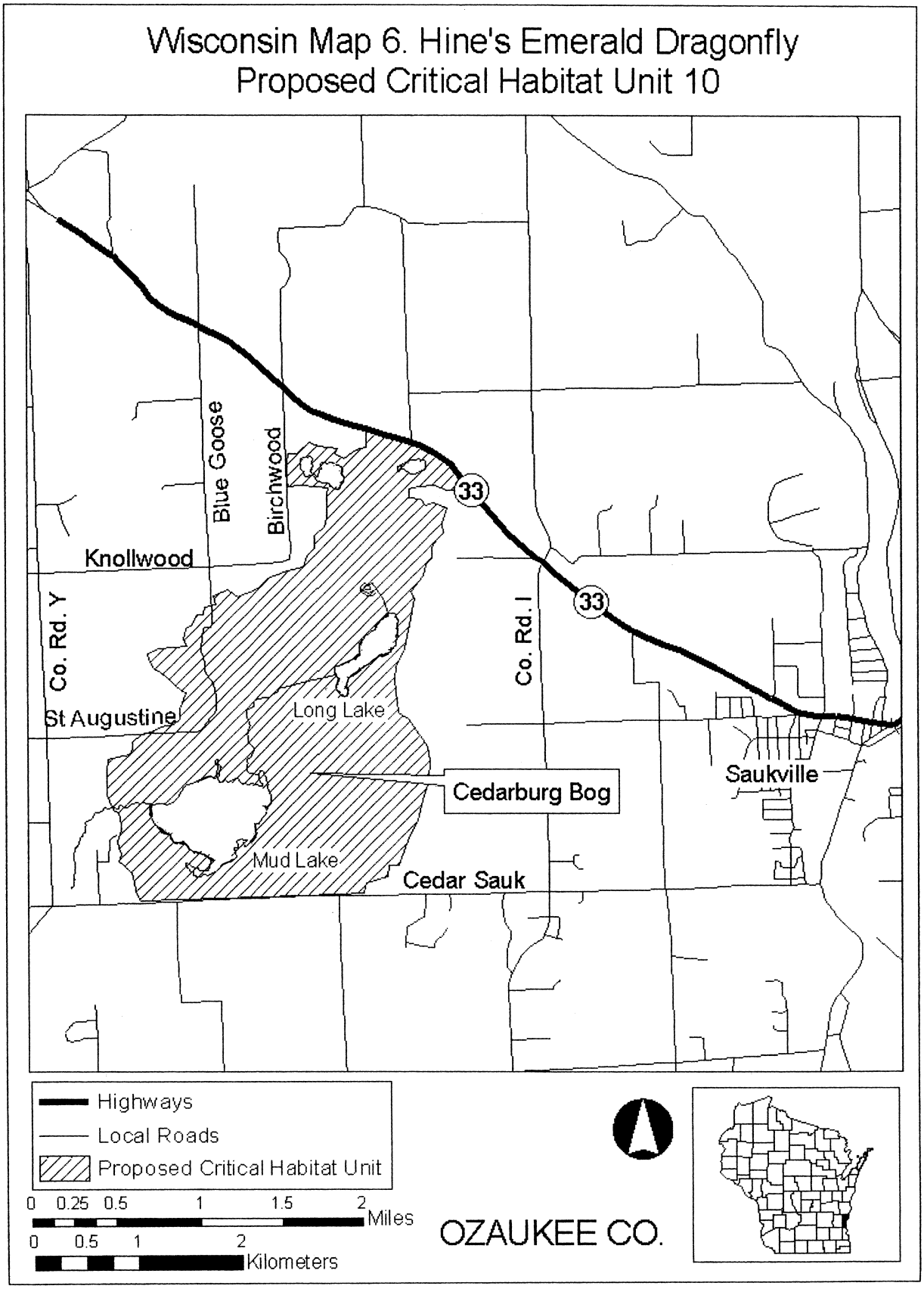
(ii) Note: Map of Wisconsin proposed critical habitat Unit 9 (Wisconsin Map 5) follows:


Wisconsin Map 5. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 9
Little Sturgeon Bay
Green Bay (Lake Michigan)
Pickerel
Fox Lane
Gravel Pit
Co. Rd. C
Keyes Creek
Four Corners
Hilly Ridge
Lovers Lane
Cedar
Co. Rd. K
High
57
Highways
Local Roads
Keyes Creek
Proposed Critical Habitat Unit
DOOR CO.
0 0.45 0.9 1.8 Kilometers
0 0.25 0.5 1 1.5 2 Miles

(29) Wisconsin Unit 10, Ozaukee County, Wisconsin.

(i) Wisconsin Unit 10: Ozaukee County. Located in T11N, R21E, E½ of Sec. 20, portions of each ¼ of Sec. 21, W½ Sec. 28, Sec. 29, E½ Sec. 30, E½ and portions of NW¼ and SW¼ Sec. 31, Sec. 32, and W½ Sec. 33 of the Cedarburg, Five Corners, Newburg, and Port Washington West 7.5′ USGS topographic quadrangles. Lands are located south of State Highway 33, east of County Road Y and Birchwood Road, north of Cedar Sauk Road about 2 miles west of Saukville, and includes the majority of Cedarburg Bog.

(ii) Note: Map of Wisconsin proposed critical habitat Unit 10 (Wisconsin Map 6) follows:


Wisconsin Map 6. Hine's Emerald Dragonfly
Proposed Critical Habitat Unit 10
Blue Goose
Birchwood
Knollwood
Co. Rd. Y
St Augustine
Long Lake
Mud Lake
Cedarburg Bog
Cedar Sauk
Co. Rd. I
33
33
Saukville
Highways
Local Roads
Proposed Critical Habitat Unit
0 0.25 0.5 1 1.5 2 Miles
0 0.5 1 2 Kilometers
OZAUKEE CO.

* * * * *

Dated: July 7, 2006.

Matt Hogan,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–6244 Filed 7–25–06; 8:45 am]

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July 26, 2006

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery, Framework Adjustment (FW) 42; Monkfish Fishery, FW 3; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060606150–6150–01; I.D. 053106A]

RIN 0648–AT24

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery, Framework Adjustment (FW) 42; Monkfish Fishery, FW 3

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in FW 42 to the NE Multispecies Fishery Management Plan (FMP) and FW 3 to the Monkfish FMP (Joint Framework). FW 42, which was developed by the New England Fishery Management Council (Council), is a biennial adjustment to the NE Multispecies FMP that would implement a rebuilding program for Georges Bank (GB) yellowtail flounder and modify NE multispecies fishery management measures to reduce fishing mortality rates (F) on six other groundfish stocks in order to maintain compliance with the rebuilding program of the FMP. FW 42 also proposes to modify and continue specific measures to mitigate the economic and social impacts of Amendment 13 to the NE Multispecies FMP and allow harvest levels to approach optimum yield (OY).

DATES: Comments must be received on or before August 25, 2006.

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

- E-mail: *FW42FW3@NOAA.gov*. Include in the subject line the following: ''Comments on the Proposed Rule for Groundfish Emergency Action.''
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule for Framework 42/3.''
- Fax: (978) 281–9135.

Copies of FW 42/FW3, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery B Mill 2, Newburyport, MA 01950. A summary of the IRFA is provided in the Classification section of this proposed rule. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rotsker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Thomas A. Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 to the NE Multispecies FMP in order to bring the FMP into conformance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including ending overfishing and implementing rebuilding plans for all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures in the amendment was published on April 27, 2004 (69 FR 22906), and became effective May 1, 2004.

Amendment 13 also established a biennial FMP adjustment process that requires the Council to review the fishery periodically using the most current scientific information available, recommend target TACs, and recommend to the Regional Administrator any changes to management measures necessary to achieve the goals and objectives of the FMP. As part of the biennial adjustment process, a regional peer-review of stock assessment updates (GARM II; Northeast Fisheries Science Center Reference Document 05–13) was completed for the 19 stocks managed under the NE Multispecies FMP during August 2005. Stock assessments were conducted using data through calendar year 2004, including evaluation of stock status relative to applicable Amendment 13 biological reference points (F_{msy} and B_{msy}). This resulted in estimates of F's and stock biomasses for calendar year 2004. The Council's Plan Development Team (PDT) performed an evaluation of the fishery based upon the results of GARM II and other available information. The primary goal of the PDT review was to determine the stocks for which an adjustment in management measures is required in order to ensure that the current F's levels are consistent with the F's required under the rebuilding plan.

Based on the information from GARM II and catch data, the PDT estimated F's for those stocks in need of reductions for calendar year 2005 (F_{2005}), a time period during which the fishery operated under one suite of regulations (Amendment 13). Specifically, the PDT utilized available information for a portion of 2005, projected landings for the remainder of the year (based on current and historic information), and then estimated the F for the entire calendar year (F_{2005}).

To determine which of the 19 groundfish stocks were not in compliance with the Amendment 13 rebuilding plans, for each stock the required F for 2006 was compared to F_{2005}. The PDT determined that, with one exception (GB yellowtail flounder), if F_{2005} exceeded the Amendment 13 target F for 2006, adjustment of management measures was necessary. These comparisons indicated that F_{2005} for some groundfish stocks was less than that estimated for 2004 (F_{2004}), but still higher than the 2006 target F (F_{2006}) specified in the rebuilding program established under Amendment 13. Table 1 includes the fishing mortality information discussed above, for stocks targeted by the proposed management measures in FW 42.

TABLE 1: MORTALITY REDUCTION NECESSARY TO ACHIEVE FISHING YEAR 2006 AMENDMENT 13 FISHING MORTALITY TARGETS

Stock	F2004	Estimated F2005	Amendment 13 F2006	Mortality Reduction Necessary
GOM Cod	0.58	0.37	0.23	32%
Cape Cod (CC)/GOM Yellowtail Flounder	0.75	0.48	0.26	46%
SNE/Mid-Atlantic (MA) Yellowtail Flounder	0.99	0.58	0.26	55%
SNE/MA Winter Flounder	0.38	0.35	0.32	9%
GB Winter Flounder	1.86	NA	1.0 *	46%
White Hake	1.18	NA	1.03	13%

* Amendment 13 did not establish a 2006 F target for GB winter flounder. Rather, Amendment 13 established the value of Fmsy as 0.32. However, because model estimates of relative F rate are more precise than estimates of actual F rates, GARM II presented the estimate of F rate for 2004 in relative terms. The threshold value for the relative F rate (F2004/Fmsy) for GB winter flounder is 1.0.

NA: An estimate of F2005 for the stocks of GB winter flounder and white hake could not be developed because the assessments are index based. The necessary F reductions are based upon F2004.

Timing of FW 42 and Relationship to NMFS Secretarial Emergency Action for May 1, 2006

The Council originally developed FW 42 with the intention of implementing the management measures on May 1, 2006, as specified by Amendment 13 and as required by the regulations. However, at its November 15–17, 2005, meeting, the Council announced that it would not be able to complete FW 42 in time for NMFS to implement the measures by the beginning of the fishing year. NMFS determined that the unforeseen delay of FW 42 implementation beyond May 1, 2006, and the need to reduce F on specific groundfish stocks as a stop-gap measure, by the start of the 2006 fishing year, constituted an emergency, as the delay could cause serious conservation and management problems. Therefore, NMFS implemented emergency management measures (71 FR 19348; April 13, 2006) for the 2006 fishing year that went into effect on May 1, 2006, and will remain in effect, at least, until such time that FW 42, if approved, is implemented. At the time of FW 42 implementation, the emergency measures would be replaced by the approved FW 42 measures. The regulatory text in this proposed rule is written to amend the regulations in 50 CFR part 648 as they appeared prior to implementation of the emergency rule. The Secretarial emergency action is expected to have substantially reduced F on most groundfish stocks, but possibly not to the full extent necessary for all stocks. An analysis of the combined effects of the Secretarial emergency management measures and the proposed FW 42 measures (alternative 1) indicates that the combined measures will be more effective in reducing F in 2006 if FW 42 is implemented soon after the Secretarial measures went into effect.

Proposed FW 42 Management Measures

The following measures are proposed to be implemented as soon as possible during the 2006 fishing year. The measures are intended to continue and modify the management regime implemented by Amendment 13 and subsequent framework adjustments (FW 40–A, FW 40–B, and FW 41), and to replace measures implemented under Secretarial emergency authority at the beginning of the 2006 fishing year.

Specifically, the Joint Frameworks would maintain the Amendment 13 default days-at-sea (DAS) reductions for the 2006 fishing year; specify target Total Allowable Catches (TACs) and Incidental Catch TACs for the 2006, 2007, and 2008 fishing years; implement a Vessel Monitoring System (VMS) requirement for NE multispecies DAS vessels; implement differential DAS counting in specific areas of the Gulf of Maine (GOM) and Southern New England (SNE); implement new commercial trip limits for several NE multispecies; renew and modify the Regular B DAS Program, including the rules pertaining to monkfish vessels; renew and modify the Eastern U.S./Canada Haddock Special Access Program (SAP); renew the DAS Leasing Program; modify the Closed Area (CA) I Hook Gear Haddock SAP; implement the GB Cod Fixed Gear Sector; provide flexibility for vessels to fish inside and outside of the Eastern U.S./Canada Management Area on the same trip; modify reporting requirements for Special Management Programs (The U.S./Canada Management Area; the Regular B DAS Pilot Program; CA I Hook Gear Haddock SAP; CA II Yellowtail Flounder SAP, and the Eastern U.S./Canada Haddock SAP Pilot Program); modify the DAS Transfer Program; modify the trawl codend mesh size requirement in the SNE Regulated Mesh Area (RMA); modify the Regional Administrator's authority to adjust certain possession limits; and modify the recreational possession restrictions and size limits for GOM cod.

1. Recreational Restrictions

Under this proposed action, private recreational vessels and vessels fishing under the charter/party regulations of the NE Multispecies FMP would be prohibited from possessing or retaining any cod from the GOM RMA from November 1 - March 31. Also, the minimum size of cod for private recreational vessels and charter/party vessels fishing in the GOM would be increased from 22 inches (56 cm) to 24 inches (61 cm). Private recreational and charter/party vessels would be allowed to transit the GOM RMA with cod caught from outside this area, provided all bait and hooks are removed from fishing rods and all cod are stored in coolers or ice chests.

These measures are intended to achieve a reduction in GOM cod F for fish caught by the recreational sector that is equivalent to the GOM cod F reduction required of the commercial sector. The gear and cod stowage requirements are necessary to properly enforce these measures. These measures are consistent with the Secretarial measures implemented on May 1, 2006.

2. GB yellowtail flounder rebuilding plan

Although F_{2004} for GB yellowtail flounder was above F_{msy}, adjustment of management measures for this stock is not necessary because F is limited by a

hard TAC (i.e., fishing on the stock is prohibited when such a TAC is reached). This TAC is specified on an annual basis through a process described at § 648.85(a)(2), in accordance with the U.S./Canada Resource Sharing Understanding. Two assessment approaches were used to evaluate the GB yellowtail flounder stock status. Both indicated that biomass increased since the mid 1990s and recent recruitment has improved, but that F has fishing mortality remained substantially above F_{msy}. Based on this review and the recommendation of the Transboundary Management Guidance Committee, the Council recommended a GB yellowtail flounder hard TAC of 2,070 mt for fishing year 2006; the U.S. portion of the shared TAC of 3,000 mt. The shared TAC of 3,000 mt represents a neutral risk, i.e., it has approximately a 50–percent chance of exceeding the F_{msy} of 0.25. NMFS implemented specification of the 2006 yellowtail flounder TAC on May 1, 2006 (71 FR 25095, April 28, 2006). The hard TAC of 2,070 mt for GB yellowtail flounder represents a 51–percent reduction from the 2005 TAC, and would constrain fishing effort to the appropriate level to achieve the required F reduction.

Based upon the scientific information from GARM II, GB yellowtail flounder is in an overfished condition (i.e., the stock biomass is less than 50 percent of the stock size associated with maximum sustainable yield (B_{msy}). To address this, FW 42 proposes a rebuilding plan for GB yellowtail flounder, whereby GB yellowtail flounder would be rebuilt from its current stock size to Bmsy using an adaptive strategy that rebuilds the stock by 2014 with approximately a 75–percent probability of success. Under the adaptive strategy, the maximum F on the stock through 2008 would be set at F_{msy} (0.25), and subsequent changes to F required to complete rebuilding by 2014 ($F_{rebuild}$) would be developed in the 2009 biennial adjustment required be the NE Multispecies FMP. This rebuilding strategy and 2014 timeline was selected by the Council to be consistent with the rebuilding timelines for most of the stocks in the FMP, and to take into account uncertainty regarding the assessment of the stock. The proposed rebuilding strategy is consistent with the management strategy agreed to under the U.S. cooperative management agreement with Canada.

3. Target TACs

Target TACs are proposed in this rule pursuant to§ 648.90(a)(2), which requires the Council to develop new target TACs based upon the most recent scientific information, as part of the biennial adjustment process. Thus, this rule proposes necessary target TACs for all groundfish stocks for fishing years (FY) 2006, 2007, and 2008. The following proposed target TACs were developed by the Council's PDT and were calculated from projections of future catches, using recent assessment data, and the Amendment 13 target F's.

TABLE 2. PROPOSED TARGET TACS FOR 2006 THROUGH 2008 (MT, LIVE WEIGHT).

Species	Stock	2006	2007	2008	Composition
Cod	GB	7,458	9,822	11,855	E *
	GOM	5,146	10,020	10,491	C *
Haddock	GB	49,829	103,329	121,681	E
	GOM	1,279	1,254	1,229	A
Yellowtail flounder	GB	2,070	see footnote		D *
	SNE/Mid-Atlantic (MA)	146	213	312	B *
	Cape Cod (CC)/GOM	650	1,078	1,406	B *
American plaice	-	3,666	4,104	5,121	B *
Witch flounder	-	5,511	5,075	4,331	A *
Winter flounder	GB	1,424	1,604	1,782	A *
	GOM	see footnote			C
	SNE/MA	2,481	3,016	3,577	C *
Redfish	-	1,946	2,075	2,167	A
White hake	-	2,056	1,676	1,367	E *
Pollock	-	12,005	12,005	12,005	E
Windowpane flounder	North	389	389	389	A
	South	173	166	159	A
Ocean pout	-	38	38	38	A
Atlantic halibut	-	NA	NA	NA	NA

A - Commercial Landings
B - Commercial Landings and Discards
C - Commercial Landings, Discards, and RecreationalHarvest
D - Commercial Landings and Discards (U.S. portion of U.S./Canada TAC)
E - Commercial Landings (U.S. and Canada)

* For Stocks of Concern: Incidental TAC is a subset of Target TAC.
GARM II did not develop a TAC for GOM winter flounder because of uncertainties in the assessment.
Note, proposed TACs for GB cod and GB haddock include Canadian landings.
GB yellowtail flounder TACs are hard TACs, which are determined annually and cannot be specified in advance.
2006 GB yellowtail flounder TAC was implemented on April 28, 2006 (71 FR 25095).

4. Incidental Catch TACs

The values of Incidental Catch TACs for fishing years 2006 through 2008 are proposed in this rule pursuant to the regulations at § 648.85(b)(5), which require the Council to develop new Incidental Catch TACs based upon the most recent scientific information, as part of the biennial FMP adjustment process. FW 40–A (69 FR 67780; November 14, 2004) initially implemented Incidental Catch TACs to limit the potential for the use of Category B DAS to cause excessive fishing mortality on stocks of concern that would likely be caught in the program. For the NE multispecies fishery, a stock of concern is defined as ''a stock that is in an overfished condition, or that is subject to overfishing''. FW 40–A implemented Incidental Catch TACs for the following eight stocks, based upon the same stock status information that was used in the development of Amendment 13: GOM cod, GB cod, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. FW 40–A also implemented percentage allocations of the Incidental Catch TACs among the Special Management Programs (with the exception of the U.S./Canada Management Area) and specified values for those Incidental Catch TACs for portions of the 2004 fishing year. FW 40–B (70 FR 31323; June 1, 2005) modified the percentage allocations of the Incidental Catch TACs among Special Management Programs (including allocations for the two Special Management Programs that were proposed but not approved by NMFS (i.e., the Western GOM Haddock SAP and Research Set-Aside Program) and specified values for Incidental Catch TACs for fishing years 2005 and 2006. FW 41 (70 FR 54302; September 14, 2005), modified the percentage allocation of the Incidental Catch TACs among Special Management Programs to include the CA I Hook Gear Haddock SAP, and specified values for the Incidental Catch TACs through the 2006 fishing year. Although Incidental Catch TACs for 2006 were specified in FW 41, this action proposes to modify definitions of the Incidental Catch TACs with respect to the target TACs, modify the allocation of Incidental Catch TACs among Special Management Programs, and specify values of all Incidental Catch TACs, based upon the most recent scientific information (GARM II).

In addition to the actions described above that relate to the Incidental Catch TACs for the eight stocks of concern noted above, this action proposes to define GB yellowtail flounder and GB winter flounder as additional stocks of concern, define the size of the Incidental Catch TACs (with respect to the target TACs) that are likely to be caught in the Special Management Programs, specify values for the 2006 through 2008 fishing years, and allocate the Incidental Catch TACs among Special Management Programs.

This action would further clarify the relationship between target TACs and Incidental Catch TACs; that is, Incidental Catch TACs are considered as a subset of the pertinent target TACs (rather than as amounts in excess of the target TACs). This clarification would increase the utility of target TACs as a tool used to evaluate the effectiveness of the management measure.

TABLE 3. PROPOSED DEFINITION OF INCIDENTAL CATCH TACS (PERCENT) AND SPECIFICATION OF TACS FOR 2006 THROUGH 2008 (MT).

Stock of Concern	Percentage of Total Target TAC	2006	2007	2008
GB Cod	Two	122.6	*	*
GOM cod	One	49.9	99.0	103.9
GB yellowtail flounder	Two	41.4	*	*
CC/GOM yellowtail flounder	One	6.5	10.8	14.1
SNE/MA yellowtail flounder	One	1.5	2.1	3.1
American plaice	Five	183.3	205.2	256.1
Witch flounder	Five	275.6	253.8	216.6
SNE/MA winter flounder	One	24.8	30.2	35.6
GB winter flounder	Two	28.5	32.1	35.6
White hake	Two	41.1	33.5	27.3

* Note: GB cod and GB yellowtail flounder, TACs are determined annually and cannot be estimated in advance.

TABLE 4. ALLOCATION OF INCIDENTAL CATCH TACS AMONG CATEGORY B DAS PROGRAMS (SHOWN AS A PERCENTAGE OF THE INCIDENTAL CATCH TAC).

Stock of Concern	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern U.S./Canada Haddock SAP
GOM cod	100%	NA	NA

TABLE 4. ALLOCATION OF INCIDENTAL CATCH TACS AMONG CATEGORY B DAS PROGRAMS (SHOWN AS A PERCENTAGE OF THE INCIDENTAL CATCH TAC).—Continued

Stock of Concern	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern U.S./Canada Haddock SAP
GB cod	50%	16%	34%
CC/GOM yellowtail flounder	100%	NA	NA
American plaice	100%	NA	NA
White hake	100%	NA	NA
SNE/MA yellowtail flounder	100%	NA	NA
SNE/MA winter flounder	100%	NA	NA
Witch flounder	100%	NA	NA
GB yellowtail flounder	50%	NA	50%
GB winter flounder	50%	NA	50%

5. Default Modifications to DAS Allocations

The Amendment 13 rebuilding strategy established two ''default'' measures that would automatically reduce F on multiple groundfish species, particularly for American plaice and SNE/MA yellowtail flounder, beginning in fishing year 2006, unless certain criteria are met. The criteria defined various conditions, indicating improvements to the fishery (i.e., fishing mortality and biomass status) that would have to be met in order for the default measures to be automatically voided. These default measures for FY 2006 include a revision of the DAS allocation ratio of Category A:B DAS from 60:40 to 55:45, and differential DAS counting in the SNE/MA RMA at a rate of 1.5:1. Based on the results of GARM II, the default criteria have not been met and further reductions in F are, therefore, required (as described above). This action does not change the Amendment 13 default measure DAS allocations (Category A and B DAS) for FY 2006–2008, but it would replace the default differential DAS counting measure in the SNE RMA. FW 42 proposes a FY 2006–2008 DAS ratio of 55:45 (Category A: B DAS), which represents an 8.3–percent reduction in the number of Category A DAS allocated by Amendment 13. This action would revise the Amendment 13 default differential DAS counting measure in the SNE/MA RMA, as described in section 8 of this preamble.

6. VMS Requirement

This proposed rule would implement a requirement that all limited access NE multispecies DAS vessels using a groundfish DAS must be equipped with an approved VMS that meets the requirements of 50 CFR 648.9. Under FW 42, it would be illegal for a limited access NE multispecies DAS vessel to fish under a groundfish DAS without an approved VMS. A vessel owner with a limited access NE multispecies DAS permit who does not intend to and does not fish any of his/her groundfish DAS during the fishing year would be permitted to renew the vessel's limited access permit without having an approved VMS, but would not be able to fish any of the vessel's groundfish DAS for that fishing year. This VMS requirement would be implemented at the same time as the rest of the proposed FW 42 management measures, unless vessels are otherwise notified by NMFS. As required under current VMS regulations, a vessel owner would be required to provide pertinent information (e.g., type of VMS unit, installation date, dealer, etc.) to NMFS prior to being eligible to use VMS. NMFS would send letters to all limited access NE multispecies DAS permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use. This rule would clarify that when a vessel is subject to multiple, conflicting VMS regulations of different programs (within the NE Multispecies FMP, or by other FMPs), the most restrictive requirement would apply. For example, a vessel fishing in both the Eastern U.S./Canada Area and in one of the Differential DAS Areas (described in sections 7 and 8 of this preamble) on the same trip would be subject to the VMS restrictions that pertain to both programs.

Although this rule proposes a mandatory VMS requirement, NE multispecies DAS vessels would still be required to declare periods out of the fishery (spawning block out and Day Gillnet vessel blocks out) through the Interactive Voice Response (IVR) call-in system. As under current regulations, the Regional Administrator would retain the authority to require limited access NE multispecies vessels to utilize the IVR system in lieu of the VMS system for the administration of DAS requirements. In addition, the Regional Administrator would be authorized to require vessels to obtain a Letter of Authorization (LOA) as an alternate method of enforcing a possession limit, if the proposed VMS requirement is delayed or not operational.

7. Differential DAS Counting in GOM

Under this proposed rule, all NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing, i.e., harvesting fish any portion of its trip in the GOM Differential DAS Area, with the exception noted below, (for a Day gillnet vessel), would be charged at a rate of 2:1, regardless of area fished. The proposed GOM Differential DAS Area (defined in the regulatory text portion of this document), includes most of the area west of 69° 30' W. long. and between 41° 30' and 43° 30' N. lat (between approximately Monomoy Island, MA and Portland, ME). Day gillnet vessels would be charged DAS at a rate of 2:1 for the actual hours used for any trip of less than 3 hr in duration, and for any trip of greater than 7.5 hr. For Day gillnet trips between 3 and 7.5

hr duration, vessels would be charged a full 15 hr. For example, a trawl vessel that has declared into the GOM Differential DAS Area and accrued 2.5 hr to and from the VMS demarcation line would be charged 5 hr (2.5 hr x 2) of DAS use. Conversely, a Day gillnet vessel that has declared into the GOM Differential DAS Area and accrued 5 hr would be charged for 15 hr of DAS use (between 3 and 7.5 hr = 15 hr); a Day gillnet vessel fishing in the GOM Differential DAS Area for 8 hr would be charged for 16 hr of DAS use (8 hr x 2). On any trip in which a vessel declares, prior to leaving the dock, that it will be fishing, i.e., harvesting fish, in the GOM Differential DAS Area under a Category A DAS, the vessel would be charged at the differential DAS rate for the entire fishing trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. At no time may a vessel fish under a Category A DAS in the GOM Differential DAS Area, unless it has declared into this area prior to the start of the trip, or unless circumstances beyond a vessel's control exit, as described below. A vessel that did not declare its intent to fish in the GOM Differential DAS Area would be permitted to transit the area, provided its fishing gear is properly stowed according to the regulations. In addition, a vessel that has not declared its intent to fish in the GOM Differential DAS Area may also be in the area when not transiting due to bad weather, or other circumstances beyond its control, provided its fishing gear is properly stowed and provided the vessel immediately notifies NMFS through it's VMS.

No changes to the Monkfish FMP are proposed to accomodate to the multispecies Differential DAS rules, but the following is an explanation of how the proposed groundfish regulations would work with the current Monkfish FMP. A vessel issued a limited access monkfish Category C, D, permit and that has declared into the GOM Differential DAS Area under a monkfish DAS (thereby using both a monkfish and NE multispecies DAS) would have its NE multispecies DAS charged at a rate of 2:1, but its monkfish DAS would continue to be charged at a rate of 1:1. The current regulations allow a monkfish Category C and D vessel to fish under a monkfish-only DAS, when groundfish DAS are no longer available, to ensure that it could fish its full allocation of monkfish DAS. Under this proposed rule, vessels fishing under a monkfish-only DAS would continue to be required to fish under the provisions of the monkfish Category A or B permit. Such a vessel would be limited to monkfish-only DAS equal to its net monkfish DAS allocations (including carry-over DAS) minus its net NE multispecies Category A DAS allocation (including carry-over DAS). This proposed rule would continue to provide a monkfish vessel with an amount of ''monkfish only'' DAS based upon its current allocations of monkfish and NE multispecies DAS, but would not expand this number to account for the effects on monkfish DAS due to the differential DAS measures proposed under this rule. For example, if a Category C monkfish vessel allocated 40 monkfish DAS has a current NE multispecies DAS allocation of 15 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25 DAS (40 monkfish DAS - 15 NE multispecies DAS). However, for a vessel fishing under differential DAS, the overall amount of monkfish DAS that could be used is effectively reduced because the NE multispecies DAS are used at the differential rate. For instance, in the example above, if the vessel fished all 15 NE multispecies DAS at the differential DAS rate, the vessel would use up its allocation of NE multispecies DAS after 7.5 days of actual time fished (7.5 days x 2.0 = 15 DAS). Therefore, after the vessel fished all of its NE multispecies DAS at the differential rate, it would have a balance of 32.5 monkfish DAS (40 - 7.5 = 32.5), but the vessel would be able to fish only up to 25 of its monkfish DAS as ''monkfish-only'' DAS.

For a vessel that has declared that it is fishing in the GOM Differential DAS Area, trip limits would apply based on the actual days spent fishing (time from Demarcation line to Demarcation line), and not on the basis of the differential DAS that would be charged for the trip. The cod possession limit rule that requires vessels to ''run the clock'' to fully account for each daily limit of cod caught would not apply to trips charged at the differential DAS rate (for both GOM and GB cod). For example, if the trip of a vessel declared into the GOM Differential DAS Area lasts for 25 hr actual time, the vessel would be allowed to catch twice the daily limit of GOM cod (800 lb (362.9 kg) per DAS), and would be charged 50 hr of DAS. Because differential DAS would apply only to Category A DAS, a vessel that fishes in the GOM Differential DAS Area under the Regular B DAS Program (and ends its trip under a Regular B DAS) would not be subject to the differential DAS counting and would be subject to the DAS counting rules of the Regular B DAS Program.

A vessel that fishes inside and outside of the Eastern U.S./Canada Area on the same trip (as described in section 15 of this preamble) may also fish in the GOM Differential DAS Area, provided the vessel declares its intent to fish in the area via VMS prior to leaving the Eastern U.S./Canada Area.

The GOM Differential DAS restrictions are designed to reduce F on three stocks of fish: GOM/CC yellowtail flounder, GOM cod, and white hake.

8. Differential DAS Counting in SNE

Under this proposed rule, all NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing, i.e., harvesting fish, in any portion of its trip in the SNE Differential DAS Area, with the exception noted below, would be charged at a rate of 2:1, when fishing in a specific portion of the SNE RMA. At no time may a vessel fish, except for transiting purposes only, under a Category A DAS in the SNE Differential DAS Area, unless it has declared into the area prior to the start of the trip. The proposed SNE Differential DAS Area (defined in the regulatory text portion of this document) is an irregular shaped, offshore area extending from 73° 40' W. long., east to 69° 30' W. long. (from south of western Long Island to north of the Nantucket Lightship Closed Area). On any trip in which a vessel declares, prior to leaving the dock, via its VMS unit, that it will be fishing, i.e., harvesting fish, in the SNE Differential DAS Area under a Category A DAS, the vessel would be charged at the differential DAS rate for that portion of the trip spent in the SNE Differential Area (as determined from VMS positional data). The time spent outside this area would be charged at the rate of 1:1. For example, a trawl vessel that declared into the SNE Differential DAS Area through its VMS unit and for which 12 hr of actual time had elapsed from the time the vessel crossed the demarcation line at the beginning of its trip to the time the vessel crossed the demarcation line on its return home to port, 4 hr of which was spent fishing in the SNE Differential DAS Area, the total DAS for that trip would equal 16 hr (8 hr of actual time and 8 hr (4 x 2) of differential DAS time). A Day gillnet vessel that declared into the a SNE Differential DAS Area through VMS would be charged according to the following formula for the time fished in this area: For hours accrued in the area less than 3 hours or greater than 7.5

hours, vessels would be charged at a rate of 2:1; for hours accrued in the area between 3 and 7.5 hr, vessels would be charged a full 15 hr. For example, under this proposed rule, a Day gillnet vessel fishing in the SNE Differential DAS Area for 5 hr would be charged 15 hr of DAS (plus actual time for any time that the vessel fished outside the area). For trips where a Day gillnet vessel declares into the SNE Differential DAS Area, the application of the DAS accrual formula described above would not supersede the DAS accounting formula that applies to all NE multispecies Day gillnet vessels. In other words, the net DAS charge for a Day gillnet vessel for a trip declared into the SNE Differential DAS Area may not be less than the DAS that would accrue on the same length trip by a Day gillnet vessel not declared into the SNE Differential DAS Area.

If the Regional Administrator requires the use of the IVR or other non-VMS reporting system, a vessel fishing for any portion of its trip in the SNE Differential DAS Area would be charged at the rate of 2:1 for the entire trip, in a manner similar to that described for differential DAS counting in the GOM Differential DAS Area (see section 7 of this preamble). Using IVR or IVR technology, it is not possible to determine the amount of time a vessel fishes inside the SNE Differential DAS Area, and therefore the vessel must be charged at the differential rate for the entire trip. Further, if a vessel fishes in both the GOM and SNE Differential DAS Area on the same trip, the vessel would be charged at the rate of 2:1 for the entire trip.

Similar to fishing in the GOM Differential DAS Area, a vessel issued a limited access monkfish Category C, D permit that has declared into the SNE Differential DAS Area under a monkfish DAS (and therefore accruing both monkfish and NE multispecies DAS) would have its NE multispecies DAS charged at a rate of 2:1, as described above, and its monkfish DAS charged at a rate of 1:1.

A vessel that does not declare its intent to fish, i.e., harvest fish, in the SNE Differential DAS Area under a Category A DAS would be permitted to transit the area, provided its fishing gear is properly stowed while transiting the Area according to the regulations.

The SNE Differential DAS restrictions are designed to reduce F on three stocks of fish: SNE/MA yellowtail flounder, SNE winter flounder, and white hake.

Similar to how trip limits would be counted when fishing in the GOM Differential DAS Area, for trips declared into the SNE Differential DAS Area, all trip limits would apply based on the actual days spent fishing, and not on the basis of the number of DAS charged. A vessel fishing under the Regular B DAS Program (that ends its trip under a Regular B DAS) would not be subject to differential DAS counting, regardless of where it fishes.

A vessel that fishes inside and outside of the U.S./Canada Area on the same trip (as described in section 15 of this preamble) could also fish in the SNE Differential DAS Area, provided the vessel declares its intent to fish in the area via VMS prior to leaving the Eastern U.S./Canada Area.

9. Commercial Trip Limits

This proposed rule does not change the Amendment 13 GOM cod trip limit (800 lb (362.9 kg) per DAS, up to 4,000 lb (1,818.2 kg) per trip). This proposed rule would implement new trip limits for white hake and GB winter flounder, modify the existing trip limits for the three yellowtail flounder stocks (CC/GOM, GB, and SNE/MA), and modify the haddock trip limit and the GOM cod trip limit exemption and cod overage regulations.

Under this action, a NE multispecies DAS vessel fishing under Category A DAS (and a vessel in another fishery that is subject to the NE multispecies possession and trip limit regulations) may land up 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536.2 kg) per trip. A NE multispecies DAS vessel fishing under a Category A DAS (and a vessel in another fishery that may possess regulated NE multispecies) that has declared into the U.S./Canada Management Area may land up to 5,000 lb (2,268.1 kg) of GB winter flounder per trip. The U.S./Canada Management Area is defined as the same geographic area as the GB winter flounder stock area.

The Amendment 13 final rule implemented the following seasonal trip limits for the CC/GOM stock of yellowtail flounder: 250 lb (113.6 kg) per trip during April, May, October, and November, and 750 lb (340.2 kg) per DAS, up to 3,000 lb (1,364.0 kg) per trip, during June - September, and December - March. In addition, the Amendment 13 final rule implemented the following seasonal trip limit for the SNE/MA stock of yellowtail flounder: 250 lb (113.6 kg) per trip during March - June, and 750 lb (340.2 kg) per DAS, up to 3,000 lb (1,364.0 kg) per trip, during July - February. This proposed rule would modify these trip limits implemented through Amendment 13 for CC/GOM and SNE/MA stocks of yellowtail flounder by implementing the same trip limits for the entire year. Under this proposed rule, NE multispecies DAS vessels fishing under Category A DAS (and vessels in other fisheries that are subject to the NE multispecies possession and trip limit regulations) could land only up to 250 lb (113.6 kg) per DAS, or any part of a DAS, up to 1,000 lb (453.6 kg) per trip of CC/GOM or SNE/MA yellowtail flounder for the entire fishing year. NMFS proposes to eliminate the current rule requiring vessels to obtain and possess on board a yellowtail flounder LOA issued by the Regional Administrator in order to land yellowtail flounder from either of these two stocks because enforceability of these proposed trip limits would be improved (because they would be the same under this proposed rule). The requirement for a LOA was implemented under Amendment 13 in order to enable enforcement of the yellowtail flounder trip limits.

This proposed rule would expand the Regional Administrator's authority to change the GB yellowtail flounder trip limit. In addition, guidance was developed in FW 42 to assist the Regional Administrator regarding potential in-season modifications to the trip limit (see Table 5 for suggested guidance offered by the Council). Under Amendment 13 regulations, there is no initial trip limit for GB yellowtail flounder. When it is projected that 70 percent of the yellowtail flounder will be harvested, current regulations require a trip limit of 1,500 lb (680.4 kg) per day, up to 15,000 lb (6,804.1 kg) per trip. However, the Regional Administrator may modify various management measures, including trip limits when it is projected that 30 and 60–percent of the GB yellowtail flounder TAC will be harvested.

This proposed rule would remove the required trip limit imposed at 70 percent of the TAC, and the threshold harvest levels of 30 percent and 60 percent before other management measures can be adjusted. In place of the current measures, this proposed rule would implement an initial GB yellowtail flounder possession limit of 10,000 lb (4,536.2 kg) per trip and allow the Regional Administrator to make adjustments to the GB yellowtail flounder trip limit at any time during the fishing year, including eliminating or adjusting the initial 10,000–lb (4,536.2-) trip limit before the start of the fishing year, in order to prevent exceeding the TAC or to facilitate harvesting the GB yellowtail flounder TAC, in a manner consistent with the Administrative Procedure Act (this is more fully described under section 22 of this preamble). If no trip limit were specified for the beginning of a fishing year, the 10,000 lb yellowtail flounder

trip limit would remain in effect. The Regional Administrator may specify yellowtail flounder trip limits for the whole U.S./Canada Management Area or for either of the sub-areas (Western Area or Eastern Area). Following are catch thresholds and associated trip limits offered as guidance by the Council for the Regional Administrator's consideration.

TABLE 5. GB YELLOWTAIL FLOUNDER TRIP LIMIT ADJUSTMENT GUIDANCE.

Fishing Year Quarter	If catch is projected to reach 30% of the TAC during the specified quarter, the suggested trip is as follows:	If catch is projected to reach 60% of the TAC during the specified quarter, the suggested trip is as follows:
Quarter 1	7,500 lb (3,402.1 kg)	3,000 lb (1,360.9 kg)
Quarter 2	10,000 lb (4,536.2 kg)	5,000 lb (2,268.1 kg)
Quarter 3	25,000 lb (11,340.4 kg)	10,000 lb (4,536.2 kg)
Quarter 4	remove trip limit	25,000 lb (11,340.4 kg)

This proposed rule would eliminate the current initial haddock trip limit provision (May-Sept 3,000 lb (1,360.8 kg) per DAS up to 30,000 lb (13,608 kg) per trip; Oct-Apr 5,000 lb (2,268 kg) per DAS up to 50,000 lb (22,680 kg) per trip) and as more fully described under section 22, of this preamble, the automatic trip limit reduction for Eastern GB haddock (1,500 lb (680.4 kg) per DAS or up to 15,000 lb (6,804.1 kg) per trip) when 70 percent of the TAC is projected by the Regional Administrator.

With respect to monitoring and enforcing trip limits, NMFS is proposing changes that would eliminate administrative requirements that NMFS believes are no longer necessary in the context of FW 42. If VMS is approved and implemented as proposed in this rule (see section 6 of this preamble), NMFS would eliminate the requirement for NE multispecies DAS vessels to obtain a GB Cod Trip Limit Exemption Letter (LOA) from the Regional Administrator when fishing outside of the GOM RMA, if the vessel operator desires to be exempt from the more restrictive cod trip limit in the GOM, because this law enforcement tool would no longer be necessary. Instead, with the exception of vessels declared into the U.S./Canada Management Area, a NE multispecies DAS vessel fishing south of the GOM RMA must declare through the VMS, prior to leaving the dock in accordance with instructions to be provided by the Regional Administrator, its intent to fish south of the GOM RMA in order to be subject to the less restrictive GB cod trip limits. Such a vessel would be exempt from the GOM cod landing limit, but could not fish in the GOM RMA for the duration of the trip. Such a vessel could transit the GOM RMA, provided that its gear is properly stowed while in the GOM RMA. A vessel that has not declared through VMS that it would be fishing south of the GOM RMA, would be subject to the most restrictive applicable cod trip limit, regardless of area fished.

The Regional Administrator would retain the authority to require a vessel to obtain a GOM Cod Trip Limit Exemption LOA (as under current regulations), should implementation of the VMS requirement be delayed or if NMFS's administration of the VMS program is not operational. If an LOA is required, such a vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the LOA on board.

For a vessel that is not fishing in either of the two differential DAS areas and that catches cod in excess of the GOM or GB cod trip limits (i.e., the vessel possesses up to 1 extra day's worth of cod in relation to the amount of DAS that have elapsed), the current requirement for vessels to ''run'' their clocks upon entering port (to account for the amount of cod on board) would be replaced by a requirement to make a declaration via VMS prior to crossing the VMS demarcation line. For a vessel making this VMS declaration, NMFS would make the appropriate increase to the DAS accrued (up to 23 hours and 59 minutes) to round up the next 24 hr increment of DAS.

10. Regular B DAS Program

The Regular B DAS Pilot Program was originally implemented by the FW 40–A final rule (69 FR 67780; November 19, 2004), and was intended to provide opportunities to use Regular B DAS outside of a SAP to catch stocks that can withstand additional fishing effort. This program included a variety of management measures designed to reduce the potential impacts of the use of Regular B DAS on stocks of concern (e.g., DAS limits, low trip limits and Incidental Catch TACs for stocks of concern). Because of the uncertainties regarding the impacts of the Regular B DAS Program, this specialized fishery was characterized as a ''Pilot'' Program and a program expiration date of October 31, 2005, was specified. This proposed rule would renew the Regular B DAS Program, but modify certain aspects in order to further reduce the potential risks associated with the use a Regular B DAS and to minimize impacts to the monkfish fishery. The program would no longer be characterized as a APilot,'' and would remain in effect indefinitely. The full program is described below, with the changes from the previous Pilot Program noted.

The proposed action would allow limited access NE multispecies DAS vessels with an allocation of Regular B DAS to fish under the Regular B DAS Program to catch relatively healthy groundfish stocks (GB haddock, pollock, redfish, GOM winter flounder and GOM haddock). GB winter flounder and GB yellowtail flounder could no longer be considered healthy stocks under the Regular B DAS Program because they would be considered ''stocks of concern'' for which fishing mortality reductions are required under this proposed rule. Vessels eligible to fish in the Regular B DAS Program would not be allowed to fish in this program and in a SAP (e.g., the Eastern U.S./Canada Haddock SAP, CA I Hook Gear Haddock SAP, or CA II yellowtail flounder SAP) on the same trip. In order to limit the potential biological impacts of the program, only 500 Regular B DAS could be used during the first quarter of the calendar year (May through July), while 1,000 Regular B DAS could be used in subsequent quarters (August through October, November through January, and February through April). DAS that are not used in one quarter would not

be available for use in subsequent quarters. The limitation of 500 DAS during the first quarter would represent a modification from the Pilot Program, which allowed the use of 1,000 DAS during the first quarter, and would provide further protection for stocks of concern, especially GB winter flounder, which was caught in relatively large numbers during the first quarter of the 2005 fishing year. As implemented previously under FW 40–A, Regular B DAS would accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished.

A vessel participating in this program would be required to be equipped with an approved VMS (this requirement would be separate from the general VMS requirement proposed for all groundfish DAS vessels). The vessel owner or operator would be required to notify the NMFS Observer Program at least 72 hr in advance of a trip in order to facilitate observer coverage. This notice would require reporting of the following information: The general area or areas that will be fished (GOM, GB, or SNE), vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Providing notice of the area that the vessel intends to fish would not restrict the vessel's activity to fish only in that area on that trip, but would be used to plan observer coverage. Prior to departing on the trip, the vessel owner or operator would be required to notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program would be required to report their catches of certain groundfish stocks of concern (cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake) and haddock, daily through VMS, including the amount of fish kept and discarded. The reporting requirements would be slightly different from those required in the Pilot Program and would be consistent with the standardized reporting requirements that would apply to all Special Management Programs of the FMP, as explained in Section 17 of this preamble.

A vessel fishing under a Category B DAS while in this program would be prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, ocean pout, and monkfish, and would be limited to landing 100 lb (45.4 kg) per DAS, or any part of a DAS, of each of the following groundfish stocks: GOM cod, GB cod, GB yellowtail flounder, American plaice, witch flounder, white hake, SNE/MA winter flounder, GB winter flounder, southern windowpane flounder, and ocean pout, unless further restricted (see below). In addition, a vessel fishing in this program would be limited to landing no more than one Atlantic halibut, and 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip, of CC/GOM or SNE/MA yellowtail flounder. A limited access monkfish DAS vessel fishing with gear other than trawl gear that is participating in this program under a NE multispecies DAS would be subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E) (i.e., 400 lb (181.4 kg) tail weight/DAS, or 50 percent of the total weight of fish on board, whichever is less, when fishing in the monkfish Northern Fishery Management Area (NFMA); and 50 lb (22.7 kg) tail weight/DAS when fishing in the monkfish Southern Fishery Management Area (SFMA)). A limited access monkfish DAS vessels fishing with trawl gear that is participating in this program under a NE multispecies DAS would be subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E), as well as the monkfish restrictions associated with the required use of the haddock separator trawl (as described below). That is, vessels would be subject to 500 lb (226.8 kg) whole weight of monkfish per trip when fishing in the monkfish NFMA; and 500 lb (226.8 kg) whole weight per trip or 50 lb (22.7 kg) tail weight per DAS, whichever is less, when fishing in the monkfish SFMA.

In contrast to the Pilot Program, in which a trawl vessel was not required to utilize any particular gear type, under this proposed rule, a trawl vessel would be required to use an approved haddock separator trawl when participating in the Regular B DAS Program. Other trawl net configurations may be on board the vessel, provided they are properly stowed when the vessel is fishing under the Regular B DAS Program rules. The intent of this restriction is to further reduce the potential for vessels to catch stocks of concern, notably cod, yellowtail flounder, and winter flounder. Furthermore, for a trawl vessel fishing with the proposed haddock separator trawl, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates would be limited to 500 lb (227 kg) each, and possession of lobsters would be prohibited, to help ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species.

If a vessel fishing under the Category B DAS Program harvests and brings on board a stock with an Incidental Catch TAC (cod, yellowtail, American plaice, witch flounder, white hake, SNE winter flounder, GB winter flounder), or southern windowpane flounder, ocean pout, Atlantic halibut, or monkfish, in excess of the landing limits, the vessel operator would be required to retain on board the excess catch of these species, and immediately notify NMFS, via VMS, that it is changing its DAS category from a Regular B DAS to a Category A DAS (i.e., ''DAS flip''). If a vessel flips from a Regular B DAS to a Category A DAS, it would be charged Category A DAS, which would accrue to the nearest minute, for the entire trip (i.e., not to the nearest day). In contrast to the Pilot Program rules, the proposed requirement to flip must be executed immediately upon exceeding the landing limit of any of the pertinent species, instead of at any time prior to crossing the VMS demarcation line. This restriction is being proposed to enhance the effectiveness and enforceability of the flipping provision. Once the vessel flips, it would be subject to the Category A trip limit restrictions. A vessel fishing in the Category B DAS Program must abide by all the reporting requirements described above for the duration of the trip, even if the vessel ''flips'' to a Category A DAS.

In order to ensure that a vessel would always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it catch a groundfish species of concern in an amount that exceeded the trip limit), with the exception of a vessel fishing in one of the two Differential DAS Areas, the number of Regular B DAS that would be allowed to be used on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5. If a vessel is fishing in either the GOM Differential DAS Area or the SNE Differential DAS Area, the number of Regular B DAS that would be allowed to be used on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip divided by 2. For example, if a vessel plans a trip under the Regular B DAS Program and has 10 Category A DAS available, the maximum number of Regular B DAS

that the vessel could fish on that trip under the Regular B DAS Program would be 5.

This action would provide the Regional Administrator authority to approve the use of additional gear specifically for this program based on approved gear standards recommended by the Council. After consideration of the Groundfish Committee's recommendation on the standards that must be met by potential gears, the Council could determine what standards, if any, would be recommended to the Regional Administrator, to facilitate the determination of whether a proposed gear type is acceptable based on whether the proposed gear has been demonstrated to reduce catch of groundfish stocks of concern. Upon receipt of the Council's recommendation on gear standards, NMFS may implement these standards in a manner consistent with the Administrative Procedure Act. If NMFS decides not to implement the Council's recommendation on gear standards, it must provide a written rationale to the Council regarding its decision not to do so.

The Pilot Program implemented by FW 40–A allowed a vessel issued a limited access monkfish Category C or D permit to use a NE multispecies Regular B DAS to fulfill the requirements of the Monkfish FMP, which requires such a vessel to use a NE multispecies DAS every time a monkfish DAS is used. To reduce fishing mortality on monkfish resulting from the use of Regular B DAS, FW 3 would prohibit a limited access monkfish DAS vessel that also possesses a limited access NE multispecies DAS permit from using a monkfish DAS (in conjunction with a NE multispecies Regular B DAS) when participating in the Regular B DAS Program. This vessel would still be able to participate in this program and use a NE multispecies Regular B DAS, but it would be required to fish under a NE multispecies DAS only and would be subject to the monkfish trip limits specified above under this section. Discarding of legal-sized monkfish would be prohibited when fishing under this program.

NMFS would administer the Regular B DAS Program quarterly DAS cap by monitoring the total number of Regular B DAS accrued on trips that begin and end under a Regular B DAS. Declaration of a Regular B DAS Program trip through VMS would not serve to reserve a vessel's right to fish under this program, because the vessel must also cross the demarcation line to begin a trip in this program. Once the maximum number of Regular B DAS are projected to be used in a quarter, the Regional Administrator would end the Regular B DAS Program for that quarter.

In order to limit the potential impact of the Regular B DAS Program on the fishing mortality of groundfish stocks of concern, a quarterly Incidental Catch TAC would be set for certain groundfish stocks of concern for this program. Based upon the definition of Incidental Catch TACs and the allocation of Incidental Catch TACs among special programs (Table 3 and 4, respectively), the proposed Incidental Catch TACs allocated to the Regular B DAS Program are calculated and divided into quarterly Incidental Catch TACs as shown below in Table 6. The quarterly Incidental Catch TACs would be divided among quarters in order to correspond to the allocation of DAS among quarters. The 1st quarter (May-July) would receive 13 percent of the Incidental Catch TACs, and the remaining quarters (August-October, November-January, and February-April) would each receive 29 percent of the Incidental Catch TACs.

TABLE 6. PROPOSED INCIDENTAL CATCH TACS FOR THE REGULAR B DAS PROGRAM (MT, LIVE WEIGHT)

	FY 2006		FY 2007		FY 2008	
	Qtr 1	Qtr 2-4	Qtr 1	Qtr 2-4	Qtr 1	Qtr 2-4
GB cod	8.0	17.8	See NOTE			
GOM cod	6.5	14.5	12.9	28.7	13.5	30.1
GB yellowtail flounder	2.7	6.0	See NOTE			
SNE/MA yellowtail	0.2	0.4	0.3	0.6	0.4	0.9
CC/GOM yellowtail	0.8	1.9	1.4	3.1	1.8	4.1
American plaice	23.8	53.2	26.7	59.5	33.3	74.3
Witch flounder	35.8	79.9	33.0	73.6	28.2	62.8
White hake	5.3	11.9	4.4	9.7	3.6	7.9
SNE/MA winter flounder	3.2	7.2	3.9	8.7	4.7	10.4
GB winter flounder	1.9	4.1	2.1	4.6	2.2	5.2

NOTE: TACs for this stock depend on annual specification of TACs in the U.S./Canada Management Area. TACs would be calculated using the definition of Incidental Catch TACs and the allocation of Incidental Catch TACs among Special Programs (Table 3 and 4, respectively), as well as the quarterly division of the TAC described above. Separate specification of these TACs would not be necessary, because it is calculated based upon an explicit formula.

With the exception of white hake, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder, if the Incidental Catch TAC for any one of these species were caught during a quarter (landings plus discards), use of Regular B DAS in

the pertinent stock area would be prohibited for the remainder of that quarter. Vessels would be able to once again use Regular B DAS under this program at the beginning of the subsequent quarter. When the white hake Incidental Catch TAC is caught, the possession of white hake when fishing under the Regular B DAS Program would be prohibited. For the CC/GOM and SNE/MA stocks of yellowtail flounder, when the respective Incidental Catch TACs are caught, only a portion of the stock area where the species is predominantly caught would be closed to Regular B DAS Program participants. Upon attainment of the CC/GOM yellowtail flounder incidental Catch TAC, the following 30-minute square blocks would close: Blocks 98, 114, 123, 124, 125, 132, and 133. Upon attainment of the SNE/MA yellowtail flounder Incidental Catch TAC, the following 30-minute square blocks would close: Blocks 70 to 73, 82 to 88, 98, 99, and 101 to 103. Closure of only a portion of the two yellowtail stock areas is a change from the original Pilot Program (which closed the whole stock areas). Given the very small Incidental Catch TACs for these two stocks, the intent of these smaller closures is to prevent closure of the whole stock area and allow continued fishing under the Regular B DAS Program in areas where little or no yellowtail flounder is likely to be caught.

Under the Pilot Program, the Regional Adminstrator had the authority to prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it was projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Program. This proposed rule would continue this authority, but would provide additional reasons for terminating the program. Additional reasons for terminating the program would include, but would not be limited to, the following: Inability to restrict catches to the Incidental Catch TACs; evidence of excessive discarding; evidence of a significant difference in flipping rates between observed and unobserved trips; and insufficient observer coverage to adequately monitor the program, particularly if coverage declines below the Council's recommendation of 36 percent (the same level of observer coverage as occurred during the original Pilot Program).

11. Renewal of DAS Leasing Program

The DAS Leasing Program was first implemented by Amendment 13 to help mitigate the economic and social impacts of effort reductions in the fishery, and expired on April 30, 2006. The Secretarial emergency rule, which will expire on October 10, 2006, without further action, continued this program from May 1, 2006, through October 10, 2006. This proposed rule would continue the DAS Leasing Program, without change, to help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort.

12. Renewal and Modification of the Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP Pilot Program was promulgated by regulations implementing FW 40–A in order to enable haddock harvest to approach OY and to mitigate the economic and social impacts of effort reductions in the fishery. The Eastern U.S./Canada Haddock SAP Pilot Program was implemented for a duration of 2 years, and will expire on November 20, 2006. This action would renew and modify the Eastern U.S./Canada Haddock SAP for fishing years 2006 through 2008. The SAP was originally characterized as a ''Pilot'' Program due to the uncertainties regarding the impacts of the SAP. Because the best available information indicates that the SAP did not undermine the fishing mortality objectives of the FMP during the Pilot phase, under this proposed rule, the program would no longer be characterized as a ''Pilot'' Program. This proposed rule would continue the Eastern U.S./Canada Haddock SAP as originally implemented, with the proposed modifications to the SAP described below.

The Eastern U.S./Canada Haddock SAP Program would allow limited access NE multispecies DAS vessels fishing with an authorized haddock separator trawl to catch haddock using a Category B DAS, in a portion of the Eastern U.S./Canada Area, including the northern-most tip of CA II. The proposed time period for the SAP would be August 1 - December 31. This time period represents a modification from the previous start date of May 1, in order to reduce the likelihood of high cod catch rates (that typically occur in the late spring and summer), reduce potential impacts on GB yellowtail flounder, and reduce likelihood of early closure of the SAP triggered by the catch of the GB cod Incidental Catch TAC (described below). Delaying the start date to August 1, is intended to help prevent an early closure of this area and thereby prolong the period of time during which vessels have access to the haddock fishery in the area under a Category B DAS.

In a manner similar to the provision proposed under the Regular B DAS Program, this action would provide the Regional Administrator authority to approve the use of additional gear specifically for this SAP based on approved gear standards recommended by the Council. After consideration of the Groundfish Committee's recommendation on the standards that must be met by potential gears to be used in this SAP, the Council could determine what standards, if any, would be recommended to the Regional Administrator, to facilitate the determination of whether a proposed gear type is acceptable, based on whether the proposed gear has been demonstrated to reduce catch of groundfish stocks of concern. Upon receipt of the Council's recommendation on gear standards, NMFS may implement these standards through a regulatory action consistent with the Administrative Procedure Act. If NMFS decides not to implement the Council's recommendation on gear standards, it must provide a written rationale to the Council regarding its decision not to do so.

New restrictions are proposed for trips on which use of the haddock separator trawl is required (including this SAP). For trawl trips, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates would be limited to 500 lb (227 kg) each per trip; and possession of lobsters would be prohibited to help ensure the proper utilization of the haddock separator trawl.

In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an annual GB cod Incidental Catch TAC would be specified for this SAP that represents 34 percent of the overall Incidental Catch TAC for GB cod (19.6 mt for FY 2006). In addition to an Incidental Catch TAC for GB cod, this action would also establish two new Incidental Catch TACs for GB yellowtail flounder and GB winter flounder for this SAP. The Incidental Catch TACs for these two species in this SAP each represent 50 percent of the respective overall Incidental Catch TACs for these stocks allocated to Special Programs. The proposed 2006 GB yellowtail flounder Incidental Catch TAC would be 20.7 mt, and the proposed GB winter flounder Incidental Catch TACs for 2006–2008 would be 14.3, 16.1, and 17.8 mt, respectively. The GB yellowtail flounder Incidental Catch TAC is dependent upon the annual

specification of the U.S./Canada TACs, and therefore would be calculated on an annual basis for the 2007 and 2008 fishing years. Separate specification of this TAC would not be necessary, because it is calculated based upon an explicit formula. Participation in the SAP by vessels using a Category B DAS would be prohibited when any one of the three Incidental Catch TACs are projected to have been caught.

Many of the associated requirements proposed for this SAP would be the same as the proposed reporting requirement that would be applicable to all Special Programs, as explained under Section 17 in this preamble. The last aspect of this SAP that represents a change from the Pilot Program is the proposed restriction on discarding while under a Category B DAS, which would apply to all regulated NE multispecies, Atlantic halibut, and ocean pout under this proposed rule, rather than applying only to cod. All other proposed measures for this SAP are consistent with the measures previously implemented.

13. Modification to CA I Hook Gear SAP

FW 42 proposes to specify a haddock TAC for this SAP for fishing years 2006 through 2008, and provide the Regional Administrator the authority to adjust these TACs based on future stock assessments using a specified formula. The formula would be based upon the size of the haddock TAC allocated for the 2004 fishing year (1,130 mt live weight) and, based on new information, would be adjusted according to the growth/decline of the western GB (WGB) haddock exploitable biomass in relationship to its size in 2004. The size of the WGB component of the stock is currently considered to be 35 percent of the total stock size (unless modified by a new stock assessment). The formula is as follows: $TAC_{year\ x}$ = (1,130 mt live weight) x (Projected WGB Haddock Exploitable $Biomass_{year\ x}$ / WGB Haddock Exploitable $Biomass_{2004}$).

TABLE 7. PROPOSED CA I HADDOCK SAP TACS FOR FISHING YEARS 2006-2009, AND PERTINENT HISTORIC INFORMATION.

Fishing Year	Total GB Haddock Stock Exploitable Biomass (mt x 1,000)	WGB Haddock Exploitable Biomass (mt x 1,000)	Ratio of Total GB Haddock Stock to WGB Component	TAC (mt live weight)
2004	100.907	35.317	N/A	1,130
2005	137.341	48.069	1.361	1,538
2006	202.261	70.791	2.004	2,265
2007	442.427	154.849	4.385	4,955
2008	560.303	196.106	5.553	6,275

For example for 2006, based on the information in the table and the formula: (202.261) x (35%) = 70.791; 70.791/35.317=2.004; and (1,130) x (2.004) = 2,265 mt.

When the haddock TAC is harvested, the SAP would close. The standardized reporting requirements as discussed in section 17 of this preamble would apply to this SAP.

14. GB Cod Fixed Gear Sector

This action would authorize the formation of a second sector in the FMP, the GB Cod Fixed Gear Sector (Fixed Gear Sector), in accordance with the procedures and requirements implemented by Amendment 13 (§ 648.87). Requirements under§ 648.87(b) that apply to all sectors would apply to the proposed Fixed Gear Sector, including, but not limited to the following: Voluntary membership; an allocation based on a hard TAC or DAS usage; a maximum allocation of 20 percent of a stock's TAC; an allocation based upon landings histories for fishing years 1996 through 2001 (for sectors formed during the period 2004 through 2007 to harvest GB cod); a requirement that sector members must remain in the sector for the entire fishing year and must abide by the rules that apply to the sector for the entire fishing year; termination of sector operations for the remainder of the fishing year once a hard TAC allocated to a sector is projected to be exceeded, and, if a hard TAC allocated to a sector is exceeded in a given fishing year, a required reduction (in the amount of the overage) from the sector's allocation the following fishing year.

The primary purpose of the proposed Fixed Gear Sector is to fish in an efficient manner, under customized managed measures, for the primary purpose of harvesting GB cod. A vessel fishing in the Fixed Gear Sector would be restricted to fishing with either jigs, non-automated demersal longline, hand gear, or sink gillnets. The Fixed Gear Sector, as required under § 648.87(b)(2), must submit an Operations Plan and Fixed Gear Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each fishing year. This proposed rule would authorize the formation of the Fixed Gear Sector, but would not constitute approval of the operation of the Fixed Gear Sector during the 2006 fishing year. The proposed Sector would be authorized to operate during the 2006 fishing year only if the Sector is approved in FW 42, and if the Regional Administrator approves an initial Operations Plan and Sector Contract for fishing year 2006. The Fixed Gear Sector submitted an Operations Plan and Sector Contract to the Regional Administrator on February 1, 2006. If the essential criteria for an Operations Plan and Sector Contract are met, the proposed Operations Plan, containing the rules under which the Fixed Gear Sector would operate, would be published in a separate **Federal Register** document and public comment solicited prior to making a final decision to authorize operation of the Sector in the 2006 fishing year. Because the Fixed Gear Sector could not be approved prior to the start of the May 1, 2006 fishing year, the Fixed Gear Sector's Operations Plan would need to provide an acceptable method for accounting for any groundfish DAS used or any GB cod caught in the 2006 fishing year prior to Regional Administrator approval.

As described above, a vessel fishing in the Fixed Gear Sector would be restricted to fishing with various gear, including jigs; however jigs are not defined in the regulations. This proposed rule includes a definition of jigging and jig as follows: Jigging, with respect to the NE multispecies fishery,

means fishing for groundfish with hook and line gear (hand line or rod and reel) using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

15. Eastern U.S./Canada Area Flexibility

This action proposes to allow a vessel that fishes in the Eastern U.S./Canada Area to choose to fish in other areas outside of the Eastern U.S./Canada Area on the same trip, with an exception noted below. If a vessel chooses to fish both inside and outside of the Eastern U.S./Canada Area on the same trip, the operator must notify NMFS via VMS prior to leaving the dock or at any time during the trip prior to leaving the Eastern U.S./Canada Area, and must comply with the most restrictive regulations for the areas fished, regardless of area fished for the entire trip. For example, a vessel electing to fish inside and outside of the Eastern U.S./Canada Area on the same trip would not receive any steaming time credit, and all cod, haddock, and yellowtail flounder caught on the entire trip would be applied against the pertinent U.S./Canada Management Area TACs for these species. In addition, the vessel must comply with reporting requirements for the Eastern U.S./Canada Area for the entire trip.

A vessel would be prohibited from fishing in the CC/GOM or SNE/MA yellowtail flounder stock areas if, when fishing in the Eastern U.S./Canada Area, it exceeded the yellowtail flounder trip limit specified for these areas (i.e., 250 lb (113.4 kg)/day to 1,000 lb (453.6 kg)/trip). Prohibiting a vessel from fishing outside of the Eastern U.S./Canada Area on the same trip if it has exceeded the CC/GOM or SNE/MA trip limit for yellowtail flounder is necessary to preclude the possibility of a vessel discarding its yellowtail flounder in order to fish outside of the area. A vessel that fishes inside and outside of the Eastern U.S./Canada Area on the same trip may also fish in one of the Differential DAS Areas (and accrue DAS at the higher rate), described in sections 7 and 8 of this preamble, provided the vessel declares its intent to fish in such areas via VMS prior to leaving the Eastern U.S./Canada Area.

This proposed measure would address a potential safety concern that has resulted from the Amendment 13 restriction that vessels fishing in the Eastern U.S./Canada Area cannot fish in any other area on the same trip. If bad weather is forecast, a vessel operator fishing in the Eastern U.S./Canada Area under current rules has only two choices: End the trip early, or continue to fish in the Eastern U.S./Canada Area. The concern is that fishermen, during inclement weather, would keep fishing in the Eastern U.S./Canada Area until it is too late to evade a rapidly advancing storm. This proposed measure would provide fishermen that have declared their intent to fish in the Eastern U.S./Canada Area the option of also fishing outside of the Eastern U.S./Canada Area on that same trip. This would reduce the chances of an economic loss for the trip and, therefore, reduce the economic incentive for a vessel operator to fish under unsafe weather conditions.

16. Modification of the DAS Transfer Program

The proposed action would modify several aspects of the DAS Transfer Program. The intent of these changes are to increase the utility of the program, provide clarification of program details that were not previously considered, and support effective administration of the program by NMFS.

The DAS Transfer Program was implemented by Amendment 13 in order to provide vessel owners an opportunity to mitigate the negative economic impacts of the regulations, enhance flexibility within the groundfish fleet, and provide opportunities for fleet rationalization. However, some industry members have commented that the DAS Transfer Program has not been used by vessel operators because the restrictions associated with the program are too severe. Therefore, this action would modify two fundamental aspects of the program in order to make the program rules less restrictive. Under this proposed rule, the vessel transferring its NE multispecies DAS permit (transferor) would no longer be required to exit all state and Federal fisheries, and would be allowed to acquire other fishing permits (i.e., other Federal limited access permits, Federal open access permits, and/or state permits) after the transfer. Secondly, other non-groundfish permits that the transferor vessel has would no longer automatically expire, but could be transferred as a bundle to the vessel receiving the NE multispecies DAS permit (subject to pertinent regulations regarding vessel replacement). Duplicate permits would expire, and a vessel would not be able to consolidate DAS or other allocations from non-groundfish permits. Non-groundfish permits would still be subject to all applicable regulations such as vessel replacement size restrictions. The program would maintain the conservation tax of 20 percent on Category A and Category B DAS, as well as the conservation tax of 90 percent on Category C DAS, in order to support the program's goal of long-term reduction in fishing effort.

Because the execution of a DAS transfer is a process whereby two limited access NE multispecies permits (with two baselines, DAS allocations, and histories) become a single permit (with a single baseline, DAS allocation, and history), this action would also specifiy the rules that pertain to the resultant single permit. All history associated with the transferred NE multispecies DAS permit would be acquired by the recipient (transferee), and would subsequently be associated with the permit rights of the transferee. The pertinent history would include catch history, DAS use history, and permit rights history. Neither the individual elements of the history associated with the transferor vessel, nor the total history may be separated from the NE multispecies DAS being transferred. With respect to vessel baseline characteristics, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded under the vessel replacement rules, it could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules.

Because limited access Hook Gear vessels (Category D) are not allowed to change permit categories under current permit rules, this proposed action would clarify that vessels with a limited access NE multispecies Category D permit would only be allowed to transfer their NE multispecies DAS (acting as a transferor) to another Category D vessel. However, such vessels could participate in a DAS transfer as a transferee vessel and acquire DAS from any limited access NE multispecies DAS permit category. That is, a Category D Hook Gear vessel would be allowed to transfer DAS only to another Category D Hook Gear vessel, but could receive transferred DAS from any limited access NE multispecies DAS permitted vessel.

In order to simplify the DAS Transfer Program, the proposed action would clarify that, for the purposes of calculating the DAS conservation tax, the transferee would be required to specify which vessel's DAS are being acquired and are, therefore, subject to the conservation tax. If a conservation tax were to apply strictly to the DAS acquired from the transferor vessel, buyers would have a strong incentive to arrange the DAS Transfer Program transaction such that it would result in

the permit with the least number of DAS being designated as the transferor (seller) permit.

Lastly, for administrative purposes, the proposed action would prohibit a vessel from participating in the DAS Leasing Program as a lessee or lessor during a particular fishing year and then subsequently participating in the DAS Transfer Program as a transferor during the same fishing year. A vessel would be allowed to participate in the DAS Leasing Program as a lessor or as a lessee and then submit an application for a DAS transfer as a transferor, but the transfer, if approved, would not be effective until the beginning of the following fishing year. Vessels would not be prohibited from participating in the DAS Leasing Program after a DAS transaction has occurred.

17. Standardized Requirements for Special Management Programs

Under current regulations, the Special Management Programs under § 648.85 (U.S./Canada Resource Sharing Understanding, Regular B DAS Pilot Program, CA I Hook Gear Haddock SAP, CA II Yellowtail Flounder SAP, and Eastern U.S./Canada Haddock SAP Pilot Program) have many similar requirements. The proposed action would modify and standardize the requirements that apply to the Special Management Programs in order to improve the reporting of directed catch and bycatch, reduce discarding, enhance enforcement, simplify the administration of these programs, and reduce industry confusion regarding such rules. In some of these Programs, additional requirements apply that were previously implemented. The standardized requirements are described below, and any new requirement, or new application of an existing requirement is noted.

The current requirement for the use of VMS and the advance notice to the observer program prior to each trip would continue. For all Special Management Programs, the catch location, which is required in order to accurately attribute catch to the appropriate stock area, would be determined by NMFS through the use of VMS positional data and other available data. For all Special Management Programs, the species that must be reported daily (catch and discards) would be haddock and all species for which a stock of concern has been identified as likely to be caught in a Special Management Program (currently, the species with stocks of concern identified as such are: Cod, yellowtail flounder, winter flounder, witch flounder, white hake, and American plaice).

For all Special Management Programs, there would be a new requirement to report the date of the catch. Currently NMFS must infer which date the fish were caught on, based upon the time NMFS receives the VMS report (and in consideration of the requirement that states when a vessel must report). The proposed measure to require the vessel operator to explicitly state on which date the fish were caught would provide assurance of the collection of pertinent information and would help to improve the accuracy of the data. As under current regulations, the vessel may report catch for a particular day of fishing at any time of the day on which it was caught, up until 0900 hr the following day.

For all Special Management Programs, there would be a new requirement to report the serial number of the Vessel Trip Report (VTR). A vessel operator would be required to report the serial number from the first page of the logbook on the daily VMS catch report. Because the serial numbers are associated with individual vessels, a vessel operator would be prohibited from sharing logbooks with other vessel operators. The VTR serial number would serve as an important tool that would enable fishery managers to make better use of available data by linking VTR data with dealer and DAS data. The improved linkage of various data sources would allow a more integrated use of available data.

While participating in SAPs and the Regular B DAS Program, a vessel would be prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout while fishing under a Category B DAS. The proposed action would also require a vessel that is participating in either the Regular B DAS Program or a SAP that exceeds any of the NE multispecies trip limits, to exit these respective programs. With the exception of the CA I Hook Gear Haddock SAP, a vessel would be required to exit the Special Management Program and ''flip'' to a Category A DAS as soon as the maximum trip limit is exceeded. Current regulations require flipping to occur prior to crossing the VMS demarcation line on a vessel's return to port. Requiring a vessel to flip immediately would make the flipping provision more enforceable and reduce the likelihood that vessels may be tempted to delay flipping to Category A DAS in order to save more valuable Category A DAS. The requirement that vessels participating in the Special Management Programs report daily via VMS would continue, even after a vessel is required to exit the program.

18. Gear Performance Incentives for Special Management Programs

The proposed action would require that, in times and areas when a Special Management Program requires a vessel to use a haddock separator trawl or other gear authorized by the program to reduce catches of stocks of concern, possession of flounders (all species combined), monkfish (live/whole weight), and skates (live/whole weight) would be limited to 500 lb (226.8 kg) each, per trip. Possession of lobsters would be prohibited. If a specific program includes a possession limit that conflicts with the Gear Performance Incentives, the most restrictive limit would apply. For example, a vessel fishing under a NE multispecies Category B DAS in the proposed Regular B DAS Program in the monkfish SFMA, that has a limited access monkfish Category C or D permit (and would not be able to fish under a monkfish DAS) would be limited to 50 lb (22.7 kg) of monkfish per trip. The intent of the proposed measure is to increase the incentive for vessels to configure the gear properly because only relatively small amounts of these species may be landed when using the gear. The proposed gear performance incentive requirement would apply to the Regular B DAS Program, NE multispecies SAPs, and the Eastern U.S./Canada Management Area (if/when the haddock separator trawl is the only allowable trawl net).

19. Modification of Cod Landing Limit in Eastern U.S./Canada Area

Currently, a vessel fishing in the Eastern U.S./Canada Area under a Category A DAS may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5–percent of the total catch on board, whichever is less. This proposed rule would remove the restriction pertaining to cod not exceeding 5–percent of the total weight of fish on board in order to eliminate a problem with the proposed regulations for vessels fishing in the Regular B DAS Program. A vessel fishing under a Regular B DAS in the Eastern U.S./Canada Area may possess no more than 100 lb (45.4 kg) of cod per DAS, up to 1,000 lb (453.6 kg) per trip. For such a vessel there is no restriction with respect to the percent of total catch, and the vessel may not discard regulated NE multispecies. If such a vessel is required to flip from a Category B to a Category A DAS, it is then subject to the rules that pertain to the Eastern

U.S./Canada Area and may immediately be in violation of the possession limit. Elimination of this 5–percent restriction would prevent a situation where a vessel operator would have no ability to avoid being in violation of the possession limit upon flipping (prior to flipping, the vessel is prohibited from discarding).

20. SNE/MA RMA Trawl Codend Mesh Requirement

The proposed action would modify the current trawl codend mesh requirement applicable to the SNE/MA RMA from 6.5–inch (15.2–cm) square or 7.0–inch (17.8–cm) diamond mesh to 6.5–inch (15.2–cm) square or 6.5–inch (15.2–cm) diamond mesh. The goal of this measure is to encourage the use of a 6.5–inch (15.2–cm) diamond mesh while fishing for yellowtail flounder in order to reduce yellowtail flounder discards. A 6.5–inch (15.2–cm) diamond mesh would provide more escapement for small yellowtail flounder than does the 6.5–inch (15.2–cm) square mesh, which the industry currently prefers to use instead of the 7.0–inch (17.8–cm) diamond mesh codend.

21. Regional Administrator Authority to Adjust Trip Limits for Target TAC Stocks

The proposed action would require the Regional Administrator to monitor the catch of all the groundfish species with trip limits (and target TACs) and adjust trip limits upwards for the purpose of facilitating harvest of the target TACs, if it is projected that less than 90 percent of the target TAC will be caught during the fishing year. Trip limit changes would be allowed at any time during the fishing year, or before the start of the fishing year, if information is sufficient to make the necessary projections.

22. Regional Administrator Authority to Adjust Measures in the U.S./Canada Management Area

The proposed action would expand the Regional Administrator's authority to adjust management measures in the U.S./Canada Management Area, after consultation with the Council, in order to more effectively prevent overharvesting or to facilitate harvesting of the hard TACs (and achieving OY). Current regulations limit the Regional Administrator authority's to adjusting the U.S./Canada Management Area measures when 30 percent and/or 60 percent of the hard TACs (for GB yellowtail flounder, Eastern GB haddock, and Eastern GB cod) are projected to be harvested. The proposed action would allow the Regional Administrator to make adjustments to management measures at any time during the fishing year, as well as prior to the start of the fishing year for the subsequent fishing year, if information is sufficient to make the necessary projections.

This proposed rule would eliminate the required implementation of a trip limit for Eastern GB haddock (i.e., when 70 percent of the TAC is projected, the Regional Administrator must implement a possession limit of 1,500 lb (680.4 kg) per day, up to 15,000 lb (6,804.1 kg) per trip). Although the Council did not propose the elimination of this non-discretionary trip limit, NMFS is proposing its removal under authority of section 305(d) of the Magnuson-Stevens Act, which allows NMFS to promulgate regulations as necessary for the general responsibility of carrying out an FMP. Specifically, the required trip limit for Eastern GB haddock, in the context of the proposed expansion of Regional Administrator's authority to modify U.S./Canada Management Area regulations would be of little value. For example, if the required trip limit trigger remained in place, if the Regional Administrator projects that 70 percent of the Eastern GB haddock TAC will be harvested and implements the non-discretionary trip limit, the Regional Administrator would have the authority to immediately remove the trip limit. Under the proposed regulations, the Regional Administrator could implement such a trip limit, if appropriate, but would have to implement a specific haddock trip limit when 70 percent of the harvest is attained.

This proposed measure would also clarify that the Regional Administrator may implement different management measures for vessels using Category A DAS and Category B DAS, and require that the Regional Administrator, when determining in season adjustments, consider Council intent that opportunities for fishing on Category A DAS should take precedence over opportunities to fish under Category B DAS.

24. Other Measures

For vessels fishing under the proposed Regular B DAS Program, or for trips where vessels have declared that they will be fishing inside and outside of the Western U.S./Canada Area on the same trip, the current daily reporting of the statistical area fished (to determine catch location) would no longer be required. Because vessels that fish in these programs are required to have an operational VMS, NMFS is able to determine location fished using VMS positional data. Further, on trips where a vessel fishes inside and outside of the Western U.S./Canada Area, the vessel operator would no longer be required to report catch as the vessel crosses into and out of the area, and would be subject only to the daily reporting requirement.

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comment on one proposed measure over which the agency has concerns, particularly regarding whether the measures are consistent with achieving the objectives of the NE Multispecies FMP, whether such measures would be effective in achieving the objective of the measures, and whether such measures would be cost effective. The issue of concern is the following:

Regional Administrator Authority to Adjust Trip Limits for Target TAC Stocks

The proposed action would require the Regional Administrator to monitor the catch of the groundfish species that have trip limits associated with them (and target TACs), and adjust these trip limits upwards if it can be projected that less than 90 percent of the target TAC for this species will be caught (see item Section 21 above). This proposed measure would expand the Regional Administrator's authority to increase trip limits for five stocks (the current regulations already provide authority for the Regional Administrator to modify the haddock trip limit). The stocks with target TACs and trip limits that would be affected by this proposed measure are GOM cod, GB cod, white hake, GB winter flounder, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder.

Administratively, this measure would be problematic to implement. Data on the catch amount and location of affected stocks are not available on a real-time basis and, depending upon the size of the TAC and the rate of harvest, there may not be timely enough information to make an accurate projection. To monitor these stocks, NMFS would need to rely on VTR data and dealer data to make projections and, although such data provide some useful information, sufficient information on both catch amount and catch location would not be available on a real-time basis. If NMFS increased trip limits based upon data that underestimated the amount of catch, there would be the risk that the catch could exceed the target TAC. The proposed measure does

not include a corresponding mechanism for the Regional Administrator to decrease trip limits, therefore allowing no mechanism to lower trip limits based on revised or corrected information. In addition, the composition of target TACs for three of the affected stocks also include discard data or recreational data, which also would not be available on a real-time basis. In order to implement a trip limit adjustment for stocks with target TACs, additional reporting requirements and Regional Administrator authority would be necessary.

Classification

At this time, NMFS has not made a final determination that the measures this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An IRFA was prepared as required, which has been adopted by NMFS for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). Below is a summary of the IRFA, which describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in the Executive Summary and section 3.0 of the EA prepared for this action. The Proposed Alternative would implement a fishery-wide modification to the DAS allocations (reduction in Category A DAS), differential DAS in two areas, recreational measures, and commercial trip limits as the principal means of reducing fishing effort in the NE multispecies fishery. In addition to the measures designed to reduce fishing mortality, FW 42 proposes modification and/or renewal of three Special Management Programs (Regular B DAS Program, Eastern U.S./Canada Haddock SAP, and CA I Hook Gear Haddock SAP), renewal of the DAS Leasing Program, approval of the GB Cod Fixed Gear Sector, and other relatively minor adjustments to the FMP.

In addition to the Proposed Alternative, the No Action Alternative and six other alternatives were analyzed and considered. The No Action Alternative would result in the continuation of the management measures implemented by Amendment 13, and subsequent framework actions (FW 40–A, FW 40–B, and FW 41). More specifically, the No Action Alternative would continue most of the management measures that have been in place since May 2004 (as modified by frameworks), but would include changes to the regulatory regime as a result of default measures previously scheduled to be implemented in fishing year 2006, as well as Special Management Programs previously scheduled to expire. The default measures that would be implemented under the No Action Alternative would include a change to the DAS allocations, which results in an 8–percent reduction in Category A DAS (the same modification to the DAS allocations as the Proposed Alternative), and counting DAS in the SNE RMA at the rate of 1.5:1. The programs that would expire under the No Action Alternative include the DAS Leasing Program, the Regular B DAS Pilot Program, and the Eastern U.S./Canada Haddock SAP Pilot Program.

The other six alternatives are similar to each other and the Proposed Alternative with respect to the inclusion of commercial trip limits, recreational measures, renewal of the Special Management Programs and DAS Leasing Program, and approval of the Fixed Gear Sector. The substantive difference between the six alternatives, and the principal reason that the impacts of the alternatives are different, is that the reliance on different DAS strategies to control fishing effort. The alternatives are limited by the need to meet the conservation objectives of the FMP. Alternatives 1 and 2 utilize Category A DAS reductions and differential counting of DAS in areas of the GOM and SNE. The difference between the two alternatives is the size of the differential DAS area and the size of the Category A DAS reduction (22 percent and 23 percent, respectively). Alternatives 3 and 4 utilize Category A DAS reductions and revised DAS counting systems in the GOM. Alternative 3 would count DAS as a minimum of 12 hr and reduce Category A DAS by 38 percent, and Alternative 4 would count DAS as a minimum of 24 hr and reduce Category A DAS by 25 percent. Alternative 5 would rely on a 40–percent reduction in Category A DAS, and Alternative E utilizes the default DAS reduction (8 percent) with differential DAS counting in SNE and counting of DAS as a minimum of 24 hr (in all areas).

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

Any vessel that possesses a NE multispecies permit would be required to comply with the proposed regulatory action. However, for the purposes of determination of impact, only vessels that actually participated in an activity during fishing year 2004 that would be affected by the proposed action were considered for analysis. Vessels that were inactive were not considered because it is not likely that the participation level will increase in the future under the proposed regulatory regime. During fishing year 2004, 1,002 permit holders had an allocation of Category A DAS. Limited access permit holders may participate in both commercial and party/charter activity without having a party/charter permit. In fishing year 2004, 705 entities participated in the commercial groundfish fishery, and 6 participated in the party/charter fishery for GOM cod. Four of these entities participated in both commercial and party/charter activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by the proposed action. Based on fishing year 2004 data, the proposed action would have a potential impact on a total of 3,216 limited or open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or party/charter activity that would be affected by the proposed action. Of these, 858 commercial fishing vessels would be affected by this proposed action, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during fishing years 2004–2005.

The SBA size standard for small commercial fishing entities is $4 million in gross sales, and the size standard for small party/charter operators is $6.5 million. Available data for fishing year 2004 gross sales show that the maximum gross sales for any single commercial fishing vessel was $1.8 million, and the maximum gross sales for any affected party/charter vessel was $1.0 million. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial and party/charter fishing entities would fall under the SBA size standard for small

entities and, therefore, there is no differential impact between large and small entities.

Economic Impacts of the Proposed Action

The proposed action would continue the default DAS allocations that took effect on May 1, 2006; specify target TACs and Incidental Catch TACs for the 2006, 2007, and 2008 fishing years; implement a VMS requirement for groundfish DAS vessels; implement differential DAS counting in specific areas of the GOM and SNE; modify the recreational possession restrictions and size limits for GOM cod; modify current and implement new commercial trip limits for several species; renew and modify the Regular B DAS Program, including the rules pertaining to monkfish vessels; renew and modify the Eastern U.S./Canada Haddock SAP; renew the DAS Leasing Program; modify the CA I Hook Gear Haddock SAP; authorize the GB Cod Fixed Gear Sector; provide flexibility for vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip; modify reporting requirements for Special Management Programs; modify the DAS Transfer Program; modify the cod trip limit for the Eastern U.S./Canada Area; implement gear performance incentives for the haddock separator trawl; modify the trawl codend mesh size requirement in the SNE RMA; and modify the Regional Administrator's authority to adjust certain possession limits.

The economic impacts of the proposed DAS allocations, differential DAS counting, and trip limits were analyzed using the Closed Area Model (CAM). Separate analyses were conducted for the impacts of the recreational measures, continuation of the DAS Leasing Program, renewal and modification of the Regular B DAS Program, and renewal and modification of the Eastern U.S./Canada Haddock SAP.

The results of the CAM and economic analysis indicate that the proposed action would result in a reduction of approximately $21 million, or 10 percent of total fishing revenue. With respect specifically to groundfish revenue, the losses would be $15 million, or 19 percent of total groundfish revenue. The clearest measure of the distribution of impacts may be a given vessel's dependence on groundfish for total fishing income. Due primarily to a significant difference among vessels in terms of the importance of groundfish in total fishing revenue, the proposed action would have different impacts across vessels of varying sizes, gear types, and in different ports or states. The median impact on vessels that rely on groundfish for less than 20 percent of sales would be a 4–percent reduction in sales. By contrast, the median impact on vessels that depend on groundfish trip income for 80–percent of total sales was estimated to be a 26–percent reduction in fishing revenue. The greatest impact on total fishing revenue would be for vessels with home ports in New Hampshire and Massachusetts. Adverse impact on vessels with a Maine home port would be less, but still substantial. The median reduction in revenue would be greatest for vessels less than 50 ft (15.2 m) in length overall, less for vessels between 50 and 70 feet (15.2 - 21.3 m), and even less for vessels greater than 70 feet (15.2 m) in length. The proposed action would have a similar impact on gillnet and trawl vessels, and less impact on hook vessels. Although the analysis indicated that the ''Other New Hampshire port group'' (the ports of Rye, Seabrook, Hampton, Hampton Beach, Hampton Falls and Newington) would experience the highest estimated reduction in groundfish sales, the impact on the port as a whole would be a 3.4–percent reduction (compared to 2004 sales) because the port group had low dependence on groundfish for total sales. Impacts on the fleet of vessels operating in the inshore GOM would be expected to be higher than those for vessels that fish elsewhere in the GOM, on GB, or in SNE.

This proposed action would implement a seasonal prohibition on retention of cod from November through March and would increase the minimum size from 22 to 24 inches (55.9 to 61 cm) for party/charter and private recreational vessels. A total of 143 different party/charter vessels took at least one trip in the GOM and landed cod. The proposed action would reduce the economic value of recreational fishing trips and reduce demand for party/charter trips if cod is a preferred target species, despite that fishing for alternative groundfish species (primarily haddock) would still be allowed. The economic impact of the seasonal prohibition would have no impact on most party/charter operators since only 25 of the 143 affected vessels actually took any trips during the proposed season. Of these 25 affected vessels, only 2 took passengers for hire exclusively during the duration of the proposed seasonal prohibition. The proposed action is likely to have a larger adverse impact on private boat anglers, because a much larger percentage of private boat trips take place during the proposed seasonal cod prohibition in the GOM. However, a quantitative estimate of the reduced economic value to recreational anglers is not possible due to a lack of appropriate data. An upper bound estimate of the loss to charter/party businesses due to a loss of passenger sales would be $154,000, assuming a complete loss of passenger demand for the duration of the closed season for cod.

Under the Proposed Alternative, limited access groundfish DAS vessels would be required to purchase, install, and operate a VMS in order to fish under a DAS. Depending upon the vendor selected by an individual vessel owner, the cost to purchase a VMS unit would range approximately from $ 1,600 to $ 3,000. The unit that sells for about $ 1,600 requires a personal computer (PC), also, and, therefore, if the vessel operator needs to purchase a PC, the cost would be greater than $ 1,600. The installation costs are approximately $150 - 200 per unit, and the monthly service charges may be between $25 and $100 per vessel, depending upon the unit type. Some vessels may also need to make minor modifications to their vessel's electrical system components.

The proposed action includes renewal of several special programs designed to provide fishing opportunity and options to mitigate the negative impacts of the extensive current and proposed fishing effort restrictions. The utility and value of these programs in such mitigation has been demonstrated, but because participation in these programs is voluntary, it is difficult to estimate the impact on any given small entity participating in these programs. Based upon the location of the programs and the location of trips taken in the Regular B DAS Pilot Program, opportunities for mitigation of impacts through these programs may be better for vessels that can fish on GB.

The proposed action would renew and modified the Regular B DAS Program. This program differs from that originally implemented by FW 40–A in that the proposed program would reduce the number of available Regular B DAS in this program between May and July to 500, require participating vessels to use a haddock separator trawl, and implement incidental catch TACs and restrictive possession limits for GB winter flounder and GB yellowtail flounder. Analysis of the impacts of the modified Regular B DAS Program in the U.S./Canada Management Area suggests that the proposed action changes may diminish the extent to which the program will improve economic opportunities for commercial fishing vessels compared to the Regular B DAS

Pilot Program implemented under FW 40–A. The requirement to use the separator trawl or gear that meets specified standards means that, in order to participate, vessels would be required to bear the added cost of acquiring new gear, or incurring the expense of modifying existing gear. Vessels operating at the brink of break-even may not be able to afford this added expense. However, the implementation of Incidental Catch TACs for GB winter flounder and GB yellowtail flounder is expected to have the greatest economic impact to participating vessels. First, revenue from the sale of these two species will be dramatically reduced, as the Incidental Catch TAC would be set at levels that would be nearly 10 times lower than observed landings during fishing year 2004. Second, available data indicate that catch rates of GB winter flounder may be sufficient to result in closure of the area to Regular B DAS well before the quarterly allocation of Regular B DAS has been used. Unless the separator trawl also reduces catches of winter and yellowtail flounders in addition to cod (which it may), the estimated revenues from the Regular B DAS Program in fishing year 2006 (about $3 million) may be as much as two-thirds less than what was observed under the Regular B DAS Pilot Program during fishing years 2004 and 2005.

This proposed action would delay the start date of the Eastern U.S./Canada Haddock SAP to August 1, 2006. Based on catch rates observed between May through July 2005, this delay could result in the loss of $1.25 million based on revenue generated from the sale of landed catch during this period. However, this loss is expected to be offset by the potential for this delayed start date to prolong availability of the GB cod and GB yellowtail flounder TACs specified for the Eastern U.S./Canada Area and this program. Furthermore, vessels may obtain higher prices for these species throughout the year than they would if they were allowed to land larger amounts early in the fishing year, due to the greater availability of fish during the summer. During fishing year 2004, catch rates of cod in the Eastern U.S./Canada Area Haddock SAP during May and June were sufficient to close the SAP well before the allowable TAC for haddock could be harvested. Secondly, delaying the start date for the Eastern U.S./Canada Area Haddock SAP is expected to reduce the amount of cod taken in the SAP, and would allow for more trips to be taken to the SAP, resulting in an increase in the amount of harvested haddock. Therefore, this measure would likely provide greater economic opportunity to small commercial fishing entities than if the regulation were left unchanged.

The renewal of the DAS Leasing Program through this proposed action would continue to offer economic benefits that help offset the impacts of the effort reductions of Amendment 13 and those proposed by this action. The DAS Leasing Program provided regulatory relief that allowed lessee vessels, on average, to fish enough DAS to cover their overhead and crew expenses. Assuming that the DAS Leasing Program would operate in a similar manner as previous years, the benefits of this program would likely accrue primarily to lessee vessels in Maine and Massachusetts. It is possible, however, that the differential DAS counting in the inshore GOM may negatively affect the ability of vessels that fish in the area to compete effectively in the DAS leasing market.

By allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, the proposed action would allow fishermen more flexibility to adapt to changing weather conditions and allow an additional fishing strategy, if fishing in the Eastern U.S./Canada Area is worse than anticipated. In these cases, vessel operators may find it to their advantage to leave the Eastern U.S./Canada Area and fish elsewhere. In doing so, vessels would be able to maximize the economic returns of trips into the Eastern U.S./Canada Area. However, it is impossible to predict the behavior of vessels electing to fish inside and outside of the Eastern U.S./Canada Area on the same trip. As a result, quantitative estimates of economic impact of this measure are not possible. It is expected that the economic impacts of this measure would be positive.

Economic Impacts of Alternatives to the Proposed Action

The No Action Alternative would reduce the Category A DAS by 8 percent and would implement differential DAS counting in the SNE/MA RMA at a rate of 1.5:1. At the median, the No Action Alternative would result in a 4–6–percent reduction in fishing income. The No Action Alternative would result in an estimated reduction of 7.0–percent in total groundfish revenue (resulting in an estimate of $ 73 million in the landed value of groundfish for 2006). The reduction in value in groundfish trips represents about 0.7 percent of the total species landed in the Northeast Region. The impacts were similar for vessels from Maine, New Hampshire, and Massachusetts-- a 2–9–percent reduction in fishing income. Vessels from home ports likely to be affected by the differential DAS counting were estimated to have total revenues reduced by as much as 18 percent. Overall adverse impacts would be largest for Connecticut vessels. The change in total fishing revenue would be similar for gillnet and trawl vessels, and lower for hook vessels. There would be no substantial differences among vessels based on their size. Across ports, the estimated reduction in groundfish trip revenue was highest in ports that are likely to be most affected by the differential DAS counting in the SNE RMA (Rhode Island, Connecticut, Eastern Long Island, New York, and New Jersey). Estimated impacts in these ports ranged from a 7- to 10–percent reduction in groundfish trip revenues. However, groundfish revenue in these ports represents only a small fraction (about 1 percent) of the total value of seafood product sales. Because the groundfish revenue in the ports of Boston, MA; Gloucester, MA; Portsmouth, NH; and Portland, ME; represents a larger portion of their revenue, the total impact on these ports would be greater.

Alternative 1 proposes Category A DAS reductions (22–percent) and differential counting of DAS in areas of the GOM and SNE as the primary effort reduction tools. The alternative would result in estimated losses of 24 percent of groundfish revenue and a reduction of 13 percent in total fishing income ($26 million). Boston and Portsmouth would experience the largest percent reductions in total port revenue (16–percent). The median reduction in fishing revenue for New Hampshire vessels would be 24 percent. There was not a consistent pattern with respect to the impacts on vessels of difference size classes. Alternative 1 would have similar impacts on vessels using gillnet gear and trawl gear, although impacts on trawl vessels would generally be higher. Median impacts for gillnet and hook gear would be the same (a 12–percent reduction in total fishing revenue). Vessels that fish predominantly in the inshore GOM and that are subject to differential DAS counting would have a larger loss in revenue than vessels that fish in other areas. The median loss in total fishing revenues for these vessels is estimated to be 27 percent, compared to 13 percent for vessels that fish less than 75 percent of their time in this area.

Alternative 2, in a manner similar to Alternative 1, proposes Category A DAS reductions (23–percent) and differential counting of DAS in areas of the GOM

and SNE as the primary effort reduction tools, but both the differential DAS areas would be larger than under alternative 1. Alternative 2 would result in estimated losses of $21 million in groundfish revenue (approximately 26 percent of groundfish revenue) and a reduction in total revenue of 14 percent. The ports of Portsmouth, Boston, and Gloucester would experience the greatest percent declines in total port revenue (19 percent, 16 percent, and 13 percent, respectively). There was not consistent pattern with respect to the impacts on vessels of difference size classes. Alternative 2 would have consistently larger impacts on vessels using trawl gear, and median impacts would be the same for both gillnet gear and hook gear. Vessels that depend on groundfish for at least 54–percent of their revenue would experience an estimated 21–percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM and that are subject to differential DAS counting, the median reduction in total fishing revenues would be 28–percent.

Alternative 3 proposes Category A DAS reductions (38 percent) and counting DAS as a minimum of 12 hr (in the GOM) as the primary effort reduction tools. Alternative 3 would result in estimated losses of $ 27 million in groundfish revenue (approximately 34 percent of groundfish revenue) and a reduction in total revenue of 18 percent. The ports of Boston, Portsmouth, and Portland would experience the greatest percent declines in total port revenue (24 percent, 22 percent, and 18 percent, respectively). Adverse impacts by vessel length were consistently greater for vessels above 70 ft (21.3 m) and lowest on vessels less than 50 ft (15.2 m) length overall. Alternative 3 would have consistently larger impacts on vessels using trawl gear, and median impacts on gillnet vessels would exceed that of hook gear vessels. Vessels that depend on groundfish for at least 54–percent of their revenue would experience an estimated 30–percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM, the median reduction in total fishing revenues would be 26–percent.

Alternative 4 proposes Category A DAS reductions (25 percent) and counting DAS as a minimum of 24 hr (in the GOM) as the primary effort reduction tools. Alternative 4 would result in estimated losses of $ 23 million in groundfish revenue (approximately 29–percent of groundfish revenue) and a reduction in total revenue of 15 percent. The ports of Portsmouth, Boston, and Gloucester would experience the greatest percent declines in total port revenue (23 percent, 18 percent, and 15 percent respectively). Adverse impacts by vessel length were generally the same. Alternative 4 would generally have larger impacts on vessels using trawl gear than on gillnet vessels, and hook gear vessels would experience the least impact. Vessels that depend on groundfish for at least 54–percent of their revenue would experience an estimated 25–percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM, the median reduction in total fishing revenues would be 35 percent.

Alternative 5 proposes Category A DAS reductions (40 percent) as the principal effort reduction tool. Alternative 4 would result in estimated losses of $ 28 million in groundfish revenue (approximately 35 percent of groundfish revenue) and a reduction in total revenue of 18 percent. The ports of Boston, Portsmouth, and Portland would experience the greatest percent declines in total port revenue (26 percent, 23 percent, and 19 percent, respectively). Adverse impacts on vessels greater than 70 ft (21.3 m) were consistently greater than on smaller vessels. Alternative 5 would have consistently larger impacts on vessels using trawl gear than on gillnet vessels, and hook gear vessels would experience the least impact. Vessels that depend on groundfish for at least 54–percent of their revenue would experience an estimated 30–percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM, the median reduction in total fishing revenues would be 24 percent.

Alternative E proposes the default Category A DAS reductions (8 percent) and counting DAS as a minimum of 24 hr (in all areas) as the primary effort reduction tools. Alternative E would result in estimated losses of $ 16 million in groundfish revenue (approximately 20–percent of groundfish revenue) and a reduction in total revenue of 10 percent. The ports of Chatham, Portsmouth, and Boston, would experience the greatest percent declines in total port revenue (11–percent, 10 percent, and 10 percent, respectively). Adverse impacts on vessels greater than 70 feet (21.3 m) were consistently greater than for vessels in the size range from 50–70 ft (15.2–21.3 m), but impacts on small vessels less than 50 ft (15.2 m) were estimated to be greatest (at the median) would. Alternative E would generally have larger impacts on vessels using hook gear, and adverse impacts on gillnet vessels would be greater than on trawl vessels. Vessels that depend on groundfish for at least 54 percent of their revenue would experience an estimated 10–percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM, the median reduction in total fishing revenues would be 28 percent.

The alternatives are limited by the need to meet the conservation objectives of the FMP, and the differential impacts of all alternatives on ports and vessels is due in part to the geographic proximity to where the stocks of concern are located.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been previously approved by OMB under control numbers 0648–0202, and 0648–0212. Public reporting burdens for these collections of information are estimated as follows:

1. VMS purchase and installation, OMB# 0648–0202, (1 hr/response);
2. VMS proof of installation, OMB# 0648–0202, (5 min/response);
3. Spawning block declaration, OMB# 0648–0202, (2 min/response);
4. Automated VMS polling of vessel position, OMB# 0648–0202, (5 sec/ response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, OMB#0648–0202, (5 min/response);
6. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./ Canada Management Areas associated SAPs, and CA I SAP OMB#0648–0202, (2 min/response);
7. Standardized catch reporting requirements while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, respectively, OMB# 0648–0212, (15 min/response);
8. Standardized reporting of Universal Data I.D. while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, OMB#0648–0212, (15 min/response);
9. Sector Manager daily reports for Closed Area I SAP, OMB#0648–0212, (2 hr/ response);

10. DAS ''flip'' notification via VMS for the Regular B DAS Program, OMB# 0648–0202 (5 min/response);

11. DAS Leasing Program application, OMB# 0648–0475 (10 min/response);

12. Declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, OMB# 0648–0202 (5 min/response);

13. Vessel baseline downgrade request for the DAS Leasing Program, OMB#0648–0202, (1 hr/response);

14. Annual declaration of participation in the CA I Hook Gear Haddock SAP, OMB control number 0648–0202 (2 min/response);

15. Declaration of area and gear via VMS when fishing under a NE multispecies DAS, OMB#0648–0202 (5 min/response); and

16. Declaration of entry into the GOM Differential DAS Area for circumstances beyond its control via VMS, OMB#0648–0202 (5 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *DavidRostker@omb.eop.gov*,or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 18, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be 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, a new definition for ''Jigging'' is added and the definition for ''Regulated species'' is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Jigging, with respect to the NE multispecies fishery, means fishing for groundfish with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

* * * * *

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake, also referred to as regulated NE multispecies.

* * * * *

3. In § 648.10, paragraphs (b)(1)(vii) and (viii) are removed and reserved; paragraphs (b)(1)(v), (b)(1)(vi), (b)(2) and (3), the introductory text to paragraph (c), and paragraphs (c)(5), (d), and (f) are revised to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(1) * * *

(v) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(vi) A vessel issued a limited access NE multispecies permit that fishes under a NE multispecies Category A or B DAS; and

* * * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit, as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS, as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all limited access NE multispecies DAS permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use.

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out (i.e., not fishing under the applicable DAS program) of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing exclusively in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85 (a)(3)(ii)(A).

(iv) The Regional Administrator may authorize or require the use of the call-in system instead of using the use of

VMS, as described under paragraph (d) of this section. Furthermore, the Regional Administrator may authorize or require the use of letters of authorization as an alternative means of enforcing possession limits, if VMS cannot be used for such purposes.

(3)(i) A vessel issued a limited access monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section.

(ii) [Reserved]

(iii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Vessels electing to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. A vessel that calls in is exempt from the prohibition specified in § 648.14(c)(2).

* * * * *

(c) *Call-in notification*. The owner of a vessel issued limited access monkfish or red crab permit-holders who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the Occasional category and who has not elected to fish under the VMS notification requirements of paragraph (b) of this section, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (d) of this section, are subject to the following requirements:

* * * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(b)(2)(iii), 648.17, and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1); shall be deemed to be in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (b) or (c) of this section.

* * * * *

(d) *Temporary authorization for use of the call-in system*. The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section, instead of the use of the VMS. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, e-mail, or other appropriate means.

* * * * *

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in*. With the exception of a vessel issued a valid Small Vessel category permit, or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through the IVR system (or through VMS, if deemed feasible by the Regional Administrator) and provide the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in*. A vessel subject to the gillnet restriction described in § 648.82 must notify the Regional Administrator of the commencement of its time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

4. In § 648.14, paragraphs (a)(130), (145), (146), (148), (151), (152), and (156); the introductory text of paragraph (c); and paragraphs (c)(7), (23), (25), (33), (49) through (53), (55) through (65) and (78) are revised; paragraphs (c)(48), (c)(54), and (c)(79) are removed and reserved; and paragraphs (a)(173) through (177), (c)(81) through (89), and paragraphs (g)(4) and (5) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the applicable restrictions specified under § 648.85(a)(3)(ii)(A) or (B).

* * * * *

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP, exceed the possession limits specified in § 648.85(b)(8)(v)(F).

(146) If fishing under the Eastern U.S./Canada Haddock SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (I).

* * * * *

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

* * * * *

(151) If fishing in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the reporting requirements specified in § 648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the observer notification requirements specified in § 648.85(b)(8)(v)(C).

* * * * *

(156) If fishing under an approved Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year or, if fishing under a NE multispecies DAS, fish in an approved Sector in a given fishing year, unless otherwise provided under § 648.87(b)(1)(xii).

* * * * *

(173) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(ii)(A)(*1*).

(174) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive regulations that apply as described in § 648.85(a)(3)(ii)(A).

(175) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish outside of the Eastern U.S./Canada

Area on the same trip, as prohibited under § 648.85(a)(3)(ii)(A).

(176) If fishing under the GB Fixed Gear Sector specified under § 648.87(d)(2), fish with gear other than jigs, non-automated demersal longline, handgear, or sink gillnets.

(177) Fail to comply with the reporting requirements under § 648.85(a)(3)(ii)(A)(*2*) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

* * * * *

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any owner or operator of a vessel issued a valid limited access multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (e), (g), (h), and (j), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

(23) Fail to declare through VMS, its intent to be exempt from the GOM cod trip limit under § 648.86(b)(1), as required under § 648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(1).

* * * * *

(25) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(1)(ii)(B).

* * * * *

(33) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(2)(ii)(B).

* * * * *

(48) [Reserved]

(49) Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a Special Access Program, as described in § 648.85(b)(3)(xi), § 648.85(b)(7)(iv)(H) or § 648.85(b)(8)(v)(I).

(50) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in§ 648.85(b)(6)(iv)(E).

(51) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

(52) If fishing in the Regular B DAS Program, fail to comply with the restriction on DAS use specified in§ 648.82(d)(2)(i)(A).

(53) If fishing in the Eastern U.S./Canada Haddock SAP Area, and other portions of the Eastern U.S./Canada Haddock SAP Area on the same trip, fail to comply with the restrictions in§ 648.85(b)(8)(v)(A).

(54) [Reserved]

(55) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the applicable landing limit specified in § 648.85(b)(8)(v)(F) or under § 648.86 .

(56) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(v)(J).

(57) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the requirements and restrictions specified in § 648.85(b)(6)(iv)(A) through (F), (I), and (J).

(58) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(59) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(60) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(61) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(62) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(6)(iv)(E).

(63) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(64) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

(65) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), use a Regular B DAS after the program has closed, as required under § 648.85(b)(6)(iv)(G) or (H).

* * * * *

(78) Fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), if the SAP is closed as specified in § 648.85(b)(8)(v)(K) or (L).

(79) [Reserved]

* * * * *

(81) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A).

(82) If fishing under a NE multispecies Category A DAS in either the GOM Differential DAS Area, or the SNE Differential DAS Area defined under § 648.82(e)(2)(i), fail to declare into the area through VMS as required under§ 648.82(e)(2)(ii).

(83) If fishing under a NE multispecies Category A DAS in one of the Differential DAS Areas defined in § 648.82(e)(2)(i), and under the restrictions of one or more of the Special Management Programs under § 648.85, fail to comply with the most restrictive regulations.

(84) Fail to comply with the GB yellowtail flounder trip limit specified under § 648.85(a)(3)(iv)(C).

(85) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required under § 648.85(a)(3)(ii)(A).

(86) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to notify NMFS via

VMS that it is electing to fish in this manner, as required by § 648.85(a)(3)(ii)(A)(*1*).

(87) For vessels fishing with trawl gear in the NE multispecies Regular B DAS Program, fail to use a haddock separator trawl as required under § 648.85(b)(6)(iv)(J).

(88) Possess or land more white hake than allowed under § 648.86(e).

(89) Possess or land more GB winter flounder than allowed under § 648.86(j).

* * * * *

(g) * * *

(4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition described in § 648.89(c)(1)(v) or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing under § 648.89(c)(2)(v).

(5) If fishing under the recreational or party/charter regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(v) or (c)(2)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.

* * * * *

5. In § 648.80, paragraph (b)(2)(i) is revised to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(i) *Vessels using trawls*. Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6–inch (15.2–cm) diamond mesh or 6.5–inch (16.5–cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5–inch (16.5–cm) square or diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

6. In § 648.82, paragraph (c)(1)(iv) is removed; paragraphs (d)(2)(i)(A), the introductory text to paragraph (d)(4), paragraphs (e), (j)(1)(iii), (k)(1), (k)(3), (k)(4)(iv), (l) introductory text, and (l)(1)(i) through (v) are revised; and paragraphs (l)(1)(viii), and (l)(1)(ix) are added to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) *Restrictions on use*. Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(6). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(6)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (i.e., when fishing in an approved SAP as described in § 648.85(b)). Vessels that are required by the Monkfish Fishery Management Plan to utilize a NE multispecies DAS, as specified under § 648.92(b)(2), may not elect to use a NE multispecies Category B DAS to satisfy that requirement.

* * * * *

(4) *Criteria and procedure for not reducing DAS allocations*. The schedule of reductions in NE multispecies DAS shall not occur if the Regional Administrator:

* * * * *

(e) *Accrual of DAS*. (1) DAS shall accrue to the nearest minute, and with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program.

(2) *Differential DAS*. For a NE multispecies DAS vessel that intends to fish some or all of its trip, or fishes, some or all of its trip other than for transiting purposes, under a Category A DAS in the GOM Differential DAS Area, as defined in paragraph (e)(2)(i)(A) of this section, or in the SNE Differential DAS Area, as defined in paragraph (e)(2)(i)(B) of this section, with the exception of Day gillnet vessels, which accrue DAS in accordance with paragraph (j)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the differential DAS rate described in paragraph (e)(2)(iii) of this section, and be subject to the restrictions defined in this paragraph (e).

(i) *GOM Differential DAS Areas*. (A) The GOM Differential DAS Area is defined by straight lines connecting the following points in the order stated:

GOM DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
GMD1	43 ° 30’	Intersection with Maine Coastline.
GMD2	43 ° 30’	69 ° 30’.
GMD3	43 ° 00’	69 ° 30’.
GMD4	43 ° 00’	69 ° 55’ eastern boundary, WGOM Closed Area.
GMD5	42 ° 30’	69 ° 55’.
GMD6	42 ° 30’	69 ° 30’.
GMD7	41 ° 30’	69 ° 30’.
GMD8	41 ° 30’	70 ° 00’.
GMD9	North to intersection with Cape Cod, Massachusetts, coast and 70 ° 00’ W.	

(B) *SNE Differential DAS Area*. The SNE Differential DAS Area is defined by straight lines connecting the following points in the order stated:

SNE DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
SNED1	41 ° 05’	71 ° 45’
SNED2	41 ° 05’	70 ° 00’
SNED3	41 ° 00’	70 ° 00’

SNE DIFFERENTIAL DAS AREA—Continued

Point	N. lat.	W. long.
SNED4	41 ° 00’	69 ° 30’
SNED5	40 ° 50’	69 ° 30’

SNE DIFFERENTIAL DAS AREA—Continued

Point	N. lat.	W. long.
SNED6	40 ° 50'	70 ° 20'
SNED7	40 ° 40'	70 ° 20'
SNED8	40 ° 40'	70 ° 30'
SNED9	40 ° 30'	72 ° 30'
SNED10	40 ° 10'	73 ° 00'
SNED11	40 ° 00'	73 ° 15'
SNED12	40 ° 00'	73 ° 40'
SNED13	40 ° 15'	73 ° 40'
SNED14	40 ° 30'	73 ° 00'
SNED15	40 ° 55'	71 ° 45'
SNED16	41 ° 05'	71 ° 45'

(ii) *Declaration*. With the exception of vessels fishing in the Eastern U.S./Canada Area, as described in§ 648.85(a)(3)(ii)(A), a NE multispecies DAS vessel that intends to fish, or fishes under a Category A DAS in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in paragraph (e)(2)(i) of this section, must, prior to leaving the dock, declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific differential DAS area the vessel will fish in on that trip. A DAS vessel that fishes in the Eastern U.S./Canada Area and intends to fish subsequently in the GOM Differential DAS Area or the SNE Differential DAS Area under Category A DAS Area must declare its intention to do so through its VMS prior to leaving the Eastern U.S./Canada Area, as specified in § 648.85(a)(3)(ii)(A)(*3*).

(iii) *Differential DAS counting*—(A) *Differential DAS counting when fishing in the GOM Differential DAS Area*. For a NE multispecies vessel that intend to fish, or fishes for some or all of its trip other than for transiting purposes under a Category A DAS in the GOM Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to1 for the entire trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel that has not declared its intent to fish in the GOM Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the GOM Differential DAS Area due to bad weather or other circumstances beyond its control, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) and the vessel declares immediately upon entering the GOM Differential DAS Area, via VMS, that it is neither fishing nor transiting. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2 to 1 for the entire trip.

(B) *Differential DAS counting when fishing in the SNE Differential DAS Area*. For a NE multispecies DAS vessel that intends to fish or fishes some or all of its trip other than for transiting purposes under a Category A DAS in the SNE Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the duration of the time spent in the SNE Differential DAS Area, as determined from VMS positional data. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip. If the Regional Administrator requires the use of the DAS call-in, as described under § 648.10(b)(2)(iv), a vessel that fishes any portion of its trip in the SNE Differential DAS Area will be charged DAS at the rate of 2 to1 for the entire trip.

(iv) *Restrictions*. A NE multispecies vessel fishing under a Category A DAS in one of the Differential DAS Areas defined in paragraph (e)(2)(i) of this section, under the restrictions of paragraph (e)(2) of this section and under the restrictions of one or more of the Special Management Programs under § 648.85 is required to comply with the most restrictive regulations, as described in § 648.85 under the pertinent Special Management Program.

(v) *Transiting*. A vessel may transit the GOM Differential DAS Area and the SNE Differential DAS Area, as defined in paragraph (e)(2)(i) of this section, provided the gear is stowed in accordance with the provisions of § 648.23(b).

(3) *Regular B DAS Program 24–hr clock*. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), and that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can legally land. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in one of the Differential DAS Areas, defined in (e)(2)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (e)(2)(iii) of this section for the entire trip.

* * * * *

(j) * * *

(1) * * *

(iii) *Method of counting DAS*. A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(3) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, when not subject to differential DAS counting as specified under paragraph (e)(2) of this section, shall accrue 15 hr of DAS for each trip of more than 3 hr, but less than or equal to 15 hr. Such vessel shall accrue actual DAS time at sea for trips less than or equal to 3 hr, or more than 15 hr.

(C) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the GOM Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(A) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours used for any trip of 0–3 hr in duration, and for any trip of greater than 7.5 hr. For such vessels fishing from 3 to 7.5 hr duration, vessels will be charged a full 15 hr. For example, a Day gillnet vessel fishing in the GOM Differential Area for 8 hr would be charged 16 hours of DAS, or if fishing for 5 hr would be charged 15 hr of DAS.

(D) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the SNE Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(B) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours that are in the SNE Differential DAS Area that are from 0–3 hr in duration and greater than 7.5 hr. For hours in the SNE Differential DAS Area that are over 3 and less than or equal to 7.5 hr duration, a vessel shall be charged a full 15 hr. For a Day gillnet vessel that fishes both inside and outside of the SNE Differential DAS Area on the same trip, time fished outside the area shall accrue on the

basis of actual time, unless otherwise specified in this paragraph (j)(1)(iii). A Day gillnet vessel fishing inside and outside of the SNE Differential DAS Area on the same trip, shall not accrue less DAS for the entire trip than would a Day gillnet vessel fishing the same amount of time outside of the SNE Differential DAS Area for the entire trip (accruing DAS as specified under paragraph (j)(1)(iii)(B) of this section).

* * * * *

(k) * * *

(1) *Program description*. Eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

* * * * *

(3) *Application to lease NE multispecies DAS*. To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until the close of business on March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(4) * * *

(iv) *Maximum number of DAS that can be leased*. A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's current allocation of Category A DAS.

* * * * *

(l) *DAS Transfer Program*. Except for vessels fishing under a sector allocation as specified in § 648.87, or a vessel that acted as a lessee or lessor in the DAS Leasing Program transaction, a vessel issued a valid limited access NE multispecies permit may transfer all or its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions*. (i) The transferor vessel must transfer all of its DAS. Upon approval of the DAS transfer, all history associated with the transferred NE multispecies DAS (moratorium right history, DAS use history, and catch history) shall be associated with the permit rights of the transferee. Neither the individual permit history elements, nor total history associated with the transferred DAS may be retained by the transferor.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits exist, i.e, those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

(iv) For the purpose of calculating the DAS conservation tax as described in this paragraph (l), the applicants must specify which DAS (the transferor's DAS or the transferee's DAS) are subject to the DAS reduction. NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, shall be reduced by 20 percent upon transfer. Category C DAS, as defined under paragraph (d)(3) of this section, will be reduced by 90 percent upon transfer.

(v) In a particular fishing year, a vessel may not execute a DAS transfer as a transferor if it previously participated in the DAS Leasing Program as either a lessee or a lessor, as described under paragraph (k) of this section. A vessel may participate in DAS lease transaction (as a lessee or a lessor) and submit an application for a DAS transfer (as a transferor) during the same fishing year, but the transfer, if approved, would not be effective until the beginning of the following fishing year. Other combinations of activities under the DAS Leasing and DAS Transfer programs are permissible during the same fishing year (i.e., act as a transferee, or act as transferor and subsequently conduct a DAS lease).

* * * * *

(viii) A vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

(ix) A vessel with a DAS allocation resulting from a DAS Transfer in accordance with this paragraph (l) may acquire, through leasing, up to the sum of the DAS allocations for the 2001 fishing year, associated with the transferred and original DAS (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit), in accordance with the restrictions of paragraph (k) of this section.

* * * * *

7. In § 648.85, paragraphs (a)(3)(ii)(A); (a)(3)(iv)(A); (a)(3)(iv)(C)(*1*) and (*2*); (a)(3)(iv)(D); (a)(3)(v); (b)(3)(xi); (b)(5); (b)(6)(iii); (b)(6)(iv)(C) through (F), (H), and (I), (b)(6)(v)(C) and (E); (b)(6)(vi); (b)(7)(iv)(F) through (H); (b)(7)(v)(D); (b)(7)(vi)(D); the introductory text of paragraph (b)(8); and paragraphs (b)(8)(i) and (b)(8)(iv); (b)(8)(v)(A) introductory text; (b)(8)(v)(A)(*2*) through (*4*); (b)(8)(v)(E), (F), (H), (I) and (K) are revised; and paragraphs (b)(6)(ii) and (b)(8)(iii) are removed and reserved; and paragraph (b)(6)(iv)(J) is added to read as follows:

§ 648.85 Special Management Programs.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area

on the same trip, provided it complies with the more restrictive regulations, including possession limits, for the areas fished for the entire trip, and provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. On a trip when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip will count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(*1*) The vessel operator must notify NMFS via VMS any time prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish, i.e., harvest fish, outside the Eastern U.S./Canada Area. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS, once a vessel that has elected to fish outside of the Eastern U.S./Canada Area leaves the Eastern U.S./Canada Area, Category A DAS will accrue from the time the vessel crosses the VMS demarcation line at the start of its fishing trip until the time the vessel crosses the demarcation line on its return to port, in accordance with § 648.10 (b)(2)(iii).

(*2*) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified under § 648.85(a)(3)(v) for the duration of the trip.

(*3*) If the vessel fishes or intend to fish in one of the Differential DAS Areas defined under § 648.82(e)(2)(i) it must declare its intent to fish, i.e., harvest fish, in the specific Differential DAS Area prior to leaving the Eastern U.S./Canada Area, and must not have exceeded the CC/GOM or SNE/MA yellowtail flounder trip limits, specified in § 648.86(g) for the respective areas.

(*4*) If a vessel possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (i.e., may not fish outside of the U.S./Canada Management Area).

* * * * *

(iv) * * *

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs as required under this section.

* * * * *

(C) * * *

(*1*) *Initial yellowtail flounder landing limit.* Unless further restricted under paragraph (a)(3)(iv)(D) of this section (gear performance incentives), or, modified pursuant to paragraph (a)(3)(iv)(D), the initial yellowtail flounder landing limit for each fishing year is 10,000 lb (4,536.2 kg) per trip.

(*2*) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust, or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC (in a manner consistent with the Administrative Procedure Act). The Regional Administrator may specify yellowtail flounder trip limits that apply to the whole U.S./Canada Management Area or to either the Western or Eastern Area.

* * * * *

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, modify the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg)(whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

* * * * *

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. The vessel must continue to report daily even after exiting the U.S./Canada Management Area. The reports must be submitted in 24–hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(A) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; and total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded;

(B) Date fish were caught; and

(C) Vessel Trip Report (VTR) serial number, as instructed by the Regional Administrator.

* * * * *

(b) * * *

(3) * * *

(xi) *No-discard provision and DAS flips.* A vessel fishing in the CA II Yellowtail Flounder SAP, may not discard legal-sized regulated NE multispecies, Atlantic halibut, or ocean pout. If a vessel fishing in the CA II Yellowtail Flounder SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a vessel operator fishing in the CA II Yellowtail Flounder SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies, ocean pout, or Atlantic halibut than the maximum landing limits allowed per trip, specified under paragraph (b)(3)(iv) or (viii) of this section, or under § 648.86,

the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (i.e., either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

* * * * *

(5) *Incidental Catch TACs*. Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs will be specified through the periodic adjustment process described in § 648.90, and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS will send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, and GB winter flounder*. With the exception of GB cod, GB yellowtail flounder, and GB winter flounder, the Incidental Catch TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod*. The Incidental Catch TAC for GB cod specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP, described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder*. Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(6) of this section; and 50 percent to the Eastern U.S./Canada Haddock SAP, described in paragraph (b)(8) of this section.

* * * * *

(6) * * *

(ii) [Reserved]

(iii) *Quarterly Incidental Catch TACs*. The Incidental Catch TACs specified in accordance with paragraph (b)(5) of this section will be divided into quarterly catch TACs as follows: The first quarter will receive 13 percent of the Incidental Catch TACs and the remaining quarters will each receive 29 percent of the Incidental Catch TACs. NMFS will send letters to all limited access NE multispecies permit holders notifying them of such TACs.

(iv) * * *

(C) *VMS declaration*. To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip. Declaration of a Regular B DAS Program trip does not reserve a vessel's right to fish under the Program.

(D) *Landing limits*. Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout, and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined, 500 lb (227 kg) of monkfish (whole weight), 500 lb (227 kg) of skates (whole weight), and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips*. A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated groundfish, ocean pout, Atlantic halibut, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of groundfish is prohibited. If such a vessel harvests and brings on board legal-sized regulated NE multispecies, or Atlantic halibut in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to A DAS. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared it DAS flip will be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the trip limits specified under § 648.86.

(F) *Minimum Category A DAS and B DAS accrual*. For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip. If a vessel is fishing in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in § 648.82(e)(2)(i), the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by 2. For example, if a vessel plans a trip under the Regular B DAS Program into the GOM Differential DAS Area and has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 5. A vessel fishing in the Regular B DAS Program for its entire trip will accrue DAS in accordance with § 648.82(e)(3).

* * * * *

(H) *Closure of Regular B DAS Program and quarterly DAS limits*. Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May-July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(3).

(I) *Reporting requirements*. The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24–hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: Total pounds of haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described under paragraph (b)(6)(iv)(E) of this section.

(J) *Gear requirement*—(*1*) Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl as described under paragraph (a)(3)(iii)(A) of this section, or other type of gear if approved as described under this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program.

(*2*) The Regional Administrator may authorize the use of additional gear for this program if it has been demonstrated to reduce the catch of groundfish stocks of concern based on approved gear standards implemented pursuant to paragraph (b)(6)(iv)(J)(*3*) of this section.

(*3*) The Regional Administrator may not authorize additional gear unless the Council first recommends to the Regional Administrator, and the Regional Administrator approves, gear standards in a manner consistent with the Administrative Procedure Act. If the Regional Administrator does not approve any gear standards recommended by the Council for use in the Regular B DAS Program, NMFS must provide a written rationale to the Council regarding its decision not to do so.

(v) * * *

(C) *CC/GOM yellowtail flounder stock area*. The CC/GOM yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
CCGOM1	43 ° 00’	Intersection with New Hampshire Coastline.
CCGOM2	43 ° 00’	70 ° 00’.
CCGOM3	42 ° 30’	70 ° 00’.
CCGOM4	42 ° 30’	69 ° 30’.
CCGOM5	41 ° 30’	69 ° 30’.
CCGOM6	41 ° 30’	69 ° 00’.
CCGOM7	41 ° 00’	69 ° 00’.
CCGOM8	41 ° 00’	69 ° 30’.
CCGOM5	41 ° 30’	69 ° 30’.
CCGOM9	41 ° 30’	70 ° 00’.
CCGOM10	1	70 ° 00’.
CCGOM11	42 ° 00’	Intersection with east facing shoreline of Cape Cod, Massachusetts.
CCGOM12	42 ° 00’	Intersection with west facing shoreline of Massachusetts.
CCGOM13	2	70 ° 00’.

1 Intersection with south facing shoreline of Cape Cod, Massachusetts
2 Intersection with east facing shoreline of Cape Cod, Massachusetts

* * * * *

(E) *SNE/MA yellowtail flounder stock area*. The SNE/MA yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
SNEMA1	40 ° 00’	74 ° 00’.
SNEMA2	40 ° 00’	72 ° 00’.
SNEMA3	40 ° 30’	72 ° 00’.
SNEMA4	40 ° 30’	69 ° 30’.
SNEMA5	41 ° 00’	69 ° 30’.
SNEMA6	41 ° 00’	69 ° 00’.
SNEMA7	41 ° 30’	69 ° 00’.
SNEMA8	41 ° 30’	70 ° 00’.
SNEMA9	41 ° 00’	70 ° 00’.
SNEMA10	41 ° 00’	70 ° 30’.
SNEMA11	41 ° 30’	70 ° 30’.
SNEMA12	1	72 ° 00’.
SNEMA13	2	72 ° 00’.
SNEMA14	3	73 ° 00’.
SNEMA15	40 ° 30’	73 ° 00’.
SNEMA16	40 ° 30’	74 ° 00’.

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. lat.	W. long.
SNEMA17	40 ° 00'	74 ° 00'.

1 South facing shoreline of Connecticut
2 North facing shoreline of Long Island, New York
3 South facing shoreline of Long Island, New York

* * * * *

(vi) *Closure of the Regular B DAS Program*. The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, in a manner consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program. Reasons for terminating the program include, but are not limited to the following: Inability to constrain catches to the Incidental Catch TACs; evidence of excessive discarding; a significant difference in flipping rates between observed and unobserved trips; or insufficient observer coverage to adequately monitor the program.

(7) * * *

(iv) * * *

(F) *Haddock TAC*. The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according the following formula: Biomass YEAR X = (1,130 mt live weight) x (Projected WGB Haddock Exploitable $\text{Biomass}_{\text{YEAR X}}$ / WGB Haddock Exploitable Biomass_{2004}). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator is authorized to specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act, based on the best available scientific information.

(G) *Trip restrictions*. A vessel is prohibited from deploying fishing gear outside of the Closed Area I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the Closed Area I Hook Gear Haddock SAP, and must exit the SAP if the vessel exceeds the applicable landing limits described in paragraph (b)(7)(iv)(H) of this section.

(H) *Landing limits*. For all eligible vessels declared into the Closed Area I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies other than cod, which are specified at paragraphs (b)(7)(v)(C) and (b)(7)(vi)(C) of this section, are as specified at § 648.86. Such vessels are prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

* * * * *

(v) * * *

(D) *Reporting requirements*. The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager will provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(vi) * * *

(D) *Reporting requirements*. The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24–hr intervals for each day fished, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(8) *Eastern U.S./Canada Haddock SAP*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section, are eligible to participate in the Eastern U.S./Canada Haddock SAP, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section, or the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section.

* * * * *

(iii) [Reserved]

(iv) *Season*. Eligible vessels may fish in the Eastern U.S./Canada Haddock SAP from August 1 through December 31.

(v) * * *

(A) *DAS use restrictions*. A vessel fishing in the Eastern U.S./Canada Haddock SAP may elect to fish under a Category A or Category B DAS, in accordance with § 648.82(d)(2)(i)(A) and the restrictions of this paragraph (b)(8)(v)(A).

* * * * *

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8)(i) of this section may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the Closed Area II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder Access Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outsides of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(*4*) Vessels that elect to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive trip provisions of the areas fished for the entire trip, including those in paragraph (a)(3)(ii)(A)(*3*) of this section.

* * * * *

(E) *Gear restrictions*—(*1*) A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section, or other type of gear if approved as described under this paragraph (b)(8)(v)(E). No other type of fishing gear may be on the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, with the exception of a flounder net, as described in paragraph (a)(3)(iii) of this section, provided that the flounder net is stowed in accordance with § 648.23 (b).

(*2*) The Regional Administrator may authorize the use of additional gear for this program if it has been demonstrated to reduce the catch of groundfish stocks of concern based on approved gear standards implemented pursuant to paragraph (b)(8)(v)(E)(*3*) of this section.

(*3*) The Regional Administrator may not authorize additional gear unless the Council first recommends to the Regional Administrator, and the Regional Administrator approves, gear standards in a manner consistent with the Administrative Procedure Act. If the Regional Administrator does not approve any gear standards recommended by the Council for use in the Eastern U.S./Canada Haddock SAP, NMFS must provide a written rationale to the Council regarding its decision not to do so.

(F) *Landing limits*. Unless otherwise restricted, NE multispecies vessels fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight), and skates (whole weight) is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited.

* * * * *

(H) *Incidental TACs*. The maximum amount of GB cod, and the amount of GB yellowtail flounder and GB winter flounder, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A), is the amount specified in paragraphs (b)(5)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips*. A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout. If a vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified under paragraph (b)(8)(v)(F) of this section, or under § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS the vessel is subject to all landing limits specified under§ 648.86. If a NE multispecies vessel fishing in this SAP, while under a Category B DAS or a Category A DAS exceeds a trip limit specified under paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined under paragraph (b)(8)(ii) of this section, for the remainder of the trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

* * * * *

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP*. When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP, through publication in the **Federal Register**, consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Program.

* * * * *

8. In § 648.86, the section heading, paragraphs (a)(1), (b)(1), (b)(2), (b)(4), (e), and (g) are revised, and paragraph (j) is added, to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(1) *NE multispecies DAS vessels*—(i) Implementation and adjustments to the haddock trip limit to prevent exceeding the target TAC. At any time prior to or during the fishing year, if the Regional Administrator projects that the target TAC for haddock will be exceeded in that fishing year, NMFS may implement or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to prevent exceeding the target TAC in that fishing year.

(ii) Implementation and adjustments to the haddock trip limit to facilitate harvest of the target TAC. At any time prior to or during the fishing year, if the Regional Administrator projects that less than 90 percent of the target TAC for that fishing year will be harvested, NMFS may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order facilitate haddock harvest and enable the total catch to approach the target TAC for that fishing year.

* * * * *

(b) * * *

(1) *GOM cod landing limit*. (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24–hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For

each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24–hr block of DAS fished, or part of an additional 24–hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than,1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24–hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24–hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard and, after returning to port, does not depart from a dock or mooring in port, unless transiting as allowed under paragraph (b)(3) of this section, until the rest of the additional 24–hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port) may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip).

(B) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system, as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24–hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.

(2) *GB cod landing and maximum possession limits*. (i) Unless otherwise restricted under § 648.85, or under the provisions of paragraph (b)(2)(ii) of this section, or unless exempt from the landing limit under paragraph (b)(1) as authorized under the Sector provisions of § 648.87, a NE multispecies DAS vessel may land up to 1,000 pounds of cod per DAS, or part of a DAS, provided it complies with the requirements specified at paragraph (b)(4) of this section and this paragraph (b)(2). A NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod during the first 24–hr period after such vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg) of cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24–hr block of DAS fished, or part of an additional 24–hr block of DAS fished, up to a maximum of 10,000 lb (4,536 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 2,000 lb (907.2 kg) of cod). A vessel that has been called into only part of an additional 24–hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24–hr block may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24–hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.)

(B) For a vessel that is subject to the VMS provisions specified under ' 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard, and after returning to port does not depart from a dock or mooring in port, unless transiting, as allowed under paragraph (b)(3) of this section, until the rest of the additional 24–hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip.)

* * * * *

(4) *Exemption*. A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the Gulf of Maine Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration*. With the exception of vessels declared into the U.S./Canada Management Area, as described under § 648.85(a)(3)(ii), a NE multispecies DAS vessel that fishes or intends to fish south of the line described in paragraph (b)(4) of this section, under the cod trip limits described under paragraph (b)(2) of this section, must, prior to leaving the dock, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the authorization letter on board.

(ii) A vessel exempt from the GOM cod landing limit may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated

Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

* * * * *

(e) *White hake*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 5,000 lb (2,268.1 kg) per trip.

* * * * *

(g) *Yellowtail flounder*—(1) *CC/GOM and SNE/MA yellowtail flounder landing limit*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined under § 648.85(a)(1), may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,000 lb (453.6 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g) or § 648.85(a)(3)(iv)(C)).

(2) *GB Yellowtail Flounder Landing Limit*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1) is subject to the GB yellowtail flounder limit described under § 648.85(a)(3)(iv)(C).

* * * * *

(j) *GB winter flounder*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1), may not possess or land more than 5,000 lb (2,268.1 kg) of GB winter flounder per trip.

9. In § 648.87, paragraph (d)(2) is added to read as follows:

§ 648.87 Sector allocation.

* * * * *

(d) * * *

(2) *GB Cod Fixed Gear Sector*. Eligible NE multispecies DAS vessels, as specified in paragraph (d)(2)(i) of this section, may participate in the GB Cod Fixed Gear Sector within the area defined as the GB Cod Hook Sector Area, as specified under paragraph (d)(1)(i) of this section, under the GB Cod Fixed Gear Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner complies with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section.

(i) *Eligibility*. All vessels issued a limited access NE multispecies DAS permit are eligible to participate in the GB Cod Fixed Gear Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001, regardless of gear fished.

(ii) *TAC allocation*. For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operations Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, regardless of gear used, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(2)(ii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(2)(ii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iii) *Requirements*. A vessel fishing under the GB Cod Fixed Gear Sector may not fish with gear other than jigs, non-automated demersal longline, hand gear, or sink gillnets.

10. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(c) *Scallop NE multispecies possession limit permit*. With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

* * * * *

11. In § 648.89, paragraphs (b)(1), (c)(1)(i), and (c)(2)(i) are revised, and paragraphs (b)(3), (c)(1)(v), and (c)(2)(v) are added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(1) *Minimum fish sizes*. Unless further restricted under paragraph (b)(3) of this section, persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL), as follows:

GPO, insert Table Minimum Fish Sizes (TL) for Charter, Party, and Private Recreational Vessels here.

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes
Cod	22 (58.4 cm)

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS—Continued

Species	Sizes
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice(dab)	14 (35.6 cm)
Winter flounder(blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

(3) *GOM cod*. Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section, may not possess cod smaller than 24 inches (63.7 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

* * * * *

(c) * * *

(1) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day in, or harvested from, the EEZ.

* * * * *

(v) *Seasonal GOM cod possession prohibition*. Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1), may not fish for or possess any cod from November 1 through March 31. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(2) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(2)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day.

* * * * *

(v) *Seasonal GOM cod possession prohibition*. Persons aboard charter/party fishing vessels fishing in the GOM Regulated Mesh Area specified under ' 648.80(a)(1) may not fish for or possess any cod from November 1 through March 31. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

* * * * *

12. In § 648.92, paragraph (b)(2)(i) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) * * *

(i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used. However, after all 30 NE multispecies Category A DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B DAS in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

* * * * *

[FR Doc. 06–6444 Filed 7–21–06; 3:36 pm]

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Federal Register

Wednesday,
July 26, 2006

Part IV

Department of Education

Grants and Cooperative Agreements—Notice of Final Priority and Notice Inviting Applications for New Awards; Notices

DEPARTMENT OF EDUCATION

RIN 1865–ZA03

Grants for School-Based Student Drug-Testing Programs

AGENCY: Office of Safe and Drug-Free Schools, Department of Education (ED).

ACTION: Notice of final priority, eligibility and application requirements, and selection criteria.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools announces a priority, eligibility and application requirements, and selection criteria under the School-Based Student Drug-Testing Programs grant program. The Assistant Deputy Secretary may use this priority, eligibility and application requirements, and selection criteria for competitions in fiscal year (FY) 2006 and later years. We intend for the priority, eligibility and application requirements, and selection criteria to support development and implementation of drug-testing programs in schools.

DATES: *Effective Date:* This priority, eligibility and application requirements, and selection criteria are effective August 25, 2006.

FOR FURTHER INFORMATION CONTACT: Robyn L. Disselkoen, or Charlotte Gillespie, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E328, Washington, DC 20202–6450.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: We published a notice of proposed priority, eligibility and application requirements, and selection criteria for this program (NPP) in the **Federal Register** on May 22, 2006 (71 FR 29321). We discussed our proposals for this program in the NPP (71 FR 29322–29324).

This notice of final priority, eligibility and application requirements, and selection criteria (NFP) contains three changes from the NPP. We fully explain these changes in the *Analysis of Comments and Changes* section that follows.

Analysis of Comments and Changes

In response to our invitation in the NPP, five parties submitted comments. An analysis of the comments and of any changes in the priority, eligibility and application requirements, and selection criteria follows. We group major issues according to subject. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Eligible Applicants

Comment: One commenter argues that isolated rural local educational agencies (LEAs) should be allowed to participate in the program with one high school and one middle school rather than with two high schools.

Discussion: While school districts with only one high school have been eligible for a grant under previous competitions for this program, we are restricting the group of eligible applicants to districts with at least two high schools for purposes of the national evaluation of this program that ED will be conducting. The evaluation design will randomly assign schools either to the treatment condition (implementing the drug testing program) or to the control condition (delaying implementation of the drug testing program for approximately one year). The prevalence of drug use among students in the treatment school will be compared against drug use in the control school. The commenter's proposal to allow a high school and a middle school to be randomly assigned would violate key principles of the random assignment design, because ED believes that the impact of a mandatory random drug-testing program is likely to be quite different in a high school setting versus a middle school setting. Comparing student drug use between schools at different levels, therefore, would not be desirable.

Change: None.

Scope of Program

Comment: One commenter believes that drug testing is ineffective at deterring drug abuse and is harmful for students. The commenter suggests that funding should be concentrated on promoting accurate, fact-based education and discussion of the dangers of drug use, as well as increased involvement in extra-curricular activities.

Discussion: The purpose of the evaluation is to build a more robust body of evidence on mandatory random student drug testing (MRSDT) using a randomized control design, the ''gold standard'' method for determining whether an intervention is effective. ED will use this rigorous design to determine if drug testing is effective among the group of districts that receive grants under this competition. We recognize that drug testing is a tool that must be used in conjunction with a comprehensive drug and alcohol prevention program. For this reason, ED requires that applicants describe the prevention program they currently have in place and explain how drug testing will be a part of that program. We also agree that strategies to promote participation in extra-curricular activities are important. Such participation helps to create a bond between the student and the school that can improve academic performance as well as deter high-risk behaviors, including drug and alcohol use. This study will gather information on the impact of MRSDT on rates of participation in extra-curricular activities.

Change: None.

Comment: One commenter stated that the evaluation would be based on too small a sample to be meaningful because grantees are also subject to the laws in their respective States and case law on mandatory random drug testing in many States is not yet settled.

Discussion: We agree with the commenter that this area of the law is evolving, and that is why we have included Eligibility and Application Requirement 2(f)(iv), which requires applicants to provide a written assurance ''that legal counsel has reviewed the proposed drug-testing program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a mandatory random student drug-testing program.'' We do not agree, however, that the sample size will be too small to be meaningful. The primary purpose of the evaluation is to determine whether there is a significant impact of mandatory random drug testing among the ED grantees selected under this competition. The evaluation is not intended to be nationally representative nor statistically generalizable beyond this group of grantees. We expect that the grantees will have a sufficient number of participating schools to provide meaningful study results. We have designed the study to detect a 10.2 percent reduction in the 30-day prevalence of illicit drug use. In order to detect this effect, we need 30 schools. Our assumptions for the study design are: (1) A two-tailed test at 80 percent power and a 5 percent statistical significance; (2) an R^2 value of 0.05 because of the use of prior student drug use as a covariate; (3) a non-random sample of 30 schools with random assignment of 15 schools to receive the

intervention and 15 schools to serve as controls; (4) a minimum sample size of 200 students per school with an 80 percent response rate; and (5) an intra-class correlation coefficient of 0.05. We estimate that this design would generate minimum detectable effects (MDE) of approximately 0.17 standard deviation for continuous outcomes and 7.8 percent for binary outcomes where the control group mean is 30 percent. Because the sample of schools is purposive, and statistically generalizing beyond this sample is not valid, we have calculated the power with a fixed effects, rather than a random effects, framework. Under our assumptions, a sample of 30 schools would be sufficient to detect the reduction of 10.2 percent in the 30-day prevalence of use of any illicit drug. If the true impact were smaller than the MDE, that would not challenge the validity of the study, only its precision in detecting smaller impacts from drug-testing programs.

Change: None.

Comment: One commenter believes the control condition should include alternatives to drug testing, such as screening all students for drug use and severity via a brief professional interview, rather than simply ''no intervention.''

Discussion: The commenter raises important drug testing program design issues regarding the control condition and suggests that other substance abuse prevention strategies be tested. That is beyond the scope of this evaluation, given that the central policy question of interest addressed by this evaluation is whether MRSDT has an impact on student drug use. Once that hypothesis has been tested, ED may decide to research alternative prevention strategies to determine whether they are more or less effective than MRSDT.

Change: None.

Comment: One commenter believes that the evaluation should monitor unintended consequences (such as successful evasion of the test, falsification of results, false negatives, and false positives) in addition to looking at the efficacy of drug testing.

Discussion: We agree that careful consideration of unintended impacts of MRSDT programs on high school students is important. To that end, the student survey will gather information on the impact of drug testing on students' participation in athletics and extra-curricular activities. Addressing the specific concerns raised by the commenter, however, is beyond the scope of the current evaluation.

The study is designed to assess the impact of MRSDT on reported substance use by students subject to and not subject to MRSDT in their schools, while ensuring the confidentiality of all students subject to drug testing in schools that implement the policy. In order for the national evaluator to measure successful evasion of the test or falsification of results, the test results would have to be linked to a specific student's questionnaire. This study has been carefully designed to avoid that linkage and to protect the privacy of student participants.

Change: None.

Institutional Review Board (IRB) Approval

Comment: One commenter objected to ED's interpretation of the IES (Institute of Education Sciences) confidentiality statutes as exempting grantees from the need to have separate IRB approvals and noted that the proposal did not make clear how or why the research would pass muster under the IES ethical guidelines.

Discussion: While research conducted under the strict confidentiality requirements of the IES confidentiality statute is not subject to IRB review, as a policy matter, ED will obtain IRB approval for all human subjects research activities, in accordance with the Common Rule for the protection of human subjects in research (34 CFR part 97). The exemption for research done under the IES Confidentiality statute from the Common Rule for the protection of human subjects is based on the fact that the Confidentiality statute prohibits the disclosure of any information that could lead to the identification of an individual participating in the survey. This is a significantly higher standard than the protection of privacy under such acts as the Privacy Act of 1974, which only prohibits the disclosure of individually identifiable information. Not only does the Confidentiality statute prohibit disclosure of information that could potentially lead to the identification of an individual, it contains criminal penalties for disclosure. The statute also provides that information collected under the Confidentiality statute is immune from legal process. *See* 20 U.S.C. 9007. Even though there is the highest degree of protection for data collected under the Confidentiality statute, the Department is very interested in protecting study participants from harm. That is why we have decided to subject the research design, including review of the informed consent forms, to review by an IRB.

The national evaluator will obtain both parental consent and student assent for student participation in the surveys, conduct all data collection for the research, analyze the data, and ensure strict confidentiality under the highest standards required by the IES Confidentiality statute. The grantees will provide the research sites, however, they will not be conducting research because all research activities will be conducted by the national evaluator that has a contract with ED to do the research. If the grantees decided to engage in human subjects research, for example, as part of separate project evaluations, they would need IRB approval for their separate research. The IES statutes require that IES contractors maintain strict data confidentiality standards. There will be compliance with these statutory requirements and ethical guidelines.

Change: None.

Testing Pool

Comment: One commenter stated that it should be made clear in student informed consent forms, or otherwise, whether participation in the evaluation is or is not a condition for participation in athletic programs or competitive extra-curricular activities, and whether students may ''opt out'' of the research.

Discussion: Participation in student surveys to be conducted by the evaluator is completely voluntary and is not a condition of participation in athletics or extra-curricular activities. If a parent or a student who is 18 years of age or older or who is an emancipated minor under State law does not sign an evaluation consent form to participate in the evaluation's student surveys, this will have no effect on that student's eligibility to participate in the school's athletic program or competitive extra-curricular activities. In fact, because participation by the student in the research requires the student's assent, even if the student refuses to complete the survey when a parent has consented, the student will remain fully eligible to participate in the school's athletic program or competitive extra-curricular activities. We will add information to the application package to make clear the voluntary, non-coercive nature of participation in the student surveys and we will direct the national evaluator to add this information to consent forms. The IRB will review the consent forms used in the evaluation research for compliance with the regulations for the protection of human subjects (34 CFR part 97). This review will include assessment of the adequacy of the consent form's information about the voluntary nature of participation in research.

Change: None.

Comment: One commenter argued that the LEA is considered ''temporary staff'' under the IES statute and should not view or evaluate any test results. The commenter believes that allowing the LEA to collect test results creates the potential for mishandling sensitive student information. Instead, the commenter suggests that the test results be transmitted directly to the national evaluator without personally identifiable student information.

Discussion: We do not agree that the LEA should be considered ''temporary staff'' because it will have no part in conducting the evaluation. We also do not agree that the LEA should not view or evaluate test results. Information about positive drug test results is a necessary part of the school's operation of a drug-testing program. Without that information, the LEA would not be able to initiate appropriate intervention such as referral to a student assistance program, counseling, or drug treatment. Student drug test results are protected as education records under the Family Educational Rights and Privacy Act (FERPA) because the information is directly related to a student and maintained by the LEA or a party acting for the LEA. (20 U.S.C. 1232g(a)(4)(A)). Additionally, in order to further protect against mishandling of sensitive student information, applicants must, as a condition of receiving a grant award, agree to a stringent set of pupil privacy protections, including limiting the number of persons with access to the test results, destroying test results when the student graduates or otherwise leaves the LEA, and carrying out all proposed activities in accordance with both FERPA and Protection of Pupil Rights Amendment. (20 U.S.C. 1232h). In addition, the data regarding test results will be transmitted to the national evaluator without personally identifiable student information. Thus, there will be no way the evaluator can identify students who tested positive or connect the survey results with the drug-testing results.

Change: None.

Comment: One commenter expressed the view that the program's requirements should only subject students to mandatory random drug testing while they are participating in the school's athletic program or in competitive extra-curricular activities.

Discussion: We agree that this requirement needs to be clarified. We intend to give applicants flexibility to propose drug-testing programs that take into consideration the special needs and circumstances in the LEA; are consistent with their adopted policies; and are in accordance with the decisions of the U.S. Supreme Court in *Vernonia School District 47J* v. *Acton,* 515 U.S. 646 (1995), and *Board of Education of Independent School District No. 92 of Pottawatomie County* v. *Earls,* 536 U.S. 822 (2002) and advice of the LEA's legal counsel. Therefore, we will not require that students remain in the testing pool when they are not participating in a covered activity, but leave the length of time students are subject to testing to the discretion and policies of each district.

Change: We have changed the eligibility and application requirement in paragraph (2)(f)(viii) to read: ''That schools randomly assigned to begin drug testing in year one of the grant will not be required to consider students to be in the testing pool at any specific point in time unless they are participating in a covered activity (for example, all students participating at that time in athletics and/or all students participating at that time in competitive, extra-curricular, school-sponsored activities).''

Drug-Test Results

Comment: One commenter stated that the requirement for all positive drug tests to be reviewed by a certified medical review officer is too vague. The commenter suggested that grantees use urine tests administered in compliance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs, which require that all positive urine tests be confirmed by a gas chromatography/mass spectrometry-certified lab.

Discussion: Although the majority of current grantees use urine tests, a few have opted to use saliva or hair tests. We do not intend to require grantees to use any specific test but, rather, leave it to local discretion, determined in consultation with local counsel, and taking into consideration the U.S. Supreme Court decisions in *Vernonia School District 47J* v. *Acton,* 515 U.S. 646 (1995), and *Board of Education of Independent School District No. 92 of Pottawatomie County* v. *Earls,* 536 U.S. 822 (2002) and the special needs and circumstances in the LEA. We agree, however, that all positive tests, whether by urinalysis or other method, should be subject to confirmation by a method appropriate for the type of test administered. For a positive urine test, gas chromatography/mass spectrometry is the preferred method for confirming test results. We also agree that further clarification is needed regarding the requirement that positive test results be reviewed by a certified medical review officer (MRO).

Change: We have modified the eligibility and application requirement in paragraph 2(f)(iii) to read: ''That all positive drug tests will be subject to confirmation by a method appropriate for the type of test administered and that positive results will be reviewed and verified by a certified medical review officer, a licensed physician who is also an expert in drug and alcohol testing and the Federal regulations governing such testing.''

Comment: One commenter suggests that the five-panel test (marijuana, amphetamine, cocaine, methamphetamine, and opiates) is too broad and runs the risk of creating false positives for students using prescription medicine. The commenter believes the categories of drugs tested should be limited.

Discussion: The five-panel test is a standard test that screens for the presence of five substances commonly used by young people. We think it is important that schools test for, at a minimum, these commonly used substances in order to identify students who have initiated drug use and ensure they receive the help they need. Limiting the number of drugs for which schools may test runs the risk of failing to identify some students. The five-panel test provides an appropriate balance between testing for too few drugs and too many drugs. The requirement for referral to an MRO is intended to guard against reporting a positive drug test when the student is using a medicine legally prescribed for him or her.

Change: None.

SAMHSA-Certified Labs

Comments: None.

Discussion: Upon our further review of the proposed selection criteria, we believe that paragraph (a) under the *Management Plan* criterion should be changed. Under this criterion as proposed, applicants would have been required to demonstrate a commitment to using SAMHSA-certified labs to process student drug tests. ED has since learned that many of these labs are not geographically accessible to all grantees. In order to give grantees the option to select any qualified lab, we are changing this selection criterion to permit applicants to use any federally or nationally accredited lab.

Change: We have changed paragraph (a) of the *Management Plan* selection criterion to read: ''The extent to which the applicant describes appropriate chain-of-custody procedures for test samples and demonstrates a commitment to using a federally or

nationally accredited lab to process student drug tests.''

Note: This notice does *not* solicit applications. In any year in which we choose to use the priority, eligibility and application requirements, and selection criteria, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each priority is as follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Participation in Evaluation of Mandatory Random Student Drug-Testing Programs

Under this priority, we will support local educational agencies (LEAs) that agree to participate in a national evaluation of the impact of mandatory random student drug testing on high school students' reported substance use. In order to meet this priority, an applicant must:

(1) Agree to carry out its drug-testing program in a manner consistent with the randomized control trial evaluation design developed by ED and its national evaluator;

(2) Propose at least two schools with three or more grades 9 through 12 to participate in the national evaluation;

(3) Not have an existing drug-testing program in operation in any of the schools proposed by the applicant for participation in the national evaluation;

(4) Consent to the evaluator's random assignment of one-half of the schools proposed by the applicant for participation in the national evaluation to begin mandatory random student drug-testing implementation in year one of the grant (following the spring 2007 survey of students), and one-half to begin mandatory random student drug testing approximately one year later (after the spring 2008 survey of students has been completed);

(5) Agree that the schools proposed by the applicant for participation in the national evaluation will limit their mandatory random student drug-testing program to students in grades 9 through 12 and, within that group of students, to one or both of the following:

(a) All students who participate in the school's athletic program; and

(b) All students who are engaged in competitive, extra-curricular, school-sponsored activities;

Note: Competitive, extra-curricular, school-sponsored activities mean any activity under the direct control of the school in which students compete against students in another school. If the State maintains a list of sanctioned, competitive, extra-curricular, school-sponsored activities, the applicant may consider those activities to be competitive, extra-curricular, school-sponsored activities for the purposes of this program.

(6) Not promote or begin the implementation of its mandatory random student drug-testing program in any participating schools until it receives notification from the national evaluator about the random assignment of its schools to participate in the first or second wave of implementation, except that an applicant may conduct outreach and generate community support for its drug-testing policy;

(7) Delay the promotion, announcement, and start of the mandatory random student drug-testing program in schools assigned to the second wave of implementation until the spring 2008 student survey has been completed;

(8) Implement its mandatory random student drug-testing program consistently across participating schools and according to uniform LEA policies and procedures during the evaluation period; and

(9) Provide contact information to the national evaluator in order for the evaluator to obtain (a) the prior written consent of either the parent or the student if the student is 18 years of age or older or is an emancipated minor under State law and (b) student assent for student participation in the surveys (if the student does not have the right to consent as stated in this paragraph) and make available space for the administration of the surveys in the schools.

Once a participating school has begun implementing its mandatory random student drug-testing program in accordance with the requirements of this priority, and following the completion of the spring 2008 student survey, the LEA, at its discretion, may announce, promote, implement, and use grant funds for testing—

(a) In schools assigned to the second wave of implementation;

(b) Students in any grade 6 through 12 who, along with their parent or guardian, volunteer to be tested; and

(c) Students in grades 6 through 8 who participate in the school's athletic programs or competitive, extra-curricular, school-sponsored activities.

Eligibility and Application Requirements: We establish the following eligibility requirements for applications submitted under this program:

(1) LEAs are the only eligible applicants; and

(2) An applicant may not have been the recipient of, or a participant in, a grant in 2005 under ED's School-Based Grants for Student Drug-Testing competition (84.184D).

The following requirements also apply to all applications submitted under this program:

(1) An applicant may not submit more than one application for a grant under the competition.

(2) In its application, an applicant must:

(a) Clearly identify the student population that will be in the drug-testing pool including, to the extent feasible, the number of students in the pool by grade, and demonstrate a significant need for drug testing within the target population;

(b) Propose to test a minimum of 50 percent of the testing pool annually, and use at least a five-panel test (marijuana, amphetamine, cocaine, methamphetamine, and opiates);

(c) Explain how the proposed drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served;

(d) Provide a comprehensive plan for referring students who are identified through the testing program as users of illegal drugs or legal medications taken without a prescription to a student assistance program, counseling, or drug treatment if necessary;

(e) Provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting drug tests from disclosing to school officials any information about a student's use of legal medications for which the student has a prescription;

(f) Provide written assurances of the following:

(i) That results of student drug tests will not be disclosed to law enforcement officials;

(ii) That results of student drug tests will be destroyed when the student graduates or otherwise leaves the LEA or private school involved;

(iii) That all positive drug tests will be subject to confirmation by a method

appropriate for the type of test administered and that positive results will be reviewed and verified by a certified medical review officer, a licensed physician who is also an expert in drug and alcohol testing and the Federal regulations governing such testing;

(iv) That legal counsel has reviewed the proposed drug-testing program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a mandatory random student drug-testing program;

(v) That all proposed activities will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA);

(vi) That the mandatory random student drug-testing program is ready to begin no later than 9 months after receipt of the grant award. We will consider a grantee's failure to achieve readiness to begin its program within 9 months of the grant award as failure to make substantial progress consistent with the requirements of the Education Department General Administrative Regulations (EDGAR) in § 75.253(a)(2)(i). This failure could result in loss of funding for year two of the project period or termination of the grant;

(vii) That mandatory random student drug testing will be conducted for the entire academic year in the schools selected to implement drug testing; and

(viii) That schools randomly assigned to begin drug testing in year one of the grant will not be required to consider students to be in the testing pool at any specific point in time unless they are participating in a covered activity (for example, all students participating at that time in athletics and/or all students participating at that time in competitive, extra-curricular, school-sponsored activities).

(3) Funds awarded under this program may not be used for any of the following purposes:

(a) Student drug tests administered under suspicion of drug use;

(b) Incentives for students to participate in the drug-testing program;

(c) Drug treatment;

(d) Drug prevention curricula or other prevention programs;

(e) Drug tests for students in non-competitive, extra-curricular activities who do not otherwise meet the eligibility criteria;

(f) Drug tests for students in co-curricular activities who do not otherwise meet the eligibility criteria; or

(g) Drug tests for student drivers who park on campus who do not otherwise meet the eligibility criteria.

Selection Criteria

The Secretary will select from the following criteria those factors that will be used to evaluate applications under this competition.

(1) *Need for Project.*

(a) The documented magnitude of student drug use in schools to be served by the mandatory random student drug-testing program, including the nature, type, and frequency, if known, of drug use by students in the target population; and,

(b) Other evidence, if any, of student drug use in schools to be served by the mandatory random student drug-testing program, which may include, but is not limited to, reports from parents, students, school staff, or law enforcement officials.

(2) *Significance.*

(a) The extent to which the proposed project includes a thorough, high-quality review of Federal and State laws and relevant Supreme Court decisions related to the proposed student drug-testing program.

(b) The extent to which the applicant demonstrates school and community support for the student drug-testing program and has obtained the input of groups representing a diversity of perspectives, for example, private schools, parents, counselors, teachers, and school board members, in the development of the mandatory random student drug-testing program; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the mandatory random student drug-testing program in the grantee's schools.

(3) *Quality of Project Design.*

(a) The extent to which the project will be based on up-to-date knowledge from research and effective practice, including the methodology for the random selection of students to be tested and procedures outlining the collection, screening, confirmation, and review of student drug tests by a certified medical review officer.

(b) The quality of the applicant's plan to develop and implement a mandatory random student drug-testing program that includes—

(i) Evidence of the applicant's readiness to begin mandatory random student drug testing in the first year of the grant; and

(ii) Detailed procedures outlining how the school will respond to a student's positive drug test, including parental notification and referral to student assistance programs, drug education, or formal drug treatment, if necessary.

(4) *Management Plan.*

(a) The extent to which the applicant describes appropriate chain-of-custody procedures for test samples and demonstrates a commitment to using a federally or nationally accredited lab to process student drug tests.

(b) The quality of the applicant's plan to ensure confidentiality of drug test results, including limiting the number of school officials who will have access to student drug-testing records.

(5) *Adequacy of resources.* The adequacy of support from the applicant, including project staff, facilities, equipment, supplies, and other resources necessary to implement a high-quality mandatory random student drug-testing program.

Executive Order 12866

This notice of final priority, eligibility and application requirements, and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority, eligibility and application requirements, and selection criteria are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, eligibility and application requirements, and selection criteria we have determined that the benefits of the final priority and application requirements justify the costs. We summarized the costs and benefits in the notice of proposed priority, eligibility and application requirements, and selection criteria.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

(Catalog of Federal Domestic Assistance Number 84.184D—Grants for School Based Student Drug-Testing Programs)

Program Authority: 20 U.S.C. 7131.

Dated: July 21, 2006.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 06–6492 Filed 7–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants for School-Based Student Drug-Testing Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184D.

Dates: Applications Available: July 26, 2006.

Deadline for Transmittal of Applications: September 5, 2006.

Deadline for Intergovernmental Review: October 4, 2006.

Eligible Applicants: Local educational agencies (LEAs). Additional eligibility requirements are listed in this notice in Section I. Funding Opportunity Description.

Estimated Available Funds: $1,680,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2007 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $70,000–$200,000.

Estimated Average Size of Awards: $140,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. Projects will be funded for 12 months with an option for three additional 12-month periods, contingent upon substantial progress by the grantee and the availability of funds.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of the Program: The Grants for School-based Student Drug Testing Programs provides funds to LEAs to support development and implementation of drug-testing programs in schools.

Priority: This priority is from the notice of final priority, eligibility and application requirements, and selection criteria for this competition, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2006 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority. This priority is:

Participation in Evaluation of Mandatory Random Student Drug-Testing Programs

Under this priority, we will support local educational agencies (LEAs) that agree to participate in a national evaluation of the impact of mandatory random student drug testing on high school students' reported substance use. In order to meet this priority an applicant must:

(1) Agree to carry out its drug-testing program in a manner consistent with the randomized control trial evaluation design developed by ED and its national evaluator;

(2) Propose at least two schools with three or more grades 9 through 12 to participate in the national evaluation;

(3) Not have an existing drug-testing program in operation in any of the schools proposed by the applicant for participation in the national evaluation;

(4) Consent to the evaluator's random assignment of one-half of the schools proposed by the applicant for participation in the national evaluation to begin mandatory random student drug-testing implementation in year one of the grant (following the spring 2007 survey of students), and one-half to begin mandatory random student drug testing approximately one year later (after the spring 2008 survey of students has been completed);

(5) Agree that the schools proposed by the applicant for participation in the national evaluation will limit their mandatory random student drug-testing program to students in grades 9 through 12 and, within that group of students, to one or both of the following:

(a) All students who participate in the school's athletic program; and

(b) All students who are engaged in competitive, extra-curricular, school-sponsored activities;

Note: Competitive, extra-curricular, school-sponsored activities mean any activity under the direct control of the school in which students compete against students in another school. If the State maintains a list of sanctioned, competitive, extra-curricular, school-sponsored activities, the applicant may consider those activities to be competitive, extra-curricular, school-sponsored activities for the purposes of this program.

(6) Not promote or begin the implementation of its mandatory random student drug-testing program in any participating schools until it receives notification from the national evaluator about the random assignment of its schools to participate in the first or second wave of implementation, except that an applicant may conduct outreach and generate community support for its drug-testing policy;

(7) Delay the promotion, announcement, and start of the mandatory random student drug-testing program in schools assigned to the second wave of implementation until the spring 2008 student survey has been completed;

(8) Implement its mandatory random student drug-testing program consistently across participating schools and according to uniform LEA policies and procedures during the evaluation period; and

(9) Provide contact information to the national evaluator in order for the evaluator to obtain (a) the prior written consent of either the parent or the student if the student is 18 years of age or older or is an emancipated minor under State law and (b) student assent for student participation in the surveys (if the student does not have the right to consent as stated in this paragraph) and make available space for the administration of the surveys in the schools.

Once a participating school has begun implementing its mandatory random student drug-testing program in accordance with the requirements of this priority, and following the completion of the spring 2008 student survey, the LEA, at its discretion, may announce, promote, implement, and use grant funds for testing—

(a) In schools assigned to the second wave of implementation;

(b) Students in any grade 6 through 12 who, along with their parent or guardian, volunteer to be tested; and

(c) Students in grades 6 through 8 who participate in the school's athletic programs or competitive, extra-curricular, school-sponsored activities.

Eligibility and Application Requirements: We establish the following eligibility requirements for applications submitted under this program:

(1) LEAs are the only eligible applicants; and

(2) An applicant may not have been the recipient of, or a participant in, a grant in 2005 under ED's School-Based Grants for Student Drug-Testing Programs competition (84.184D).

The following requirements also apply to all applications submitted under this program:

(1) An applicant may not submit more than one application for a grant under the competition.

(2) In its application, an applicant must:

(a) Clearly identify the student population that will be in the drug-testing pool including, to the extent feasible, the number of students in the pool by grade, and demonstrate a significant need for drug testing within the target population;

(b) Propose to test a minimum of 50 percent of the testing pool annually, and use at least a five-panel test (marijuana, amphetamine, cocaine, methamphetamine, and opiates);

(c) Explain how the proposed drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served;

(d) Provide a comprehensive plan for referring students who are identified through the testing program as users of illegal drugs or legal medications taken without a prescription to a student assistance program, counseling, or drug treatment if necessary;

(e) Provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting drug tests from disclosing to school officials any information about a student's use of legal medications for which the student has a prescription;

(f) Provide written assurances of the following:

(i) That results of student drug tests will not be disclosed to law enforcement officials;

(ii) That results of student drug tests will be destroyed when the student graduates or otherwise leaves the LEA or private school involved;

(iii) That all positive drug tests will be subject to confirmation by a method appropriate for the type of test administered and that positive results will be reviewed and verified by a certified medical review officer, a licensed physician who is also an expert in drug and alcohol testing and the Federal regulations governing such testing;

(iv) That legal counsel has reviewed the proposed drug-testing program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a mandatory random student drug-testing program;

(v) That all proposed activities will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA);

(vi) That the mandatory random student drug-testing program is ready to begin no later than 9 months after receipt of the grant award. We will consider a grantee's failure to achieve readiness to begin its program within 9 months of the grant award as failure to make substantial progress consistent with the requirements of the Education Department General Administrative Regulations (EDGAR) in § 75.253(a)(2)(i). This failure could result in loss of funding for year two of the project period or termination of the grant;

(vii) That mandatory random student drug testing will be conducted for the entire academic year in the schools selected to implement drug testing; and

(viii) That schools randomly assigned to begin drug testing in year one of the grant will not be required to consider students to be in the testing pool at any specific point in time unless they are participating in a covered activity (for example, all students participating at that time in athletics and/or all students participating at that time in competitive, extra-curricular, school-sponsored activities).

(3) Funds awarded under this program may not be used for any of the following purposes:

(a) Student drug tests administered under suspicion of drug use;

(b) Incentives for students to participate in the drug-testing program;

(c) Drug treatment;

(d) Drug prevention curricula or other prevention programs;

(e) Drug tests for students in non-competitive, extra-curricular activities who do not otherwise meet the eligibility criteria;

(f) Drug tests for students in co-curricular activities who do not otherwise meet the eligibility criteria; or

(g) Drug tests for student drivers who park on campus who do not otherwise meet the eligibility criteria.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final priority, eligibility and application requirements, and selection criteria published elsewhere in this issue of the **Federal Register**.

Note: The regulations in part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,680,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2007 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $70,000–$200,000.

Estimated Average Size of Awards: $140,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. Projects will be funded for 12 months with an option for three additional 12-month periods, contingent upon substantial progress by the grantee and the availability of funds.

III. Eligibility Information

1. *Eligible Applicants:* LEAs. Additional eligibility requirements are listed in this notice in section I. Funding Opportunity Description.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:*

(a) *Participation by Private School Children and Teachers.* LEAs receiving an award under the Grants for School-Based Student Drug-Testing Program are required to provide for the equitable participation of private school children and their teachers or other educational personnel. In order to ensure that grant program activities address the needs of private school children, timely and meaningful consultation with appropriate private school officials must occur during the design and development of the program. This consultation must take place before any decision is made that affects the

opportunities of eligible private school children, teachers, and other educational personnel to participate. Administrative direction and control over grant funds must remain with the grantee. See Section 9501, Participation by Private School Children and Teachers, of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

(b) *Maintenance of Effort.* An LEA may receive an award under the Grants for School-Based Student Drug-Testing Programs only if the State educational agency finds that the combined fiscal efforts per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. See Section 9521, Maintenance of Effort, of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

IV. Application Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: 1–301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs be sure to identify this competition as follows: CFDA Number 84.184D.

You may also download the application from the Department of Education's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

Individuals with disabilities may obtain a copy of the application in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

The public can also obtain applications directly from the program office: Robyn Disselkoen or Charlotte Gillespie, U.S. Department of Education, 400 Maryland Ave., SW., room 3E328, Washington, DC 20202–6450. Telephone: (202) 260–1862 or by e-mail at *osdfsdrugtesting@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Certain application requirements for this competition are listed in this notice in section I. Funding Opportunity Description. Additional requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:* Applications Available: July 26, 2006. Deadline for Transmittal of Applications: September 5, 2006.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: October 4, 2006.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.* Applications for grants under the Grants for School-Based Student Drug-Testing Programs—CFDA Number 84.184D—must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contacts) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Department's e-Application system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Charlotte Gillespie, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E328, Washington, DC 20202. fax: 202–260–7767.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.184D, 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: CFDA Number 84.184D, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.184D, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

You may access the electronic grant application for Grants for School-Based Student Drug-Testing Programs at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from the notice of final priority, eligibility and application requirements, and selection

criteria published elsewhere in this issue of the **Federal Register**, and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and expenditure information as specified by the Secretary in 34 CFR 75.118. We also may require more frequent performance reports in accordance with 34 CFR 75.720(c). Note, however, that you will not be expected to collect data on the key GPRA measures for this program because the data will be collected and reported to ED by the national evaluator.

4. *Performance Measure:* We have identified the following key GPRA performance measure for the Grants for School-Based Student Drug-Testing programs: The reduction of the incidence of drug use in the past month and past year. The Secretary has set an overall performance target that calls for the prevalence of drug use by students in the target population to decline by 5 percent annually.

This measure constitutes the Department's indicator of success for this program. The national evaluator will collect all data required to report on GPRA in each year that grants are funded. Grantees will have no requirement to collect and report this information.

VII. Agency Contacts

For Further Information Contact: Robyn Disselkoen or Charlotte Gillespie, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E328, Washington, DC 20202–6450. Telephone: 202 260–1862. e-mail address: *OSDFSdrugtesting@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at (toll free) 1–800–877–8339.

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

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/drugtesting/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/fr/index.html.*

Dated: July 21, 2006.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 06–6491 Filed 7–25–06; 8:45 am]

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Imported fire ant; published 7-26-06

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

2-propenoic acid, 2- methyl-, polymer with ethenylbenzene, etc., ammonium salt; published 7-26-06

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Fish and Wildlife Service

Endangered and threatened species:

Northern aplomado falcons; nonessential experimental population establishment in New Mexico and Arizona; published 7-26-06

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Airbus; published 6-21-06

Rolls-Royce Corp.; published 6-21-06

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Labeling and advertising; major food allergen labeling standards; published 7-26-06

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National Organic Program:

Allowed and prohibited substances; national list; comments due by 8-2-06; published 7-3-06 [FR E6-10393]

AGRICULTURE DEPARTMENT

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Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

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West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 8-2-06; published 7-3-06 [FR 06-05957]

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Natural gas project applications; coordination of Federal authorization processing and complete consolidated records maintenance; comments due by 7-31-06; published 5-30-06 [FR E6-08205]

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Portland cement manufacturing industry; comments due by 8-1-06; published 7-18-06 [FR E6-11334]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Ascorbic acid, etc.; comments due by 7-31-06; published 5-31-06 [FR E6-08249]

Inorganic bromide; comments due by 7-31-06; published 5-31-06 [FR E6-08398]

Sulfuryl fluoride; comments due by 8-4-06; published 7-5-06 [FR E6-10454]

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LIST OF PUBLIC LAWS

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H.R. 42/P.L. 109–243

Freedom to Display the American Flag Act of 2005 (July 24, 2006; 120 Stat. 572)

S.J. Res. 40/P.L. 109–244

Authorizing the printing and binding of a supplement to, and revised edition of, Senate Procedure. (July 25, 2006; 120 Stat. 574)

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