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U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

12–4–08 Thursday
Vol. 73 No. 234 Dec. 4, 2008

Pages 73761–73994

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS–FV–08–0093; FV09–984–2 IFR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Walnut Board (Board) for the 2008–09 and subsequent marketing years from $0.0158 to $0.0131 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective December 5, 2008. Comments received by February 2, 2009, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at the Web site referenced above.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Debbie.Wray@usda.gov*, or *Kurt.Kimmel@usda.gov*.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on September 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule decreases the assessment rate established for the Board for the 2008–09 and subsequent marketing years from $0.0158 to $0.0131 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008–09 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0158 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to the USDA. The Board recommended this rate in May 2008 along with expenditures of $4,594,300 for 2008–09.

The Board met on September 12, 2008, and unanimously recommended reducing its 2008–09 expenditures to $3,809,000 and reducing the assessment rate to $0.0131 per kernelweight pound

of assessable walnuts. The assessment rate of $0.0131 per kernelweight pound of assessable walnuts is $0.0027 per kernelweight pound lower than the rate currently in effect. The decreased assessment rate is primarily due to an $800,000 decrease in domestic market development expenditures previously recommended for the 2008–09 marketing year.

The following table compares major budget expenditures recommended by the Board in May 2008 and September 2008 for the 2008–09 marketing year:

Budget expense categories	Original 2008–09	Revised 2008–09
Employee Expenses	$410,500	$410,500
Travel/Board Expenses	100,000	100,000
Office Costs/Annual Audit	142,500	142,500
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	.....	.....
Crop Estimate	110,000	110,000
Production Research *	835,000	835,000
Domestic Market Development	2,935,000	2,135,000
Reserve for Contingency	56,300	71,000

* Includes Research Director's compensation and a contingency for production research issues.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 290,773,800 kernelweight pounds which should provide slightly over $3,809,000 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

The estimate for merchantable shipments is based on historical data, which is the prior year's production of 323,082 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of 0.45 (323,082 tons × 2,000 pounds per ton × 0.45).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2008–09 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are currently 55 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,000 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 218,000 bearing acres during 2007–08. The average yield for the 2007–08 crop was 1.49 tons per acre, which is slightly lower than the 1.53 tons per acre average for the previous five years. NASS reported the value of the 2007–08 crop at $2,320 per ton, which is considerably higher than the previous five-year average of $1,384 per ton.

At the time of the 2002 Census of Agriculture, which is the most recent information available, approximately 83 percent of California's walnut farms were smaller than 100 acres. Forty-seven percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.49 tons per acre would have been expected to produce about 149 tons of walnuts during 2007–08. At $2,320 per ton, that farm's production would have had an approximate value of $345,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $345,000 in 2007–08. This is well below the SBA threshold of $750,000; thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2007–08 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule decreases the assessment rate established for the Board and collected from handlers for the 2008–09 and subsequent marketing years from $0.0158 per kernelweight pound of assessable walnuts to $0.0131 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2008–09 expenditures of $3,809,000 and an assessment rate of

$0.0131 per kernelweight pound of assessable walnuts. The assessment rate of $0.0131 is $0.0027 lower than the rate currently in effect. The quantity of assessable walnuts for the 2008–09 marketing year is estimated at 323,082 tons. Thus, the $0.0131 rate should provide slightly over $3,809,000 in assessment income and be adequate to meet the year's expenses. The decreased assessment rate is primarily due to an $800,000 decrease in domestic market development expenditures.

The following table compares major budget expenditures recommended by the Board in May 2008 and September 2008 for the 2008–09 marketing year:

Budget expense categories	Original 2008–09	Revised 2008–09
Employee Expenses	$410,500	$410,500
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Crop Acreage Survey	.....	.....
Crop Estimate	110,000	110,000
Production Research *	835,000	835,000
Domestic Market Development	2,935,000	2,135,000
Reserve for Contingency	56,300	71,000

* Includes Research Director's compensation and a contingency for production research issues.

The Board reviewed and unanimously recommended 2008–09 expenditures of $3,809,000. Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 290,773,800 kernelweight pounds which should provide $3,809,000 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

According to NASS, the season average grower price for years 2006 and 2007 were $1,630 and $2,320 per ton, respectively. These prices provide a range within which the 2008–09 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of $0.815 to $1.16. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2008–09 price range estimate of $1.81 to $2.58 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0131 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2008–09 marketing year as a percentage of total grower revenue would thus likely range between 0.508 and 0.724 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because (1) the 2008–09 marketing year began on September 1, 2008, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; (2) the action decreases the assessment rate for assessable walnuts beginning with the 2008–09 marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule

provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2008, an assessment rate of $0.0131 per kernelweight pound is established for California merchantable walnuts.

Dated: November 26, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–28766 Filed 12–2–08; 11:15 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AH83

Milk Income Loss Contract Program and Price Support Program for Milk

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Milk Income Loss Contract (MILC) Program, as authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), to extend the program from October 1, 2007, through September 30, 2012. This rule also increases the percentage rate for the payment calculation after fiscal year (FY) 2008 and increases the payment quantity limitation of eligible pounds of milk per operation beginning in FY 2009. This rule also provides for an adjustment to the MILC payment rate if feed costs increase above a specified level. This rule is needed to extend the MILC program, which is designed to stabilize and generally enhance milk producer revenue, through FY 2012 and to make changes to that program authorized by the 2008 Farm Bill. This rule also adjusts the milk price support program regulations to specify that support purchases will only be made from manufacturers and not from third parties such as brokers.

DATES: *Effective Date:* December 1, 2008.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Special Programs Manager, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Ave., SW., Washington, DC 20250–0512; telephone: (202) 720–1919; fax: (202) 690–1536; e-mail: *Danielle.Cooke@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This final rule implements changes in the MILC program enacted in section 1506 in Title I of the 2008 Farm Bill (Pub. L. 110–246, 7 U.S.C. 8773). It, in effect, permits new contracts to extend the old MILC program first provided for in Section 1502 of the Food Security and Rural Investment Act of 2002 (Pub. L. 107–171, 7 U.S.C. 7982). That program, as amended by subsequent enactments, ended its coverage with milk marketed in September of 2007. The 2008 Farm Bill permits coverage starting with October 2007 marketings carrying through September 2012 marketings. The ''old'' program, regulations were codified in 7 CFR part 1430. This rule, to provide for the ''new'' program, modifies 7 CFR part 1430 to:

- Cover marketings during the new period and make changes to the payment rate formula used to calculate payments;
- Change the production limits for payments during specific periods;
- Add applicability of Adjusted Gross Income (AGI) provisions to eligibility requirements; and
- Add provisions to adjust the payment rate if feed costs exceed a specified level.

With certain per year per operation eligibility pound limits, the MILC program provides payments to dairy operations when milk prices fall below a set benchmark. What constitutes an ''operation'' for purposes of the ''new'' program, including poundage limits, will be determined as before. All prior participants in the ''old'' program must sign new contracts. New participants (those not in the ''old'' program) cannot be affiliated with prior participants. Also, the rule, as required by the 2008 Farm Bill, beginning in FY 2009, sets new eligibility limits tied to the AGI of persons or entities seeking payment. Payees for the relevant year cannot have nonfarm income in excess of $500,000. AGI rules will cover multi-program regulations to be issued separately.

As indicated, there is a per-operation per year pound limit to the MILC payment eligibility of operations. For FY 2009 (October 1, 2008, through September 30, 2009), FY 2010 (October 1, 2009, through September 30, 2010), FY 2011 (October 1, 2010, through September 30, 2011), and FY 2012 (October 1, 2011, through September 30, 2012), the limit for each fiscal year is 2.985 million pounds. Further, no payments will be made for September 2012 marketings, as specified in the 2008 Farm Bill, if the operation's cumulative total for FY 2012 is over 2.4 million pounds and if the operation is under that amount the payable marketings for September will be limited to those that will not bring the total over 2.4 million pounds. Payments are computed, however, on a monthly basis. They are made only when the official Federal class I milk marketing order milk price per cwt. for Boston, Massachusetts is less than $16.94. When the Boston price is under the target, the payment for eligible production will be, for FYs 2009 through 2012, 45 percent of the difference. Otherwise, for September 2012 marketings the percentage will be 34 percent. The pay rate can be raised, by command of the 2008 Farm Bill; however, if the National Average Feed Dairy Feed Ration Cost as officially computed exceeds $7.35 per cwt. ($9.50 per cwt. for September 2012 marketings). If the triggering feed ration amount is exceeded, the benchmark $16.94 figure for the MILC payment rate calculation will be increased by the percentage amount which is 45 percent of the percentage amount by which the Feed Ration Cost exceeded its own benchmark ($7.35 or $9.50, depending on the month involved). Feed Ration Cost is calculated using the same procedures used to calculate the feed components of the estimated price of 16 percent Mixed Dairy Feed per pound as reported in the USDA Agricultural Prices publication. Entire month prices used to calculate feed price ratios for each month will be used. As to the calculation, if for example, the May 2009 Feed Ration Cost exceed by 14 percent the $7.35 per cwt. benchmark, then the MILC payment benchmark for May 2009 marketings would be increased by 6.3 percent (45% of 14%)

and upped by $1.07 to $18.01 for May 2009 marketings only.

For purposes of applying the yearly pay limits on pounds per operation, the rule will continue to use a start month concept for each year. The operation must, with limitations set out in the rules, pick a start month for each fiscal year. Once the start month is picked, any marketing in the month and subsequent months of the fiscal year that generate a payment will count against the operation's fiscal year limit. (The special rule for September 2012 has been noted and will not be repeated here.) Generally under the rule, once signup is opened after October 1, 2008, an operation can pick any start month for FY 2008. However, this point is moot because no payments were generated from that fiscal year. Provisions regarding FY 2008 are included in the rule for the sake of completeness. Likewise, under the rule, if the operation signs its new MILC contract within 30 days of the beginning of the application period for this new FY 2008 though 2012 program it can pick any preceding FY 2009 month as its start month for that period. Also, whenever the operation submits its FY 2008 through 2012 contract, it can pick the month of the submission as the start month for the current fiscal year. Otherwise, for the fiscal year in which the contract is submitted, or for later fiscal years if the operation wants a different start month for a subsequent fiscal year, the rule will be that the month chosen or the start month must be chosen by the 14th of the month preceding the month chosen. Once a month is chosen for a fiscal year, the corresponding month will be the start month for subsequent fiscal years unless affirmatively changed by the operation. No payment will be made for any fiscal year that has ended before the FY 2008 through 2012 program contract is submitted.

Producers to be paid must:

(1) Sign the contract,

(2) Provide verifiable data,

(3) Be actively engaged in milk production for the relevant period,

(4) Meet the AGI test for payment, and

(5) Pick the start month for each fiscal year (as indicated, the original start month will be the same for subsequent fiscal years unless changed by the operation).

Dairy operations can apply at FSA county offices, via fax, or at *http://www.fsa.usda.gov/dafp/psd/*.

This final rule includes changes in the dates marketed production must be submitted. Editorial changes to the previous regulations are made as well. While the statute in some places suggests that the program may carry beyond FY 2012, the statute and these regulations limit the covered marketings to those made no later than September, 2012. Also, as before in the program contract, the regulations specify that the payment rules are subject to change, even after the contract is signed, to reflect statutory changes. Also, as indicated, payments are subject to the AGI limits being implemented through a separate rulemaking.

Dairy Product Price Support Program

This rule amends § 1430.2, ''Price Support Levels and Purchase Conditions,'' to ensure that the Dairy Product Price Support Program supports dairy producers by ensuring that manufacturers have sufficient incentive to pay the support rate to producers. CCC will only purchase dairy products from the manufacturer of the product. CCC will no longer purchase eligible dairy products from nonmanufacturers, as the program is not intended to provide a speculative market for third parties.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to those provisions, the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Therefore, these regulations are issued as final.

Executive Order 12866

The Office of Management and Budget (OMB) designated this final rule as significant under Executive Order 12866 and, therefore, OMB reviewed this rule. A cost benefit assessment of this rule is summarized below and is available from the contact information listed above.

Summary of Economic Impacts

The MILC program has paid about $2.5 billion to dairy operations over the five initial years of operation. Annual expenditures during the last two years of the program have totaled over $350 million in FY 2006 and $160 million in FY 2007. Expenditures during the period authorized by the 2008 Farm Bill, are expected to be between $300 and $400 million based on estimated milk prices during the period. Dairy farm direct payments and Government expenditures will increase commensurately. MILC program impact on milk prices will reduce benefits to dairy farmers, which will result in consumers being able to buy dairy products at lower prices than if the program was not operating.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule were considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The substantive changes to the MILC program, required by the 2008 Farm Bill that are identified in this final rule are non-discretionary. Therefore, FSA has determined that NEPA does not apply to this final rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12988

The final rule has been reviewed under Executive Order 12988. This rule preempts State laws that are inconsistent with its provisions. This rule is not retroactive as such, but does apply to marketings in a period that precedes this rule. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not

required to publish a notice of proposed rulemaking for this rule. Further, this rule imposes no unfunded mandates, as defined in UMRA, on any local, State, or tribal government or on the private sector.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.051—Commodity Loans and Loan Deficiency Payments.

Paperwork Reduction Act

The regulations in this rule are exempt from requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601 of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1430

Dairy products, Price support programs.

■ For the reasons discussed above, 7 CFR part 1430 is amended as set forth below.

PART 1430—DAIRY PRODUCTS

■ 1. Revise the authority citation to read as follows:

Authority: 7 U.S.C. 7981, 7982, and 8773; and 15 U.S.C. 714b and 714c.

Subpart A—Price Support Program for Milk

■ 2. Amend § 1430.2, paragraph (a)(2), by adding a sentence at the end to read as follows:

§ 1430.2 Price support levels and purchase conditions.

(a) * * *

(2) * * * Purchases may only be made from eligible offerers which must be the manufacturer of the product offered and must meet all other conditions set by CCC.

* * * * *

Subpart B—Milk Income Loss Contract Program

■ 3. Amend § 1430.202 by removing the definitions for ''Fiscal Year,'' and ''Transition Period,'' revising the definitions of ''Dairy operation,'' ''Eligible production,'' ''Participating State,'' and ''United States,'' and adding the definition for ''Fiscal Year or FY'' to read as follows:

§ 1430.202 Definitions.

* * * * *

Dairy operation means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows, and whose production facilities are located in the United States. In administering this program, for purposes of determining what is a ''dairy operation'' and its eligibility under this program, those determinations will be made in the same manner as was done for the Dairy Market Loss Assistance (DMLA) contracts in the State in which the dairy is located. New MILC operations, which is to say those operations that did not participate in the MILC program for marketings prior to FY 2008, must be unaffiliated with any other DMLA or MILC operations.

* * * * *

Eligible production means milk that was produced at a time relevant to this program by cows in the United States and marketed commercially by a producer in a participating State.

* * * * *

Fiscal Year or FY means the year beginning October 1 and ending the following September 30. Fiscal years will be designated for this part by year by reference to the calendar year in which it ends. For example, FY 2009 is from October 1, 2008, through September 30, 2009 (inclusive).

* * * * *

Participating State means each of the 50 States in the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

* * * * *

United States means the 50 States of the United Sates of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

* * * * *

■ 4. Amend § 1430.203 as follows:

■ a. In paragraphs (a) and (f) remove the words ''December 1, 2001, through September 30, 2007'' and add, in their place, the words ''October 1, 2007, through September 30, 2012;''

■ b. Amend paragraph (f) by removing the period at the end and adding a semicolon in its place; and

■ c. Revise paragraph (g) and add paragraphs (h) and (i) to read as follows:

§ 1430.203 Eligibility.

* * * * *

(g) Meet all adjusted gross income eligibility requirements of part 1400 of this chapter as regards any person or entity seeking to receive payment under this part. No person or entity may, generally, receive any payment for FY 2009 marketings and subsequent marketings if their nonfarm yearly income for the relevant base period for the relevant marketings as determined under the adjusted gross income rules (as in effect when the payment is sought) is over $500,000 as determined under this subpart. Further, for entities an otherwise due payment will be reduced commensurately to the extent that any person with an interest in the entity, as determined under the adjusted gross income rules had such income over that limit for the relevant period;

(h) Have submitted a contract during the applicable contract period for FYs 2008 through 2012:

(1) Except for 2009, and subject to the start month provision of § 1430.205, must have for any fiscal year or month for which payment is sought to be paid submitted the FY 2008 through 2012 contract before the end of that fiscal year or month or

(2) For FY 2008 payments, if payments are generated under this part for that fiscal year, must have submitted a contract for the FY 2008 through 2012 program by October 1, 2009 and for FY 2009 the contract must have been submitted by the month for which payment is first sought except to the extent that § 1430.205 explicitly permits the operation to pick a start month in advance of the month in which the contract is submitted; and

(i) Must not, if it did not participate in the preceding MILC program for fiscal years prior to FY 2008, be affiliated with any other dairy operation.

■ 5. In § 1430.205 revise paragraphs (a) through (d) and (g) to read as follows:

§ 1430.205 Selection of starting month.

(a) A dairy operation that enters into a MILC contract with CCC must designate the starting month for each fiscal year for the calculation of payments and pound limits for the operation. Once a start month is chosen for a fiscal year the corresponding month will be the start month for each subsequent fiscal year unless changed by an affirmative request in writing on a form approved by CCC. The production start month must be selected on or before the 14th of the month

before the month for which payment is sought. If such date falls on a weekend, the start month selection must be made on the last business day preceding the weekend. A dairy operation cannot select as the start month for payment a month which:

(1) Has already begun, except as provided in paragraph (c)(1) of this section;

(2) Has already passed; or

(3) During which no milk production was produced by the dairy operation.

(b) For FY 2009, if the operation signs its FY 2008 through 2012 MILC contract within 30 days of the beginning of the application period it can pick any preceding FY 2009 month as its start month for that period or can use the normal rule of paragraph (c) of this section to pick the start month.

(c) Except as provided in paragraph (b) of this section, the start month for a fiscal year may only be

(1) For the fiscal year in which the contract is submitted, the month the contract is submitted or

(2) For a fiscal year that has not yet begun, any month, provided that a month may not be selected after the 14th of the preceding month.

(d) Dairy operations may change the production start month on or before the 14th day of the month previously selected.

* * * * *

(g)(1) MILC production start month selections made during the signup period designated by CCC may be made as provided in paragraph (b) of this section, otherwise MILC production start month selections must be made in accordance with paragraph (c) of this section. If a payment rate is not in effect during the production start month selected by the dairy operation, payments to the dairy operation will be issued based on the next consecutive month with a payment rate in effect following the MILC production start month selected by the dairy operation. Production in months in which the pay formula does not produce a payment will not count against the fiscal year's poundage limit for the operation.

(2) Dairy operations with MILC production start months that begin with the month a MILC contract is submitted to FSA or that begin with the first month of the fiscal year with an effective payment rate will receive payments made by CCC consecutively on a monthly basis, if otherwise provided for in this part, until the earlier of the following:

(i) The maximum payment quantity for the fiscal year or month is reached as determined in accordance with § 1430.207 or

(ii) The end of the applicable fiscal year.

* * * * *

■ 6. Amend § 1430.207 by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 1430.207 Dairy operation payment quantity.

* * * * *

(b) The maximum quantity of eligible production for which dairy operations, per separate and distinct operation, are eligible for payment per fiscal year under this subpart will be:

(1) 2,400,000 pounds (24,000 cwt.) for FY 2008 (October 1, 2007, through September 30, 2008);

(2) 2,985,000 pounds (29,850 cwt.) for FY 2009 (October 1, 2008 through September 30, 2009), FY 2010 (October 1, 2009, through September 30, 2010), FY 2011 (October 1, 2010, through September 30, 2011) and FY 2012 (October 1, 2011, through September 30, 2012), provided further an operation may receive payment for September, 2012, marketings only if its pre-September FY 2012 marketings did not exceed 2,400,000 pounds in which case new marketings that would not put the operation's FY 2012 marketings over 2,400,000 pounds will be eligible for payments otherwise permitted in this rule.

(c) In accordance with these regulations, the Deputy Administrator will determine what is a separate and distinct operation. That decision will be final.

■ 7. In § 1430.208 revise paragraphs (b) through (e) and add paragraph (f) to read as follows:

§ 1430.208 Payment rate and dairy operation payment.

* * * * *

(b) A per-hundredweight payment rate will be determined for the applicable month by:

(1) Subtracting from $16.94 the Class I milk price per cwt. in Boston;

(2) Multiplying the difference by 34 percent for marketings during the period beginning on October 1, 2007, and ending on September 30, 2008;

(3) Multiplying the difference by 45 percent for marketings during the period beginning on October 1, 2008, and ending on August 31, 2012; and

(4) Multiplying the difference by 34 percent for marketings in September 2012.

(c) The payment rate as calculated as specified in paragraph (b) of this section, will be adjusted to compensate for feed prices when the National Average Dairy Feed Ration Cost for a month is greater than the levels set in paragraphs (c)(1) and (c)(2) of this section. The National Average Dairy Feed Ration Cost per cwt. for each month will be calculated using the same procedures used to calculate the feed components of the estimated price of 16 percent Mixed Dairy Feed per pound noted on page 33 of the USDA monthly Agricultural Prices publication (including the data and factors noted in footnote 4). The payment rate adjustment for Entire Month feed prices will be determined by increasing $16.94 by the percentage that is 45 percent of the percentage by which the National Average Dairy Feed Ration Cost exceeds $7.35 per cwt. (except that $7.35 will be $9.50 for September 2012 marketings.)

(d) Each eligible dairy operation payment will be calculated, as determined by the Secretary, by:

(1) Converting whole pounds of milk to hundredweight and

(2) Multiplying the payment rate determined in paragraphs (b) and (c) of this section by the quantity of eligible production marketed by the operation during the applicable month as determined according to § 1430.205 and other provisions of this subpart.

(3) Payments to dairy operations will be based on calculated payment rates rounded seven places to the right of the decimal.

(e) Payments under this subpart may be made to a dairy operation only up to the maximum production limitations set in § 1430.207(b) of eligible production per applicable fiscal year.

(f) Dairy operations receiving benefits under this subpart, will receive earned payments on a monthly basis according to the MILC contract, to the extent practicable, not later than 60 days after the later of production evidence and all supporting documents for the applicable month are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, as applicable. Payments issued by CCC more than 60 days after the later of all production evidence and supporting documentation are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, whichever is later, will be subject to prompt payment interest as allowed by law. However, CCC will endeavor where possible to make payments within 60 days of the end of the marketing month.

§ 1430.209 [Amended]

■ 8. Amend § 1430.209 in paragraph (a) by removing the words ''October 1, 2005, and ending September 30, 2007'' and adding in their place the words ''October 1, 2007, and ending September 30, 2012.''

§ 1430.211 [Amended]

■ 9. Amend § 1430.211 in paragraph (a) by removing the words ''September 30, 2007'' and adding, in their place, the words ''September 30, 2012.''

■ 10. Amend § 1430.212 by revising the section heading and adding paragraph (c) to read as follows:

§ 1430.212 Contract Modifications and Statutory Changes in Program.

* * * * *

(c) Payments otherwise due under this subpart or the program will be adjusted or denied to the extent provided for by a statutory change in program eligibilities or requirements of any kind irrespective of whether the program contract preceded the statutory change. Operations will be given the option of accepting the changes or terminating the contract.

■ 11. Amend § 1430.213 by revising paragraph (a) to read as follows:

§ 1430.213 Reconstitutions.

(a) A dairy operation receiving MILC benefits may reorganize or restructure such that the constitution or makeup of its operation is reconstituted in another organizational framework. However, any operation that reorganizes or restructures after October 1, 2007, is subject to a review by FSA to determine if the operation was reorganized or restructured for the sole purpose of receiving multiple or additional MILC payments.

* * * * *

Signed in Washington, DC, on December 1, 2008.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–28710 Filed 12–1–08; 4:15 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 101, 400, 401, and 420

[Docket No. FAA–2007–27390; Amendment Nos. 1–62, 101–8, 400–2, 401–6, and 420–4]

RIN 2120–2120–AI88

Requirements for Amateur Rocket Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends amateur rocket regulations to preserve the level of safety associated with amateur rocketry and to reflect current industry practice. The new regulations update and align FAA regulations with widely used advances in the amateur rocket industry, specify the required information collected from operators of advanced amateur rocket launches, and define amateur rocket classifications. This action also corrects minor inconsistencies in the current rule.

DATES: These amendments become effective February 2, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Charles P. Brinkman, Licensing and Safety Division (AST–200), Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267–7715, e-mail *Phil.Brinkman@faa.gov*. For legal questions concerning this final rule contact Gary Michel, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267–3148.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Sections 40102, 40103, 40113–40114, and 44701–44702. Under those sections, the FAA is charged with prescribing regulations that govern air traffic rules on the flight of aircraft (which include unmanned rockets). This regulation is within the scope of that authority because it defines classes of unmanned rockets and details the information the FAA would require to issue a certificate of waiver or authorization to allow launching of an amateur rocket.

Background

Historically, the FAA relied on State and local regulation, voluntary self-regulation, and its own analysis to fulfill its oversight responsibility for unmanned rocket operations under part 101. Until now, the voluntary self-regulation and State and local regulations adequately protected the public and ensured safe operation of amateur rockets. Amateur rocket performance continued to improve and participation in amateur rocket launches increased significantly.

The FAA believes these activities need appropriate regulation for continued safe operation. This rulemaking is intended to preserve the safety record of amateur rocket activities, address inconsistencies, and clarify existing amateur rocket regulations.

Summary of the NPRM

The Requirements for Amateur Rocket Activities notice of proposed rulemaking (NPRM) published in the **Federal Register** on June 14, 2007 (72 FR 32816).

The proposal added two new categories of amateur rocket operations and amended the definitions of the existing two categories. The new category structure would be numbered from Class 1 to Class 4. The two new categories would be Class 3—High-Powered Rocket and Class 4—Advanced High-Power Rockets. These two new categories would capture amateur rockets that require significant FAA analyses to determine whether they can be safely operated within the National Air Space (NAS). The Class 1 and Class 2 rocket categories, meanwhile, would be slightly modified to incorporate current definitions of model rocket and large model rocket, respectively.

We proposed to re-classify the existing information requirements and operating limitations currently required before a proposed launch for the more advanced amateur rocket activities. Low risk Class 1—Model Rocket operators would continue to be exempt from information requirements. Operators of Class 2—Large Model Rockets would continue to provide their names, addresses, highest anticipated altitude, location of the launch, date, time, and duration of the launch event. This information enables us to take appropriate action to ensure safe operation in the NAS.

The notice also proposed to specify reporting practices for the new category Class 3 and Class 4 rockets. Operators of rockets with these characteristics generally file for a certificate of waiver or authorization to conduct their operations. They are exempt from launch license regulations in part 400. Operators are often contacted for additional information when the FAA receives their waiver application. As proposed, most, if not all, information would be submitted on the initial waiver application, which would save the FAA and the operator's time and expense.

Amateur rocket regulations were written when the amateur rocket community used mainly solid rocket motors. Now the amateur rocket

community also uses liquid propellants. We proposed to redefine amateur rocket activity to reflect this advanced rocket environment and codify safe practices being used by the amateur rocket community.

Summary of Comments

The FAA received comments from 33 entities including rocketry associations, a pilot association, and individuals. Associations commenting on behalf of their memberships include the National Association of Rocketry (NAR), Tripoli Rocketry Association (TRA), Rocketry Association of California (ROC), Rocketry of Central Carolina, and the Aircraft Owners and Pilots Association (AOPA). Many individual commenters also identified themselves as members of these organizations.

In general, commenters supported the proposed requirements and suggested several changes. The comments fall into the following categories:

- Definition of classes for amateur rockets;
- Prohibition of amateur rocket activities within 5 miles of an airport;
- Separation distances from amateur rocket activities and participants, and persons or property not associated with the activities;
- Need for the presence of someone at least 18 years old;
- Need to take measures to control any fire caused by amateur rocket activities; and
- Specific information and notice requirements.

Discussion of the Final Rule

Below is a more detailed discussion of the rule as it relates to the comments we received.

Amateur Rocket Definitions

The FAA proposes to define *amateur rocket* as an unmanned rocket propelled by a motor or motors having a combined total impulse of 889,600 Newton-seconds (200,000 pound-seconds) or less, and cannot reach an altitude greater than 150 km (93.2 statute miles) above the earth's surface.

The ROC commented that the value of 889,600 Newton-seconds falls in the middle of the ''T'' impulse range, using the values in common usage by amateur rocket hobbyists. As a result, the value in the NPRM definition does not correspond with any natural dividing line between impulse levels.

The ROC recommended the FAA increase the total impulse limit for amateur rockets from 889,600 Newton-seconds to 1,310,720 Newton-seconds. The FAA believes the current total impulse limit represents a reasonable boundary based on the potential performance of a rocket with that total impulse.

The FAA adopts the definition language in § 1.1, as proposed.

Proposed § 101.22 would require an amateur rocket be launched on a suborbital trajectory. Two individual commenters suggested the FAA begin to consider rulemaking for amateur rockets that may go into Earth orbit. One addressed the limit of 150 km specified in § 1.1. The second suggested the FAA re-examine the requirement that amateur rockets be suborbital, as proposed in § 101.22. The FAA believes that 150 km is the best limit for amateur rocket launch operations. Any rocket that goes above the 150 km altitude limit will involve licensing issues, i.e., foreign policy, national security, and safety concerns.

Location of Amateur Rocket Regulations

The FAA proposed to move the rules governing operation of model rockets from Subpart A—General (§ 101.1) to Subpart C—Unmanned Rockets (§ 101.21). This proposal would align all definitions and operating requirements for unmanned rockets in a single subpart. We would continue to allow model rockets to operate without FAA oversight. We received no comments on this action. The FAA adopts this proposal without change.

Amateur Rocket Definitions

We proposed two new classes of amateur rockets. We defined Class 1 as an amateur rocket using less than 125 grams (4.4 ounces) of slow-burning propellant and weighing no more than 454 grams (16 ounces) including the propellant. We defined Class 2 as an amateur rocket using less than 125 grams (4.4 ounces) of slow-burning propellant and weighing no more than 1,500 grams (53 ounces) including propellant.

The NAR, ROC, and 13 individual commenters noted that the only difference between Class 1 and Class 2 is weight. The NAR conducted computer flight simulations of these two classes of amateur rockets to demonstrate the ''heavier models have far less velocity and altitude potential.'' The NAR's flight experience with rockets meeting the specifications of both classes indicates that both types can be flown using the operating limitations proposed for Class 1. The NAR, as well as the other commenters on this section, recommended combining Class 1 and Class 2 into a single classification—Class 1. The other classes would be renumbered. Therefore, requirements specified in the NPRM for Class 3 and Class 4 now apply to Class 2.

The FAA created the two classes, model rocket and large model rocket, in 1994. Since that time amateur rocket hobbyists have established a history of safe operation for large model rockets. We have analyzed the performance of proposed large model rockets, in light of NAR's suggestion, and found they can cause more significant damage to persons or property than model rockets. However, neither model rockets nor large model rockets can affect air traffic if operated in accordance with this regulation. Since local ordinances cover hazards due to the reckless use of model and large model rockets on ground-based property and persons, the FAA agrees that combining these two classes is appropriate. Therefore, the FAA combines the proposed Class 1—Model Rocket and Class 2—Large Model Rocket into a single Class 1—Model Rocket. We have decided the operating limitations contained in § 101.24 of the NPRM are not necessary for the combined Class 1 Model Rockets, and, therefore, proposed § 101.24 is removed.

We proposed a new Class 3—High-Power Rocket as an amateur rocket other than a model rocket or large model rocket propelled by a motor or motors having a combined total impulse of 163,840 Newton-seconds (36,818 pound-seconds) or less.

Several commenters recommended the upper limit for Class 3 be reduced from 163,840 Newton-seconds to 40,960 Newton-seconds. They stated this reduction would place the upper limit at the ''O'' class, as documented in the TRA safety code. Some commenters noted that a rocket carrying a motor above the ''O'' class, or 40,960 Newton-seconds, could reach altitudes greater than 7,620 meters (25,000 feet). These commenters suggest any rocket with the ability to reach greater altitudes belongs in Class 4—Advanced High-Power Rockets.

The FAA agrees. In addition to creating a class of rocketry that is inconsistent with the TRA safety code, the proposal, if adopted, would be inconsistent with the 2008 National Fire Protection Association (NFPA) 1127 Code for High-Power Rockets. This code also addresses rockets having total impulse up to 40,960 Newton-seconds (9,208 pound-seconds) or ''O'' motor class. Further, most amateur rocket activities involve rockets with a total impulse of 40,960 Newton-seconds or less. The FAA has reconsidered this proposal and revises the criteria and class for high-power rockets. The Class 2—High Power Rocket is defined as having a combined total impulse of

40,960 Newton-seconds (9,208 pound-seconds).

Operating Limitations

We proposed the following general operating limitations for amateur rocket activities:

An amateur rocket must be:

- Launched on a suborbital trajectory,
- Unmanned, and
- Not cross into the territory of a foreign country unless there is an agreement between the United States and the country of concern.

We further included a condition that we may specify additional operating restrictions necessary to ensure that air traffic is not adversely affected, and public safety is not jeopardized.

We received no comments on this section. These requirements are adopted, as proposed, although the section is renumbered as § 101.23.

We proposed an additional operating limitation for Class 1 model rockets in proposed § 101.23. Specifically, persons operating this class of rocket must do so in a manner that does not create a hazard to persons, property, or other aircraft.

No comments were received on this proposal. However, after further review, we realize our intent was to apply this requirement to all classes of amateur rockets. We have removed any specific reference to Class 1 model rockets. These requirements now apply to amateur rockets in general.

Amateur Rocket Activities Within 5 Miles of an Airport

Proposed § 101.25(b) would prohibit operating High-Power Rockets within 8 kilometers (5 miles) of any airport boundary. We received comments from the NAR, ROC, Rocketry of Central Carolina, and 13 individual commenters stating the proposed rule does not provide flexibility for waiving this requirement. They commented further that the proposal does not consider airport size, frequency of flight operations, facilities, location, or history of safe operations, and maintained that it is unclear whether this requirement can be waived.

The FAA understands High-Power Rockets have a long history of safe operation within 5 statute miles of airport boundaries and agrees such operations should be allowed to continue, when appropriate, under a certificate of waiver or authorization.

Separation Distances From Amateur Rocket Activities

Proposed §§ 101.25 and 101.26 would stipulate that, no person may operate a high-power rocket or advanced high-power rocket within 457 meters (1,500 ft.) of any person or property not associated with the operation. The same separation distance exists in the current regulation. This distance from any person or property not associated with the operation also applies to Class 4—Advanced High-Power Rocket (§ 101.26).

Several commenters questioned the requirement regarding proposed separation distances. One commenter requested clarification regarding whether uninvolved public includes spectators. The commenters note the 2008 Edition of NFPA 1127, Code for High Power Rocketry, specifies differing minimum separation distances for spectators and participants that relate to the classifications of rocket motors. Commenters recommended the FAA adopt the NFPA standards that establish minimum separation distances between the launch point, spectators, and other exposed elements of the public. Commenters also noted that both NAR and TRA follow the safety requirements of the rocketry-related codes published by NFPA.

In developing this proposal, the FAA considered amateur rocketry events and participants involved, their families and friends, and a few casual spectators. Various rocketry groups do not include spectators in the 1,500 feet separation distance for persons or property not associated with the operations. In fact, the 2008 Edition of NFPA 1127 recognizes this disparity by providing separation distances for spectators and participants that are less stringent than the existing FAA requirement. However, we do not intend to encourage the presence of large crowds of spectators close to the launch because their presence would pose a significant threat to those spectators.

Most commonly launched amateur rockets are small and their hazards typically are also small. No serious accidents or incidents have been reported by NAR and TRA. While there have been no reported accidents associated with launches of larger amateur rockets, the risk associated with a large amateur rocket launch could be considerably greater. Participants and spectators, clearly associated with the activity, are not required to comply with the specified separation. We retain the provision in § 101.23(b) to specify additional operating limitations, as necessary, to ensure air traffic operations are not adversely affected, and public safety is not jeopardized. The FAA routinely attaches conditions to certificates of waiver or authorization for larger amateur rocket launches specifying separation distances greater than 1,500 feet applicable to spectators and persons not associated with the operation.

The FAA agrees, in principal, with the commenters' suggestion to adopt the NFPA standard. Generally, those engaged in amateur rocket activities have applied the 457 meters (1,500 ft.) distance requirement to the uninvolved public. As stated in the NPRM, the FAA seeks primarily to codify existing practice. Current amateur rocket activities, especially those under the auspices of various rocketry associations, have not resulted in harm to persons not associated with the operations. The FAA believes the 1,500 feet separation distance has served a useful purpose, and we retain this separation minimum in the final rule for High-Power Rockets and Advanced High-Power Rockets.

In consideration of the comments recommending the FAA adopt the NFPA 1127 separation distance requirements, we will require an additional separation distance from any person or property not associated with the operation. This decision is based on the minimum site dimensions provided in NFPA 1127. In the regulation, we instead specify this as an equivalent separation distance assuming the launch location is in the center of the site. This minimum separation distance is equal to one quarter of the expected maximum altitude or 457 meters (1,500 ft.), whichever is greater. Under normal conditions, this requirement will be adequate to protect public safety. When greater separation distances are required to protect spectators, the FAA will specify additional operating limitations in any certificate of waiver or authorization it may grant.

The FAA believes its principal responsibility is to protect those individuals and property not associated with the launch. This approach differs somewhat from that taken under 14 CFR Chapter III where the FAA counts spectators as part of the public in its risk analysis. The rationale for this different approach reflects the good job rocketry associations do in protecting spectators. Usually, spectators viewing amateur rocket launches are more closely associated with the operations than those viewing FAA-licensed launches and do not have as great a potential for a catastrophic accident, such as loss of life or serious injury.

Need for Presence of Someone at Least 18 Years Old

Proposed § 101.25(f) stipulates that no person may operate a High-Power Rocket unless a person at least 18 years old is present; that person is charged

with ensuring the safety of the operation and has final approval authority for initiating high-power rocket flight. The NAR supported this requirement. We received no other comments on this proposal. The FAA adopts § 101.25(f) as proposed.

Measures To Control Fire Caused by Amateur Rocket Activity

The FAA proposed that no person may operate a High-Power Rocket unless reasonable precautions are provided to report and control a fire caused by rocket activity. The NAR supported the proposal and went on to reference the NFPA 1127 Code for High Power Rocketry. Conversely, the ROC does not believe this provision is necessary or appropriate for codification.

We disagree. This requirement is consistent with our mission to ensure the safety of any person or property not associated with the operations. In developing the proposed rule, our goal was to eliminate duplicate requirements imposed by other Federal agencies or state or local governments. For example, this proposal contains no explicit requirements concerning hazardous materials because other Federal and local laws are applicable. The proposal is intended to protect the ''uninvolved'' public, on the ground and in the air. It would not supersede any other laws or ordinances. Operators of high-power and advanced high-power rockets would be required to take reasonable precautions to control and report a fire. Additionally, operators would comply with local ordinances as applicable, because a fire in some of the remote areas where amateur rocket launches occur could have serious consequences. The FAA adopts § 101.25(g) as proposed.

Operating Limitations for Advanced High-Power Rockets

The FAA proposed additional operating limitations for Advanced High-Power Rockets to ensure air traffic is not adversely affected and public safety is not jeopardized. We received no comments on this section. Therefore, the FAA adopts § 101.26 as proposed.

Notice Requirements

We proposed that FAA Air Traffic Control (ATC) must receive notice requirement information no less than 24 hours before and no more than 3 days before the amateur rocket activities take place.

Three commenters expressed concern that this proposed rule means a temporary flight restriction (TFR) must be in place before an amateur rocket launch can occur. The Aircraft Owners and Pilots Association (AOPA) recommended adding clear guidance to prohibit the use of TFRs for amateur rocket activities. Two individual commenters urged that there be no change in the current NOTAM procedures. Another commenter questioned the necessity of collecting personal information about amateur rocket operators and requiring operators to apply for a certificate of waiver or authorization before conducting amateur rocket activities.

The FAA stresses that the only change proposed was to the timeline for giving information to ATC. Operators must still notify ATC no less than 24 hours before amateur rocket activities begin. We proposed to change the second half of the timeline from 'no more than 48 hours' to 'no more than 3 days' before amateur rocket activities begin. This change would synchronize FAA regulations with FAA Order 7930.2, Para. 4–1–1, Notice to Airmen. We did not propose changes to requirements for NOTAMs or TFR procedures. Because we did not propose any changes, any ban on the use of TFRs for amateur rocket activities is outside the scope of this rulemaking.

The information requested in the notice requirement is needed to ensure the safety and integrity of the NAS, to issue a NOTAM, or take other action. The FAA adopts the timeline requirements in § 101.27, as proposed. However, the title was changed to include ATC notification for all launches.

Latitude and Longitude, Information Required 45 Days Before Rocket Activities, and Estimated Number of Rockets

As proposed in the NPRM under § 101.27(d), no person may operate an unmanned rocket, other than a Class 1—Model Rocket, unless that person provides the FAA with the location of the center of the affected area in latitude and longitude coordinates. Proposed § 101.29(a)(7) lists the launch site latitude and longitude among the detailed information requirements a person operating a High-Power Rocket must submit to the FAA when requesting a certificate of waiver or authorization. The information must be provided at least 45 days before the proposed operation.

The NAR, ROC, and eight individual commenters proposed a modification to this notice requirement. Previous sponsors of launch activities have submitted distances along a VOR radial to describe their location. An individual commenter noted that his organization has provided latitude and longitude coordinates in its certificate of waiver or authorization applications. According to this commenter, its organization has been asked to give the location as a VOR radial and distance. These commenters suggest there are other acceptable methods to locate a launch pad, such as checking distance along a VOR radial.

We find that latitude and longitude coordinates provide the most accurate method of fixing an exact location. Further, a latitude and longitude location is consistent with FAA charting practices. The FAA adopts the requirements of § 101.27(d) and § 101.29(a)(7), as proposed, except these requirements are located in § 101.29(a)(6).

The NAR, TRA, ROC, and 16 individual commenters questioned the need for the 45 days in advance of the rocket activity. An individual commenter noted that due to uncertainties in schedules and weather, among other things, participants in rocket launch events involving High-Power Rockets may not know if the event is really going to occur, if they are going to attend, and what rockets they are going to fly until shortly before the event, the day of the event, or even during the event. The commenter contends these last-minute changes occur for bona-fide reasons involving matters such as wind direction and speed and cloud cover that cannot be predicted with any assurance. The commenter further contends rocket launch events involve multiple participants who need to be able to have flexibility to lower their flight plans if weather deteriorates at the last minute or raise them if weather improves.

The NAR and ROC cite the current practice of completing one annual certificate of waiver or authorization for all their planned amateur rocket events for a calendar year. That certificate describes the types of amateur rockets typically launched at these events. The certificate of waiver or authorization requires notification to the local ATC facility 48 hours prior to each flight activity. The NAR and ROC recommend adoption of requirements that reflect current practice.

The FAA agrees. We intended to retain the current practice and have modified the language in the final rule to do so. When requesting a certificate of waiver or authorization, the FAA will require each person or organization to provide the requested information at least 45 days before the proposed operation. An organization can still submit an application for an annual certificate of waiver or authorization, detailing the events for the coming year.

As proposed in § 101.29(a)(1), a person operating a High-Power Rocket that requires a certificate of waiver or authorization must provide the information requested on each rocket to be flown. The NAR, TRA, ROC, and 12 individual commenters objected strenuously to this provision. The ROC noted that rocketry clubs typically file a single certificate of waiver or authorization application for the year. They detail the dates for the event and the types of amateur rockets they expect to be flown. What they actually fly will depend on how many people show up, what rockets they bring with them, what the weather conditions are, and other factors. They state that adopting the NPRM as written would require them to complete Form 7711–2 for each rocket they expect to fly. In the case of the ROC, this could mean deluging the FAA with ''multiple thousands of notices.'' One commenter calculated that for a typical weekend launch, he ''might bring 10 rockets, each of which can be flown with one of 10 different motors, and perhaps a similar number of pad and recovery choices, making 1,000 possible combinations. If there are 100 fliers at the event, the waiver documentation could be 100,000 pages.'' He then notes that Form 7711–2 requires the information to be in triplicate. All the commenters on this issue urge that the FAA require the current practice for these launch events—that is, an approximate number of rockets to be flown and an aggregate of information on those rockets. That would mean the maximum size, weight, and power to be flown, and the maximum altitude and radius expected for these rockets.

The FAA agrees and fully intended that current practice be reflected in the final rule. We now state that each person or organization must provide the information requested at least 45 days before the proposed operation and clarify that the 45-day requirement applies only when a certificate of waiver or authorization is necessary. Organizations may continue to aggregate the information and detail the maximum parameters they expect for a given event.

Information Requirement for Type of Propulsion, Fuel(s), Oxidizer(s), Manufacturer, and Certification

As proposed in the NPRM under § 101.29(a)(2), a person operating a Class 3—High-Power Rocket that requires a certificate of waiver or authorization must provide the FAA information on the type of propulsion, fuel(s), oxidizer(s), manufacturer, and certification, if any, for the rockets.

The NAR, TRA, ROC, and 11 individual commenters noted that requiring information on propulsion systems, fuels, oxidizers, manufacturers, and certifications does not contribute to preserving safety. The commenters recommended that this requirement be stricken entirely from the final rule. In lieu of striking the requirement, the NAR would note that the NFPA has established standards for the certification and production of amateur rocket motors in NFPA Code 1125, ''Code for the Manufacture of Model Rocket and High Power Rocket Motors, 2007 Edition.'' The NAR's Standards and Testing Committee tests motors to this standard, and NAR members can only use engines on its ranges that have been tested and passed these standards.

The FAA conducted more research into whether having knowledge of these elements has an impact on safety. We found that having information about the manufacturer and any certification of a rocket does not increase the FAA's ability to determine the safe operation of amateur rocket activities. However, we do need to know the type of propulsion, fuels, and oxidizers involved because some of them are highly explosive or toxic. Therefore, the FAA removes the manufacturer and certification information requirement from the final rule. We retain the propulsion, fuels, and oxidizers information requirement, as proposed.

Description of the Launcher(s)

As proposed in the NPRM under § 101.29(a)(3), operators must provide a description of the launcher(s) planned for their amateur rocket activities, including any airborne platform(s).

The NAR, TRA, ROC, and 11 individual commenters noted that requiring a description of the launcher does not contribute to preserving safety. They state there is no record of launcher-related failures resulting in an unsafe flight condition, life threatening injury, or property damage.

The FAA disagrees because there are documented incidents where a balloon launcher failure occurred and started a fire on the ground. In addition, we find that having a description of the launcher adds a safety benefit to amateur rocket activities. A launcher failure could cause the rocket to veer in a different direction than intended. The FAA adopts § 101.29(a)(3), as proposed.

Description of the Recovery System

As proposed in the NPRM under § 101.29(a)(4), operators must provide a description of their recovery system. The NAR, TRA, ROC, and 12 individual commenters propose this requirement be removed from the final rule. They maintain the FAA did not explain why such information is necessary for flight safety.

The FAA disagrees with these comments. This information allows the FAA to calculate the hazard area for an amateur rocket launch event. The FAA adopts § 101.29(a)(4), as proposed.

Additional Safety Procedures

As proposed in the NPRM under § 101.29(a)(8), operators must provide any additional safety procedures that will be followed. The NAR, TRA, ROC, and 11 individual commenters found this section to be vague and unnecessary. Several commenters proposed this section should be modified to make clear that flying on NAR safety codes is an acceptable method to report this information.

While the FAA believes the NAR and TRA safety codes contribute to the safety of amateur rocket activities, we cannot make a blanket requirement accepting these safety codes. The codes may change in the future. The FAA would then be bound to whatever those changes might be. We must have the ability to require additional information as circumstances or technology changes might demand. The FAA adopts § 101.29(a)(8), as proposed.

Miscellaneous Comments

One commenter suggested that § 101.29 be changed to require the information listed only for those flights that exceed 25,000 feet. TRA noted they have a precise procedure for reviewing and approving all flights held at TRA-sanctioned events that will exceed 24,000 feet in apogee. Since their criteria are similar to the information requirements detailed in the NPRM, they see no need to change the rule. The FAA disagrees because these requirements also apply to operations not sanctioned by TRA. The FAA adopts § 101.29, as proposed.

One commenter suggested that the rule exempt Class 1 Model Rockets from U.S. Postal Service (USPS) restrictions to allow mailing these ''common goods'' without special labeling and papers. The commenter suggested a number of other changes to the rule to facilitate shipping model rockets. These suggestions are outside the scope of this rulemaking. The FAA has no authority to release amateur rocket enthusiasts from USPS regulations, nor can we impose regulations not associated with aviation on the USPS.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been

approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0027. There is no increase in paperwork required as a result of this rulemaking.

International Compatibility

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

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

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

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

We will first discuss the non-quantified benefits and then discuss the quantified cost-savings benefits of this final rule.

Benefits

General

This final rule provides several benefits. General benefits provided include the updating, streamlining, and modernizing of the existing regulations for amateur rocket activities. More specific benefits are discussed below.

Maximum Altitude Definition

This final rule defines a maximum altitude of 150 kilometers or 492,120 feet for amateur rockets. This allows a prospective amateur rocket operator to determine if the proposed rocket can be classified as an amateur rocket and thus avoid the necessity and expense of obtaining a license. This altitude limit also provides a reasonable margin of safety for objects that are already in orbit. Although this final rule defines a maximum altitude for amateur rockets, for practical purposes, it is not imposing a new altitude limit on amateur rocket activities because the requirements of the existing rule for burn time and ballistic coefficient, which will be eliminated under this final rule, make it virtually impossible for an amateur rocket launched under the existing regulations to reach the altitude defined in this final rule.

Suborbital Requirement

This final rule requires that amateur rockets be launched in such a manner that they will not become orbital. The current rule has no such specific restriction. By specifically prohibiting orbital launches of amateur rockets, this provision of this final rule provides the benefit of protecting existing orbital objects, such as the International Space Station (ISS) and orbiting civil and military satellites, from a possible collision with an amateur rocket.

Not Cross International Boundary Requirement

The final rule requires that an amateur rocket not cross an international boundary unless an international treaty exists that permits such activity. We do not know of an amateur rocket sent from the United States that crossed an international boundary. Although, the rule will make this specific to the amateur rockets, it is generally necessary to have some kind of international agreement in order to cross international borders. The benefit provided by this provision of this final rule is that it helps prevent international incidents.

Elimination of Burn Time and Ballistic Coefficient Requirements

This final rule eliminates the existing requirements for a burn time of less than 15 seconds and a ballistic coefficient requirement of less than 12 pounds per square inch. The elimination of these requirements allows amateur rocket activities to operate in accordance with current industry practice and recognizes technological changes since the establishment of the existing regulations. In particular, the elimination of the burn time requirement allows for the optimum operation of liquid rockets.

Revision of Amateur Rocket Classes

Table B–1 shows a comparison of the existing amateur rocket classes and this final rule's rocket classes.

The existing amateur rocket rule has three classes of rockets: Model rockets, large model rockets, and others. These classes were categorized by weight of propellant, type of propellant, property of rocket, and operation as detailed in Table B–1. The term ''other'', as discussed in the NPRM, captures unmanned launches other than amateur launches. These would include FAA-licensed or permitted launches, as well as U.S. government launches.

This final rule provides for four classes of rockets: Class 1—Model Rockets; Class 2—High-Power Rockets; Class 3—Advanced High-Power Rockets; and a fourth non-numbered Class—Other. The detailed definition of these classes is shown in Table B–1.

The benefit of this final rule's classifications is that the new definitions are more closely aligned with current practices than are the existing classifications. In addition, for this final rule's Class 1 rockets, the FAA is removing the notification requirement thereby reducing the burden on those seeking to launch model rockets.

(Benefit Tables B–1 through B–3)

TABLE B–1—COMPARISON OF EXISTING AND FINAL RULE AMATEUR ROCKET CLASSES

Existing rule categories:	Final rule categories:
Model Rockets: • Uses no more than 4 ounces (113.5 grams) of propellant ..... • Uses a slow-burning propellant ..... • Is made of paper, wood, or breakable plastic ..... • Contains no substantial metal parts ..... • Weighs no more than 454 grams (16 ounces), including the propellant. Large Model Rockets: • Uses no more than 125 grams (4.4 ounces) of propellant. • Uses a slow-burning propellant. • Is made of paper, wood, or breakable plastic. • Contains no substantial metal parts. • Weighs no more than 1,500 grams (53 ounces) including propellant.	Class 1—Model Rockets: • Uses no more than 125 grams (4.4 ounces) of propellant. • Uses a slow-burning propellant. • Is made of paper, wood, or breakable plastic. • Contains no substantial metal parts. • Weighs no more than 1,500 grams (53 ounces) including propellant.
Other: • Undefined—every unmanned rocket other than a model or large model rocket.	Class 2—High-Power Rockets: • A rocket other than a Class 1, propelled by a rocket motor or motors having a combined total impulse of 40,960 N-sec (9,208 lb-sec) or less. Class 3—Advanced High-Power Rockets: • Any amateur rocket other than a Class 1 or 2. Other: • Any unmanned rocket that is not an amateur rocket.

Revision of Data Collection Process

Amateur rocket launches may require that data be provided to the nearest air traffic facility. In addition, for the larger amateur rockets, it may be necessary to apply for a waiver and provide the required data. Table B–2 shows the data requirements that must be reported to the nearest FAA air traffic control (ATC) facility.

TABLE B–2—AMATEUR ROCKET NOTICE REQUIREMENTS TO THE NEAREST AIR TRAFFIC FACILITY

	Existing rule			Final rule			
	Model rockets	Large model rockets	Other	Class 1—model rocket	Class 2—high-power rockets	Class 3—advanced high-power rockets	Other
Notice requirements to nearest ATC facility.	None	24 hrs	24 hrs	None	24 hrs	24 hrs	24 hrs.
Operator: Name(s) and Address(es).	.....	√	√	.....	√	√	√
Date/time the activity will begin.	.....	√	√	.....	√	√	√
Estimated number of rockets to be operated.	.....	√	√				
Estimated size and weight of each rocket.	.....	√	√				
Location of the center of the affected area.	.....	√	√	.....	√	√	√
Highest affected altitude	.....	√	√	.....	√	√	√
Duration of the activity	.....	√	√	.....	√	√	√
Date/time/duration	.....	√	√	.....	√	√	√
Other pertinent information requested by the FAA.	.....	√	√	.....	√	√	√

No person may operate an unmanned rocket, other than a Class 1—Model Rocket, unless that person gives the information shown in Table B–2 to the ATC facility nearest the intended operation no less than 24 hours before and no more than three days before beginning the operation. This final rule will expand the model rocket category to include what had been large model rockets. Previously, a person operating a large model rocket needed to provide the information shown on Table B–2 to the ATC facility. Notification is not required for the expanded Class 1—Model Rocket category under this final rule.

Table B–3 shows the information requirements for a certificate of waiver or authorization. As is shown on the table, no certificate of waiver or authorization is required to operate a Class 1–Model Rocket. With the expansion of this category to include what had been large model rockets, this final rule will reduce waiver requests.

This final rule will eliminate the requirement to obtain a license or permit for launches where the burn-time exceeds 15 seconds. Hence, the proposed launches that previously required a license or permit, now would only require a waiver or authorization from the FAA, and only if operating beyond the limitations listed in §§ 101.25 or 101.26. These limitations include operating in controlled airspace and within 8 kilometers (5 miles) of any

airport boundary without prior authorization by the FAA.

The primary difference between the information requirements in the existing rule and the new rule is that the information previously required as part of the request for a waiver or authorization was identified generally as ''a detailed description of the proposed operation.'' In practice, the type of information shown in Table B–3 was provided with the request for a waiver. However, the FAA often needed to request more detailed information. The asterisk indicates that the information typically is required only for more powerful or advanced amateur rockets. Some of the informational elements are typically not applicable for smaller rockets. The FAA believes a rule specifying the required information will actually reduce the burden on applicants.

The Table B–3 entries labeled current practice are not existing FAA regulations. By current practice we mean the FAA would typically ask for and amateur rocket operators would submit this information before a launch.

TABLE B–3—INFORMATIONAL REQUIREMENTS FOR A CERTIFICATE OF WAIVER OR AUTHORIZATION

	Existing rule			This final rule		
	Model rockets	Large model rockets	Other	Class 1—model rocket	Class 2—high power rockets	Class 3—advanced high power rockets
When a certificate of waiver or an authorization is required.						
Submission of Form 7711–2 (time before event).	No	45 days	45 days	No	45 days	45 days
Name of organization	√	√		√	√	
Name of responsible person		√	√		√	√
Permanent mailing address		√	√		√	√
FAR section and number to be waived.		√	√		√	√
Detailed description of proposed operation, such as:		√	√		√	√
Estimated number of rockets to be operated.			Current practice		√	√
Type of propulsion (liquid or solid), fuel(s), and oxidizer(s).			Current practice		√	√
Description of launcher(s) planned to be used, including any airborne platform(s).			Current practice*		√	√
Description of recovery system			Current practice*		√	√
Highest altitude, above ground level, expected to be reached.			Current practice		√	√
Launch site latitude, longitude, and elevation.			Current practice		√	√
Any additional safety procedures that will be followed.			Current practice		√	√
Maximum possible range			Current practice			√
Dynamic stability characteristics for the entire flight profile.			Current practice*			√
Description of all major rocket systems.			Current practice*			√
Description of other support equipment necessary for safe operation.			Current practice*			√
Planned flight profile and sequence of events.			Current practice*			√
All nominal impact areas within three standard deviations.			Current practice*			√
Launch commit criteria			Current practice*			√
Countdown procedures			Current practice*			√
Mishap procedures			Current practice*			√
Area of operation (Location, altitude, etc.).		√	√		√	√
Beginning (Date and hour)		√	√		√	√
Ending (Date and hour)		√	√		√	√
Area of operation (Location, altitudes, etc.).		√	√		√	√
Aircraft make and model		√	√		√	√
Sponsor of event		√	√		√	√
Sponsor's permanent mailing address.		√	√		√	√
Policing (Description of provisions for policing event).		√	√		√	√
Emergency facilities		√	√		√	√
Air Traffic control (Description of method of controlling air traffic).		√	√		√	√
Schedule of Events		√	√		√	√

TABLE B–3—INFORMATIONAL REQUIREMENTS FOR A CERTIFICATE OF WAIVER OR AUTHORIZATION—Continued

	Existing rule			This final rule		
	Model rockets	Large model rockets	Other	Class 1—model rocket	Class 2—high power rockets	Class 3—advanced high power rockets
Certification		√	√		√	√

A positive effect of the new classifications and definitions is that they allow for the unlicensed launching of liquid rockets at their optimum burn rates. Today, someone who wanted to launch a liquid rocket at its optimum burn rate would have to obtain a license that requires complicated analyses that can cost up to $100,000. An alternative would be to adjust the burn rate of the liquid rocket to meet the current requirements. This alternative would result in either a reduced rocket performance or reduced rocket safety. Therefore, this final rule provides some potential cost savings and performance and safety improvements.

Benefits Summary

As discussed above, this final rule provides benefits. The major benefits of this final rule are summarized below:

- Eliminate inconsistencies in the existing rules;
- Provide new definitions of amateur rocket categories that would allow amateur rocket operators to more easily determine what, if any, regulations they would have to comply with;
- Allow unlicensed launches of liquid rockets at optimum performance levels;
- Streamline and clarify the data collection process in cases where a proposed launch would require that the amateur rocket operator provide data to the FAA;
- Insure amateur rocket activities would be conducted in accordance with all international treaties;
- Insure that amateur rocket activities would not interfere with objects in orbit.
- Provide cost savings to both amateur rocket operators and the FAA.

Costs

Introduction

This section shows the costs of the existing rule, the estimated costs of this final rule, and the incremental costs of this final rule. The incremental costs are the costs of this final rule subtracted from the costs of the existing rule.

The costs of both the existing and this final rule are determined by multiplying the number of hours to perform a required task by the hourly cost of the person performing the task. The number of hours is estimated by the Office of Commercial Space Transportation (AST) of the FAA. The cost of an aerospace engineer is estimated by the Office of Policy and Plans (APO) of the FAA. The fully allocated hourly costs of an aerospace engineer are estimated to be $81.

Existing Rule Costs

Table C–1 shows that the total annual cost of the existing rule is estimated to be approximately $8,886,000. This includes the costs of Large Model Rockets and Other Rockets. No costs are estimated for Model Rockets. The costs are based on a total of 100 notifications to the FAA for Large Model Rockets and 200 annual waivers for Other Rockets.

Final Rule Costs

Table C–2 lists approximately $8,378,000 as the total annual cost of this final rule. This includes the costs of Class 2 and 3 amateur rockets. No costs are estimated for Class 1 amateur rockets. The costs are based on a total of 200 annual waivers, 198 for Class 2 rockets and 2 for Class 3 rockets.

The reason for the decrease in costs for Class 1 rockets from the existing rule to this final rule is that Large Model Rockets included in Class 1 rockets in this final rule generally no longer will require a notification to FAA and rarely require a waiver.

Incremental Final Rule Costs

Our incremental cost estimate equals the total cost of this final rule minus the total cost of the existing requirements.

Table C–3 lists the annual incremental cost of this final rule as about a negative $507,870. This represents a cost-saving benefit for the final rule. The study period for the costs of this final rule is estimated to be 10 years. The total 10-year cost savings of this final rule is estimated to be approximately $5,080,000 in current dollars with a present value of $3,567,000 with a discount rate of 7%. Thus, as the incremental cost estimate results in cost savings, the benefits of this rule exceed the costs.

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(Costs Tables C-1 through C-3)

Table C-1

Existing Rule - Notification and Waiver Information to be Submitted to FAA and Notification and Waiver Total Annual Costs

	Unmanned Rockets															Total Annual Cost of Existing Rule
	Model Rockets					Large Model Rockets					Other					
	Hours (A)	Rate (B)	Cost per Waiver	Annual Number of Waivers	Total Annual Cost of Waivers	Hours	Rate	Cost per Notification	Annual Number of Notifications	Total Annual Cost of Notifications	Hours	Rate	Cost per Waiver	Annual Number of Waivers	Total Annual Cost of Waivers	Total Annual Cost of Existing Rule
FAA(AST)																
Evaluation (2 people)	0	$ 81	$ -	0	$0	1	$ 81	$ 81	100	$ 8,100	264	$ 81	$ 21,384	200	$ 4,276,800	$ 4,284,900
Risk Analysis (1 person)							$ 81	$ -	100	$ -	50	$ 81	$ 4,050	200	$ 810,000	$ 810,000
Team Review/Mgmt Feedback (6 people)							$ 81	$ -	100	$ -	22	$ 81	$ 1,782	200	$ 356,400	$ 356,400
Mgmt Approval/ATC Coord (4 people)							$ 81	$ -	100	$ -	11	$ 81	$ 891	200	$ 178,200	$ 178,200
Total FAA (AST)	0	$ 81	$ -	0	$0	1	$ 81	$ 81	100	$ 8,100	347		$ 28,107	200	$ 5,621,400	$ 5,629,500
Launch Operator (Applicant)																
Waiver Request	0	$ 81	$ -	0	$0	0	$ 81	$ -	100	$ -	10	$ 81	$ 810	200	$ 162,000	$ 162,000
FAA Coordination						2	$ 81	$ 162	100	$ 16,200	20	$ 81	$ 1,620	200	$ 324,000	$ 340,200
Data Package Preparation						0	$ 81	$ -	100	$ -	170	$ 81	$ 13,770	200	$ 2,754,000	$ 2,754,000
Total Launch Operator (Applicant)	0	$ 81	$ -	0	$0	2	$ 81	$ 162	100	$ 16,200	200		$ 16,200	200	$ 3,240,000	$ 3,256,200
Grand Total	0	$ 81	$ -	0	$0	3	$ 81	$ 243	100	$ 24,300	547		$ 44,307	200	$ 8,861,400	$ 8,885,700

(A) Estimated by AST

(B) From APO Website - The fully allocated cost of an Aerospace Engineer.

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Table C-2

Final Rule - Waiver Information to be Submitted to FAA and Waiver Total Annual Costs

	Unmanned Rockets															
	Class 1					Class 2					Class 3					Total Annual Cost of Rule
	Model Rockets					High Power Rockets					Advance High Power Rockets					
	Hours(B)	Rate (C)	Cost per Waiver	Annual Number of Waivers	Total Annual Cost of Waivers	Hours	Rate	Cost per Waiver	Annual Number of Waivers	Total Annual Cost of Waivers	Hours	Rate	Cost per Waiver	Annual Number of Waivers	Total Annual Cost of Waivers	Total Annual Cost of Rule
FAA(AST)																
Evaluation (2 people)	5	$ 81	$ 405	0	$0	240	$ 81	$ 19,440	198	$ 3,849,120	480	$ 81	$ 38,880	2	$ 77,760	$ 3,926,880
Risk Analysis (1 person)						45	$ 81	$ 3,645	198	$ 721,710	90	$ 81	$ 7,290	2	$ 14,580	$ 736,290
Team Review/Mgmt Feedback (6 people)						20	$ 81	$ 1,620	198	$ 320,760	40	$ 81	$ 3,240	2	$ 6,480	$ 327,240
Mgmt Approval/ATC Coord (4 people)						10	$ 81	$ 810	198	$ 160,380	20	$ 81	$ 1,620	2	$ 3,240	$ 163,620
Total FAA (AST)	5	$ 81	$ 405	0	$0	315	$ 81	$ 25,515	198	$ 5,051,970	630		$ 51,030	2	$ 102,060	$ 5,154,030
Launch Operator (Applicant)																
Waiver Request	5	$ 81	$ 405	0	$0	10	$ 81	$ 810	198	$ 160,380	10	$ 81	$ 810	2	$ 1,620	$ 162,000
FAA Coordination						20	$ 81	$ 1,620	198	$ 320,760	40	$ 81	$ 3,240	2	$ 6,480	$ 327,240
Data Package Preparation (A)						160	$ 81	$ 12,960	198	$ 2,566,080	1,040	$ 81	$ 84,240	2	$ 168,480	$ 2,734,560
Total Launch Operator (Applicant)	5	$ 81	$ 405	0	$0	190	$ 81	$ 15,390	198	$ 3,047,220	1,090		$ 88,290	2	$ 176,580	$ 3,223,800
Grand Total	10	$ 81	$ 810	0	$0	505	81	$ 40,905	198	$ 8,099,190	1,720		$ 139,320	2	$ 278,640	$ 8,377,830

(A) For Class 3, that is one full time person, one part time, and one person one quarter of the time.

Equation: (40 hours x 4 weeks x 8 months) + (20 hours x 4 weeks x 8 months) + (10 hours x 4 weeks x 8 months) = 2,240

(B) Estimated by AST

(C) From APO Website - The fully allocated cost of an Aerospace Engineer.

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Table C-3			
Incremental Costs of The Final Rule			
Annual Costs:			
Final Rule:		$ 8,377,830	
Existing Rule:		$ 8,885,700	
Incremental Costs of Final Rule:		$ (507,870)	
	Incremental Costs of the Final Rule		
Year	Current $	Present Value $	Discount Factor @ 7%
1	$ (507,870)	$ (474,655)	0.9346
2	$ (507,870)	$ (443,574)	0.8734
3	$ (507,870)	$ (414,574)	0.8163
4	$ (507,870)	$ (387,454)	0.7629
5	$ (507,870)	$ (362,111)	0.7130
6	$ (507,870)	$ (338,394)	0.6663
7	$ (507,870)	$ (316,251)	0.6227
8	$ (507,870)	$ (295,580)	0.5820
9	$ (507,870)	$ (276,230)	0.5439
10	$ (507,870)	$ (258,150)	0.5083
Totals	$ (5,078,700)	$ (3,566,974)	
			08/21/2008

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Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

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

The FAA believes that this final rule will not have a significant negative economic impact on a substantial number of small entities. This final rule will affect a large number of small entities. These small entities would include the individuals, organizations, and firms involved in launching amateur rockets. However, although this final rule will affect a large number of small entities, it will not have a negative economic impact because this final rule results in substantial cost savings compared to the existing rule. Therefore, as the Acting FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This final rule will not have an impact on international trade because it applies only to launches conducted in the United States. This final rule will help insure that all international treaties with respect to space and amateur rocket launches will be complied with. The FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

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

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

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

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

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Parts 1, 101, 400, 401, and 420

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 1, 101, 400, 401, and 420 of Title 14, Code of Federal Regulations, as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Add the following definition of *Amateur rocket* in alphabetical order to § 1.1 to read as follows:

§ 1.1 General definitions.

* * * * *

Amateur rocket means an unmanned rocket that:

(1) Is propelled by a motor or motors having a combined total impulse of 889,600 Newton-seconds (200,000 pound-seconds) or less; and

(2) Cannot reach an altitude greater than 150 kilometers (93.2 statue miles) above the earth's surface.

* * * * *

PART 101—MOORED BALLOONS, KITES, UNMANNED ROCKETS AND UNMANNED FREE BALLOONS

■ 3. The authority citation for part 101 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 45302, 44502, 44514, 44701–44702, 44721, 46308.

■ 4. Amend § 101.1 by revising paragraph (a)(3) to read as follows:

§ 101.1 Applicability.

(a) * * *

(3) Any unmanned rocket except aerial firework displays.

* * * * *

■ 5. Revise § 101.21 to read as follows:

§ 101.21 Applicability.

(a) This subpart applies to operating unmanned rockets. However, a person operating an unmanned rocket within a restricted area must comply with § 101.25(b)(7)(ii) and with any additional limitations imposed by the using or controlling agency.

(b) A person operating an unmanned rocket other than an amateur rocket as defined in § 1.1 of this chapter must comply with 14 CFR Chapter III.

■ 6. Revise § 101.22 to read as follows:

§ 101.22 Definitions.

The following definitions apply to this subpart:

(a) *Class 1—Model Rocket* means an amateur rocket that:

(1) Uses no more than 125 grams (4.4 ounces) of propellant;

(2) Uses a slow-burning propellant;

(3) Is made of paper, wood, or breakable plastic;

(4) Contains no substantial metal parts; and

(5) Weighs no more than 1,500 grams (53 ounces), including the propellant.

(b) *Class 2—High-Power Rocket* means an amateur rocket other than a model rocket that is propelled by a motor or motors having a combined total impulse of 40,960 Newton-seconds (9,208 pound-seconds) or less.

(c) *Class 3—Advanced High-Power Rocket* means an amateur rocket other than a model rocket or high-power rocket.

■ 7. Revise § 101.23 to read as follows:

§ 101.23 General operating limitations.

(a) You must operate an amateur rocket in such a manner that it:

(1) Is launched on a suborbital trajectory;

(2) When launched, must not cross into the territory of a foreign country unless an agreement is in place between the United States and the country of concern;

(3) Is unmanned; and

(4) Does not create a hazard to persons, property, or other aircraft.

(b) The FAA may specify additional operating limitations necessary to ensure that air traffic is not adversely affected, and public safety is not jeopardized.

■ 8. Redesignate § 101.25 as § 101.27 and revise it to read as follows:

§ 101.27 ATC notification for all launches.

No person may operate an unmanned rocket other than a Class 1—Model Rocket unless that person gives the following information to the FAA ATC facility nearest to the place of intended operation no less than 24 hours before and no more than three days before beginning the operation:

(a) The name and address of the operator; except when there are multiple participants at a single event, the name and address of the person so designated as the event launch coordinator, whose duties include coordination of the required launch data estimates and coordinating the launch event;

(b) Date and time the activity will begin;

(c) Radius of the affected area on the ground in statute miles;

(d) Location of the center of the affected area in latitude and longitude coordinates;

(e) Highest affected altitude;

(f) Duration of the activity;

(g) Any other pertinent information requested by the ATC facility.

■ 9. Add new § 101.25 to Subpart C to read as follows:

§ 101.25 Operating limitations for Class 2—High-Power Rockets.

(a) You must comply with the General Operating Limitations of § 101.23.

(b) In addition, you must not operate a Class 2—High-Power Rocket—

(1) At any altitude where clouds or obscuring phenomena of more than five-tenths coverage prevails;

(2) At any altitude where the horizontal visibility is less than five miles;

(3) Into any cloud;

(4) Between sunset and sunrise without prior authorization from the FAA;

(5) Within 8 kilometers (5 statute miles) of any airport boundary without prior authorization from the FAA;

(6) In controlled airspace without prior authorization from the FAA;

(7) Unless you observe the greater of the following separation distances from any person or property that is not associated with the operations applies:

(i) Not less than one-quarter the maximum expected altitude;

(ii) 457 meters (1,500 ft.);

(8) Unless a person at least eighteen years old is present, is charged with ensuring the safety of the operation, and has final approval authority for initiating high-power rocket flight; and

(9) Unless reasonable precautions are provided to report and control a fire caused by rocket activities.

■ 10. Add new § 101.26 to Subpart C to read as follows:

§ 101.26 Operating limitations for Class 3—Advanced High-Power Rockets.

You must comply with:

(a) The General Operating Limitations of § 101.23;

(b) The operating limitations contained in § 101.25;

(c) Any other operating limitations for Class 3—Advanced High-Power Rockets prescribed by the FAA that are necessary to ensure that air traffic is not adversely affected, and public safety is not jeopardized.

■ 11. Add § 101.29 to Subpart D to read as follows:

§ 101.29 Information requirements.

(a) *Class 2—High-Power Rockets.* When a Class 2—High-Power Rocket requires a certificate of waiver or authorization, the person planning the operation must provide the information below on each type of rocket to the FAA at least 45 days before the proposed operation. The FAA may request

additional information if necessary to ensure the proposed operations can be safely conducted. The information shall include for each type of Class 2 rocket expected to be flown:

(1) Estimated number of rockets,

(2) Type of propulsion (liquid or solid), fuel(s) and oxidizer(s),

(3) Description of the launcher(s) planned to be used, including any airborne platform(s),

(4) Description of recovery system,

(5) Highest altitude, above ground level, expected to be reached,

(6) Launch site latitude, longitude, and elevation, and

(7) Any additional safety procedures that will be followed.

(b) *Class 3—Advanced High-Power Rockets.* When a Class 3—Advanced High-Power Rocket requires a certificate of waiver or authorization the person planning the operation must provide the information below for each type of rocket to the FAA at least 45 days before the proposed operation. The FAA may request additional information if necessary to ensure the proposed operations can be safely conducted. The information shall include for each type of Class 3 rocket expected to be flown:

(1) The information requirements of paragraph (a) of this section,

(2) Maximum possible range,

(3) The dynamic stability characteristics for the entire flight profile,

(4) A description of all major rocket systems, including structural, pneumatic, propellant, propulsion, ignition, electrical, avionics, recovery, wind-weighting, flight control, and tracking,

(5) A description of other support equipment necessary for a safe operation,

(6) The planned flight profile and sequence of events,

(7) All nominal impact areas, including those for any spent motors and other discarded hardware, within three standard deviations of the mean impact point,

(8) Launch commit criteria,

(9) Countdown procedures, and

(10) Mishap procedures.

PART 400—BASIS AND SCOPE

■ 12. The authority citation for part 400 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 13. Revise § 400.2 to read as follows:

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision under 49 U.S.C. Subtitle IX, chapter 701, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to amateur rockets activities, as defined in 14 CFR 1.1, or to space activities carried out by the United States Government on behalf of the United States Government.

PART 401—ORGANIZATION AND DEFINITIONS

■ 14. The authority citation for part 401 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

§ 401.5 [Amended]

■ 15. Amend § 401.5 by removing the definition of *Amateur rocket activities.*

PART 420—LICENSE TO OPERATE A LAUNCH SITE

■ 16. The authority citation for part 420 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 17. Revise § 420.3 to read as follows:

§ 420.3 Applicability.

This part applies to any person seeking a license to operate a launch site or to a person licensed under this part. A person operating a site that only supports amateur rocket activities as defined in 14 CFR 1.1, does not need a license under this part to operate the site.

Issued in Washington, DC, on November 24, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8–28703 Filed 12–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0589; Directorate Identifier 2008–NE–17–AD; Amendment 39–15757; AD 2008–24–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series 94-Inch Fan Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney (P&W) PW4052, PW4056, PW4060, PW4062, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engines. This AD requires a onetime visual inspection of all EEC–131 model electronic engine controls (EECs). This AD also requires the EECs to be identified, categorized by group number, marked, and replaced using a fleet management plan. This AD results from a report of an uncommanded engine in-flight shutdown due to defective EEC pulse width modulator (PWM) microcircuits. We are issuing this AD to prevent uncommanded in-flight engine shutdowns which could result in loss of thrust and prevent continued safe flight or landing.

DATES: This AD becomes effective January 8, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 8, 2009.

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov*; telephone (781) 238–7117; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to P&W PW4052, PW4056, PW4060, PW4062, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engines. We published the proposed AD in the **Federal Register** on August 14, 2008 (73 FR 47561). That action proposed to require a onetime visual inspection of all EEC–131 model EECs. That action also proposed to require the EECs to be identified, categorized by group number, marked, and replaced using a fleet management plan.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for

the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Change Compliance From Cycles In Service Since New

Pratt & Whitney, Airbus S.A.S., Boeing, the Air Transport Association (ATA), and 10 carriers request that we change cycles in service ''since new'' to cycles in service ''from the effective date of this AD''. They state that cycles in service since new was probably selected in error by the FAA, as the age of the fleet would require most of the EECs to be removed immediately.

We agree. We changed the AD to reflect ''cycles in service from the effective date of this AD''.

Request for Clarification on Group 4 EEC Classification

Pratt & Whitney and Northwest Airlines request clarification on the classification of Group 4 EECs, and on what action is required for group 4 EECs. They express confusion on how Group 4 EECs are handled in the proposed AD.

We provide clarification as follows:

Group 4 is a category of EECs that have been identified as having non-defective PWMs, either by the serial numbers published in P&W Service Bulletin (SB) No. PW4ENG A73–214, or through the completion of the repair described in Hamilton Sunstrand SB No. EEC131–1–73–59. We changed the AD by adding compliance paragraph (h)(3) as follows:

''(3) There are no scheduled replacement requirements for Group 4 EECs.''

We also changed compliance paragraph (i) to read: ''A serviceable EEC is an EEC that does not violate the EEC installation procedure as provided by paragraphs (k), (l), and (m) of this AD, or a Group 4 EEC.''

Request To Re-Evaluate EEC Marking

FedEx and Lufthansa Technik AG request that the EEC marking requirements be re-evaluated so that the operators who have a means of verifying and tracking units can be exempted from the physical marking of the EEC. They state that the physical marking adds an unnecessary burden on their maintenance system.

We partially agree. While some operators may have the capability of reliably tracking EECs in their fleet without physically remarking them, we determined that not all operators share this capability. In the absence of an alternate method of categorizing EECs into the appropriate group, the AD requires physical remarking of the EECs. This is done to prevent Group 1 EECs from being inadvertently moved from one engine or airplane to another, and to aid in the prioritization of EEC returns to Hamilton Sundstrand. Operators who believe they have sufficient means of categorizing EECs without physically remarking the parts, should request an Alternative Method of Compliance in accordance with compliance paragraph (o) of the AD. We did not change the AD.

Request To Increase the Costs of Compliance Estimate

FedEx, United Airlines, and the ATA, request that we increase the costs of compliance estimate in the AD. The commenters state that it takes 2 hours to remove the old EEC and install its replacement. They state that a post installation Required Inspection Item and engine idle test, must be performed for each EEC replacement.

We partially agree. Although the proposed AD states that 1 work-hour per engine was considered in the estimate for replacing the EEC, the estimate of $467,200 includes 3 work-hours (1 hour for inspecting, categorizing, and marking the EEC and 2 hours for removing and replacing the EEC) and $400 for replacement parts for each EEC. The three-hour estimate, therefore, is accurate. However, to properly reflect that estimate, we changed the costs of compliance to read:

''We also estimate that it will take about 1 work-hour per engine to inspect, categorize, and mark each of the 730 EECs, and 2 work-hours per engine to remove and replace up to 730 EECs.''

Suggestion for More Consistency With the SBs

Pratt & Whitney Cheshire Engine Center and Airbus S.A.S., suggest changes to the Discussion section of the proposed AD, so there would be more consistency between the AD and P&W Alert SB No. PW4ENG A73–214 and P&W SB No. PW4ENG 73–216.

We disagree. While the description of the issue in the SBs is more detailed, the intent of the Discussion section in the proposed AD is to provide a summary of the unsafe condition, rather than an in-depth technical discussion. The final rule AD does not repeat the information from the proposed AD Discussion section, therefore, we did not change the AD.

Request for Aircraft Maintenance Manuals To Be Updated

Lufthansa Technik AG and Royal Dutch Airlines request that we arrange for the Aircraft Maintenance Manuals (AMM) to be updated to reflect the requirements set forth in this AD.

We disagree. While changes to the AMM may be warranted, the requirements set forth in this AD are sufficient to address the unsafe condition addressed by the AD. We suggest that the commenters request changes to the AMM directly to the airframer. We did not change the AD.

Request To Add Provisions to the AD To Accept Work Done Previously Using the Original Issue or Revision 1 of P&W ASB No. PW4ENG A73–214

One commenter, United Parcel Service, requests that we add provisions to the AD to accept work done previously using the original issue or Revision 1 of P&W ASB No. PW4ENG A73–214. The commenter states that accomplishment of original issue or Revision 1, satisfies the requirements in Revision 2 of ASB No. PW4ENG A73–214.

We agree. Rework done using the original issue and Revision 1 of P&W ASB No. PW4ENG A73–214 satisfies the ASB Revision 2 requirements for Groups 1, 2, and 3 EECs. We added a Previous Credit paragraph as follows:

''(n) Inspecting, categorizing, and marking of EECs before the effective date of this AD performed using the Accomplishment Instructions of P&W Alert SB No. PW4ENG A73–214 original issue or Revision 1, satisfy the requirements of paragraph (f)(1) of this AD.''

Claim That SBs Are Incorrectly Labeled

United Airlines and the ATA claim that in two locations of the proposed AD, P&W SBs are incorrectly labeled, either as Alert SBs or as non-Alert SBs.

We agree. However, one of the locations is in the proposed AD Discussion section, which we do not repeat in the AD, and the other location is already corrected due to a previous comment response.

Question on Whether Omission of SB References Was Intentional

One commenter, Airbus S.A.S., questions whether the omission of any reference of P&W SB No. PW4ENG 73–215 was intentional. The commenter states that SBs No. PW4ENG A73–214, No. PW4ENG 73–215, and No. PW4ENG 73–216, were issued by P&W as a group,

to address the unsafe condition addressed by this AD.

We intentionally omitted that SB reference. P&W SB No. PW4ENG 73–215 limits the installation of Group 1 EECs to one per airplane within one year from the SB issue date. Because the recommended compliance end-date for P&W SB No. PW4ENG 73–215 action coincides with the compliance time to remove all Group 1 EECs as required by this AD, we determined that it was only necessary to mandate the removal of all Group 1 EECs. Operators are encouraged to evaluate all the recommended maintenance actions provided by the manufacturer to accomplish smooth fleet-wide compliance with the requirements of this AD. We did not change the AD.

Suggestion To Change the Part Number on EECs

Northwest Airlines suggests that the part number be changed on the EEC, as opposed to categorizing and marking Group numbers, as discussed in the proposed AD. The commenter states that doing this would allow ease of tracking parts and ease of showing compliance to the AD.

We disagree. We consider the addition of a Group number to the part marking to be sufficient means for identification of EECs. The method of tracking compliance to the AD is left up to each operator. We did not change the AD.

Request To Change the Compliance Times

Northwest Airlines and P&W request that we change the proposed AD compliance times to make them consistent with the SBs.

We partially agree. The compliance times in the proposed AD were compressed from those in the SBs, due to the cycle time associated with issuing an AD. The intent was for the end-date of the proposed AD compliance times to roughly agree with those in the referenced SBs. To better achieve this intent, we updated the compliance times in the AD. We changed compliance paragraphs (h)(1) and (h)(2) from:

''(1) Group 2 EECs, before reaching 4,000 CIS since new, but not later than 2 years after the effective date of this AD.

(2) Group 3 EECs, before reaching 14,000 CIS since new, but not later than 6 years after the effective date of this AD.''

To:

''(1) Group 2 EECs, before reaching 5,000 CIS after the effective date of this AD, but not later than 2½ years after the effective date of this AD.

(2) Group 3 EECs, before reaching 13,000 CIS after the effective date of this AD, but not later than 6½ years after the effective date of this AD.''

We also changed prohibition paragraphs (k), (l), and (m) from:

''(k) Do not install any Group 1 EEC after 1 year from the effective date of this AD or any Group 1 EEC that has reached 2,000 CIS since new.

(l) Do not install any Group 2 EEC after 2 years from the effective date of this AD or any Group 2 EEC that has reached 4,000 CIS since new.

(m) Do not install any Group 3 EEC after 6 years from the effective date of this AD or any Group 3 EEC that has reached 14,000 CIS since new.''

To:

''(k) Do not install any Group 1 EEC after 1 year from the effective date of this AD or any Group 1 EEC that has accumulated an additional 2,000 CIS from the effective date of this AD.

(l) Do not install any Group 2 EEC after 2½ years from the effective date of this AD or any Group 2 EEC that has accumulated an additional 5,000 CIS from the effective date of this AD.

(m) Do not install any Group 3 EEC after 6½ years from the effective date of this AD or any Group 3 EEC that has accumulated an additional 13,000 CIS from the effective date of this AD.''

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 730 P&W PW4000 series 94-inch fan turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per engine to inspect, categorize, and mark each of the 730 EECs, and 2 work-hours per engine to remove and replace up to 730 EECs. The average labor rate is $80 per work-hour. Required replacement parts will cost about $400 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $467,200. This Costs of Compliance reflects only the requirements set forth by the AD, which is the removal and replacement of the EEC.

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 this AD:

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

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

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

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

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

2008–24–13 Pratt & Whitney: Amendment 39–15757. Docket No. FAA–2008–0589; Directorate Identifier 2008–NE–17–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 8, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (P&W) PW4052, PW4056, PW4060, PW4062, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engines. These engines are installed on, but not limited to, Airbus A300–600 and A310–300, and Boeing 747–400, Boeing 767–200, 767–300, and MD–11 series airplanes.

Unsafe Condition

(d) This AD results from a report of an uncommanded engine in-flight shutdown due to defective electronic engine control (EEC) pulse width modulator (PWM) microcircuits. We are issuing this AD to prevent uncommanded in-flight engine shutdowns which could result in loss of thrust and prevent continued safe flight or landing.

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 Visual Inspection and Reporting Requirements

(f) Within 600 operating hours after the effective date of this AD:

(1) Perform a onetime visual inspection of the EEC–131 model EECs to identify, categorize, and mark them as a Group 1, Group 2, Group 3, or Group 4 EEC.

(2) Use paragraphs 1 through 7 in the Accomplishment Instructions of P&W Alert Service Bulletin No. PW4ENG A73–214, Revision 2, dated May 23, 2008, to inspect, categorize, and mark the EECs.

(3) Within 30 calendar days of completing paragraph (f)(1) of this AD, report all inspection findings to Kevin Dickert, Engine Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803.

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

Replacement of Group 1 EECs

(g) Replace Group 1 EECs with a serviceable EEC before reaching 2,000 cycles-in-service (CIS) after the effective date of this AD, but not later than one year from the effective date of this AD.

Replacement of Groups 2, 3, and 4 EECs

(h) Replace the following groups of EECs with a serviceable EEC, or any EEC that does not violate the EEC installation procedure as provided by paragraphs (k), (l), and (m) of this AD, as follows:

(1) Group 2 EECs, before reaching 5,000 CIS after the effective date of this AD, but not later than 2½ years after the effective date of this AD.

(2) Group 3 EECs, before reaching 13,000 CIS after the effective date of this AD, but not later than 6½ years after the effective date of this AD.

(3) There are no scheduled replacement requirements for Group 4 EECs.

Definition of Serviceable EECs

(i) A serviceable EEC is an EEC that does not violate the EEC installation procedure as provided by paragraphs (k), (l), and (m) of this AD, or a Group 4 EEC.

(j) Information on obtaining a serviceable EEC can be found in P&W SB No. PW4ENG 73–216, dated April 8, 2008. To obtain this SB, see paragraph (q) of this AD for P&W contact information.

EEC Installation Prohibition

(k) Do not install any Group 1 EEC after 1 year from the effective date of this AD or any Group 1 EEC that has accumulated an additional 2,000 CIS from the effective date of this AD.

(l) Do not install any Group 2 EEC after 2½ years from the effective date of this AD or any Group 2 EEC that has accumulated an additional 5,000 CIS from the effective date of this AD.

(m) Do not install any Group 3 EEC after 6½ years from the effective date of this AD or any Group 3 EEC that has accumulated an additional 13,000 CIS from the effective date of this AD.

Previous Credit

(n) Inspecting, categorizing, and marking of EECs before the effective date of this AD performed using the Accomplishment Instructions of P&W Alert SB No. PW4ENG A73–214 original issue or Revision 1, satisfy the requirements of paragraph (f)(1) of this AD.

Alternative Methods of Compliance

(o) The Manager, Engine 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.

Related Information

(p) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(q) You must use the service information specified in Pratt & Whitney Alert Service Bulletin No. PW4ENG A73–214, Revision 2, dated May 23, 2008, to inspect, categorize, and mark the EECs. 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 Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503, for a copy of this service information. You may review copies at the FAA, New England Region, 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 November 21, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–28270 Filed 12–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1258; Directorate Identifier 2008–NM–142–AD; Amendment 39–15758; AD 2008–24–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Cracks on the main landing gear trunnion fitting web have been discovered during fatigue testing. Failure of the main landing gear trunnion fitting web could compromise the structural integrity of the trunnion fitting and result in a main landing gear collapse. * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 19, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 19, 2008.

We must receive comments on this AD by January 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–21, dated June 12, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks on the main landing gear trunnion fitting web have been discovered during fatigue testing. Failure of the main landing gear trunnion fitting web could compromise the structural integrity of the trunnion fitting and result in a main landing gear collapse. A Temporary Revision has been made to the Bombardier CL–600–2B19 Maintenance Requirements Manual, Appendix B, ''Airworthiness Limitations'' to ensure that fatigue cracking of the trunnion fitting web is detected and corrected.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new structural inspection requirements. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Temporary Revision 2B–2136, dated May 1, 2008, to the Bombardier CL–600–2B19 Maintenance Requirements Manual, Part 2, Appendix B—Airworthiness Limitations.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if the actions specified in the service information are not accomplished at the specified threshold, cracking in the main landing gear trunnion fitting web could go undetected. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1258; Directorate Identifier 2008–NM–142–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

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 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 this AD:

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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 AD:

2008–24–14 Bombardier, Inc. (Formerly Canadair): Amendment 39–15758. Docket No. FAA–2008–1258; Directorate Identifier 2008–NM–142–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1A.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Cracks on the main landing gear trunnion fitting web have been discovered during fatigue testing. Failure of the main landing gear trunnion fitting web could compromise the structural integrity of the trunnion fitting and result in a main landing gear collapse. A Temporary Revision has been made to the Bombardier CL–600–2B19 Maintenance Requirements Manual, Appendix B, ''Airworthiness Limitations'' to ensure that fatigue cracking of the trunnion fitting web is detected and corrected.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new structural inspection requirements.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the Airworthiness Limitation (AWL) No. 57–21–161, as identified in Bombardier Temporary Revision 2B–2136, dated May 1, 2008, to the Bombardier CL–600–2B19 Maintenance Requirements Manual, Part 2, Appendix B—Airworthiness Limitations. The initial compliance time for the task starts from the applicable time specified in Table 1 or Table 2 of this AD, as applicable. Repeat the inspection thereafter at the applicable interval specified in Bombardier Temporary Revision 2B–2136, dated May 1, 2008.

TABLE 1—PRE-MODSUM TC601R15827 AIRPLANES

If the airplane has accumulated (as of the effective date of this AD)—	Then phase in the initial inspection—
23,500 total flight cycles or fewer	Prior to the accumulation of 25,000 total flight cycles.
23,501 to 25,000 total flight cycles	Prior to the accumulation of 26,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs first.
25,001 to 26,000 total flight cycles	Prior to the accumulation of 26,500 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs first.
26,001 or more total flight cycles	Within 500 flight cycles after the effective date of this AD.

TABLE 2—POST-MODSUM TC601R15827 AIRPLANES

If the airplane has accumulated (as of the effective date of this AD)—	Then phase in the initial inspection—
15,667 total flight cycles or fewer	Prior to the accumulation of 16,667 total flight cycles.
15,668 to 16,667 total flight cycles	Prior to the accumulation of 17,333 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs first.
16,668 to 17,333 total flight cycles	Prior to the accumulation of 17,666 total flight cycles, or within 666 flight cycles after the effective date of this AD, whichever occurs first.
17,334 or more total flight cycles	Within 333 flight cycles after the effective date of this AD.

(2) After accomplishing the actions specified in paragraph (f)(1) of this AD, no alternative inspections or inspection intervals may be used unless the inspection or inspection interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531. Before using any approved AMOC on any airplane to

which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

(4) Special Flight Permits: Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–21, dated June 12, 2008; and Bombardier Temporary Revision 2B–2136, dated May 1, 2008, to the Bombardier CL–600–2B19 Maintenance Requirements Manual, Part 2, Appendix B—Airworthiness Limitations; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Temporary Revision 2B–2136, dated May 1, 2008, to the Bombardier CL–600–2B19 Maintenance Requirements Manual, Part 2, Appendix B—Airworthiness Limitations Section, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; 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/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 19, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–28365 Filed 12–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending the Iranian Transactions Regulations to expand the scope of Appendix A to Part 560 to include non-financial as well as financial institutions determined to be owned or controlled by the Government of Iran, and to add to the appendix three non-financial institutions that have been determined to be owned or controlled by the Government of Iran: The National Iranian Oil Company (a.k.a. NIOC), Naftiran Intertrade Company Ltd (a.k.a. NICO), and Naftiran Intertrade Co. (NICO) Sarl.

DATES: *Effective Date:* December 3, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, *tel.:* 202/622–2490, Assistant Director for Licensing, *tel.:* 202/622–2480, Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

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

The Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), implement a series of Executive orders that began with Executive Order 12613, which was issued on October 29, 1987, pursuant to authorities including the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9). In that Order, after finding, *inter alia*, that the Government of Iran was actively supporting terrorism as an instrument of state policy, the President prohibited the importation of Iranian-origin goods and services. Subsequently, in Executive Order 12957, issued on March 15, 1995, under the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), the President declared a national emergency with respect to the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with that threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, to further respond to this threat, the President issued Executive Order 12959, which imposed comprehensive trade and financial sanctions on Iran. Finally, on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

The ITR implement these Executive orders and prohibit various transactions, including, among others, transactions with the *Government of Iran*, a term defined in § 560.304 to include any *entity owned or controlled by the Government of Iran*, which is a term that is itself defined in § 560.313 of the ITR. Since its initial publication in 1999, Appendix A to Part 560 has listed financial institutions that OFAC determined to be entities owned or controlled by the Government of Iran, within the meaning of §§ 560.304 and 560.313 of the ITR. This appendix is intended to assist U.S. persons in complying with the ITR. OFAC is expanding the scope of appendix A to include all categories of entities, not just financial institutions. This change will allow OFAC to give notice when it determines that any entity is owned or controlled by the Government of Iran.

OFAC is expanding the scope of appendix A today in order to add the National Iranian Oil Company (a.k.a. NIOC), Naftiran Intertrade Company Ltd (a.k.a. NICO), and Naftiran Intertrade Co. (NICO) Sarl to the appendix as entities that are owned or controlled by the Government of Iran within the meaning of §§ 560.304 and 560.313 of the ITR. The ITR prohibit most transactions with any entity, wherever located, that is owned or controlled by the Government of Iran.

It is important to note that Appendix A to Part 560 is not a comprehensive list of entities owned or controlled by the Government of Iran. Even if an entity is not listed in appendix A, if it is owned or controlled by the Government of Iran, U.S. persons are prohibited from engaging in transactions with that entity, in any of its locations worldwide, to the same extent that U.S. persons are prohibited from engaging in transactions

with the entities listed in appendix A. A U.S. person also is prohibited from engaging in most transactions with entities located in Iran that are not owned or controlled by the Government of Iran. Finally, please be aware that certain entities listed in Appendix A to Part 560 may be subject to further sanctions under other sanctions programs.

Public Participation

Because the amendment of the ITR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

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

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Banks, Banking, Brokers, Foreign trade, Investments, Loans, Securities, Iran.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 560 as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation of part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; Pub. L. 110–96, 121 Stat. 1011; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

■ 2. Amend Appendix A to Part 560 by revising the heading and introductory text, as well as redesignating paragraphs 19 and 20 as 22 and 23, respectively, and adding new paragraphs 19, 20, and 21, to read as follows:

Appendix A to Part 560—Entities Determined To Be Owned or Controlled by the Government of Iran

This non-exhaustive appendix lists entities determined by the Office of Foreign Assets Control (''OFAC'') to be *entities owned or controlled by the Government of Iran* within the meaning of §§ 560.304 and 560.313 of this part 560. The entities listed below are considered to be *entities owned or controlled by the Government of Iran* when they operate not only from the locations listed below, but also from any other location. The names and addresses are subject to change. This part 560 contains prohibitions against engaging in most transactions with entities owned or controlled by the Government of Iran, whether such entities are located or incorporated inside or outside of Iran. Moreover, regardless of whether an entity is listed below, if the entity is owned or controlled by the Government of Iran, the prohibitions on engaging in transactions with the entity, wherever located worldwide, apply to the same extent they would apply if the entity were listed in this appendix. Note that the prohibitions in this part 560 also apply to transactions with entities located in Iran that are not owned or controlled by the Government of Iran. Finally, please be aware that certain entities listed in this appendix may be subject to further sanctions under other sanctions programs.

* * * * *

19. NATIONAL IRANIAN OIL COMPANY, (a.k.a. NIOC) Hafez Crossing, Taleghani Avenue, P.O. Box 1863 and 2501, Tehran, Iran
20. NAFTIRAN INTERTRADE COMPANY LTD, (a.k.a. NICO); a.k.a. Naft Iran Intertrade Ltd, 22 Grenville St, St Helier, Jersey Channel Islands JE4 8PX, United Kingdom; 22 Grenville St, St Helier, Jersey, Channel Islands JE2 4UF, United Kingdom; 5th floor, Petro Pars Building, Saadat Abad Avenue, No. 35, Farhang Blvd, Tehran, Iran
21. NAFTIRAN INTERTRADE CO. (NICO) Sarl, 6, Avenue de la Tour Haldimand, 1009 Pully, VD, Switzerland

* * * * *

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E8–28711 Filed 12–3–08; 8:45 am]

BILLING CODE 4811–45–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1045, 1054, and 1065

[EPA–HQ–OAR–2004–0008; FRL–8712–8]

RIN 2060–AM34

Control of Emissions From Nonroad Spark-Ignition Engines and Equipment

Correction

In rule document E8–21093 beginning on page 59034 in the issue of Wednesday, October 8, 2008, make the following corrections:

§ 1045.205 [Corrected]

1. On page 59205, in the third column, in § 1045.205(q), in the fifth line, ''CO2'' should read ''CO_2''.

§ 1045.315 [Corrected]

2. On page 59212, in the second column, in § 1045.315(b), the equation should read as follows:

''$C_i = \text{Max}\ [0 \text{ or } C_{i-1} + X_i - (\text{STD} + 0.25 \times \sigma)]$''

3. On the same page, in the same column, in § 1045.315(f), in the fourth line, ''5.0 x σ'' should read ''5.0 × σ''.

§ 1054.112 [Corrected]

4. On page 59264, in the first column, in § 1054.112(b)(2), in the first line, ''m2 day'' should read ''m^2/day''.

§ 1065.370 [Corrected]

5. On page 59329, in the first column, in § 1065.370(c), in the third line, ''± 3% or less'' should read ''± 2% or less''.

[FR Doc. Z8–21093 Filed 12–3–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[LLWO32000.L13300000.PO0000.24–1A]

RIN 1004–AE00

Mining Claims Under the General Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this interim final rule to amend the BLM's regulations for Mining Claims under the General Mining Laws. The rule responds to a Federal district court decision that required the BLM to evaluate whether the regulations

comply with Congress's policy goal for the United States to receive fair market value for the use of the public lands and their resources. The interim final rule makes it clear that, other than processing fees, location fees, and maintenance fees provided for in 43 CFR parts 3800 and 3830, the BLM does not require any other fees for surface use of the public lands for mining purposes.

DATES: *Effective date:* The interim final rule is effective December 4, 2008.

Comment deadline: You should submit your comments on the interim final rule on or before February 2, 2009. The BLM may not necessarily consider or include in the administrative record for the interim final rule comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**).

ADDRESSES: Mail: Director (630), Bureau of Land Management, U.S. Department of the Interior, Mail Stop 401 LS, 1849 C St., NW., Washington, DC 20240, Attention: 1004–AD69.

Personal or messenger delivery: 1620 L Street, NW., Washington, DC 20036.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Scott Haight at (406) 538–1930 for information relating to the surface management program or the substance of the notice, or Ted Hudson at (202) 452–5042 for information relating to the rulemaking process generally. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Why We Are Publishing This Rule?
IV. Section-by-Section Analysis
V. Procedural Matters

I. Public Comment Procedures

A. How do I comment on the notice?

If you wish to comment, you may submit your comments by any one of several methods:

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, Director (630), Mail Stop 401 LS, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Attn: 1004–AD69.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.
- You may access and comment on the notice at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Written comments on the interim final rule should be specific, should be confined to issues pertinent to the interim final rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment is addressing.

The BLM may not necessarily consider or include in the Administrative Record for the notice comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

You may examine documents pertinent to this interim final rule as follows. Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: ''Personal or messenger delivery'' during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. They will also be available at the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions at this Web site.

C. Can my name and address be kept confidential?

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. Mail your comment to: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 40l LS, 1849 C Street, NW., Attention: 1004–AD69, Washington, DC 20240.

You may deliver comments to: Room 401, 1620 L St., NW., Washington, DC 20036.

II. Background

In 2003, a Federal district court substantially upheld the BLM's surface management regulations in 43 CFR subpart 3809, but remanded them in part to the Department ''for evaluation, in light of Congress's expressed policy goal for the United States to 'receive fair market value of the use of the public lands and their resources.' '' The district court concluded that ''[o]perations neither conducted pursuant to valid mining claims nor otherwise explicitly protected by [the Federal Land Policy and Management Act of 1976 (FLPMA)] or the Mining Law (i.e., exploration activities, ingress and egress, and limited utilization of mill sites) must be evaluated in light of Congress's expressed policy goal for the United States to 'receive fair market value of the use of the public lands and their resources.' '' *Mineral Policy Center* v. *Norton,* 292 F. Supp. 2d 30, 51 (D.D.C. 2003). The court remanded the regulations to the Department to evaluate the competing priorities set forth in FLPMA as applied to invalidly claimed or unclaimed lands ''in light of Congress's expressed policy goal for the United States to 'receive fair market value of the use of public lands and their resources.' '' *Id.*

On February 23, 2007, the BLM published an advance notice of proposed rulemaking (ANPR) to assist the BLM in the evaluation ordered by the court (71 FR 8139). The ANPR requested public comments regarding whether any miners or mining companies in fact use unclaimed lands for such mining operations. The BLM asked for detailed examples of any such use so that it could determine whether it needed to conduct further evaluation of FLPMA's competing priorities with regard to any mining operations that go beyond exploration activities on unclaimed lands. The absence of comments providing such examples suggests that the BLM's belief is correct that no mining operations amounting to more than initial exploration activities occur on unclaimed Federal lands under the Mining Law. (The comments we received are discussed fully below.) Consequently, the BLM has determined that there is no use of the surface of invalidly claimed or unclaimed lands for mining purposes, amounting to more than initial exploration activities, for which BLM must consider charging fair market value.

The BLM received 958 comments in response to the ANPR. The comments expressed opinions on whether the BLM had the authority to implement regulations to obtain fair market value for the use of unclaimed lands for mining purposes.

The great majority of the comments appeared in identical form e-mails, and read as follows:

''In 2003, a court ordered the Bureau of Land Management to require fair market value for operations conducted on lands not subject to valid claims or unclaimed lands. This would require mining companies to

comply with the current mining law and demonstrate the validity of their mining claims.

''In the advance notice of proposed rulemaking issued February 23, the BLM argued that it is not 'practical' to undertake claim validity examinations to determine whether or not a mining company has staked valid claims under the 1872 Mining Law. It appears the BLM plans to just ignore the fact that there may be mining companies that are violating the law by operating on unclaimed or invalidly claimed lands.

''Please do not permit the BLM to allow mining companies to violate the 1872 Mining Law—an antiquated law that has already caused tremendous harm to western lands and water resources—instead of compelling mining companies to comply with the law and demonstrate the validity of their mining claims.

''Instead of allowing mining companies to thwart the law, the BLM should do everything it can to make sure that all mining occurs on valid claims.''

Most of the other comments presented variations on these positions, or general statements favoring or opposing the Mining Law. (The latter issue is beyond the scope of this rule.) Others opposed any imposition of fair market value charges on mining operations.

As we stated in the ANPR, ''[t]he court's decision in *Mineral Policy Center* did not address the use of lands on which mining claims of unknown validity exist.'' Nevertheless, we discussed in the ANPR and discuss in the next section of this preamble the budgetary and other practical reasons why the BLM does not routinely undertake validity examinations of all mining claims.

Public lands are generally open to the operation of the Mining Law, unless they are statutorily or administratively withdrawn from such use. A mining claim on lands that are open to the operation of the Mining Law and that is determined invalid by the BLM remains open for relocation by the original claimant or another claimant.

On the other hand, withdrawn lands are usually withdrawn subject to valid existing rights. Under the BLM's regulations, a mining claim that was located before a withdrawal is automatically subject to a validity examination when the claimant files a plan of operations under 43 CFR 3809.11 or a notice under 43 CFR 3809.21. See 43 CFR 3809.100. A validity examination is also triggered when a mining claimant files a patent application under 43 CFR part 3860. See 43 CFR 3862.1–1. Also, when anyone attempts to use a mining claim for purposes not contemplated by the Mining Law, the BLM treats that use as a trespass and will conduct a validity examination of the mining claim. In these ways, the BLM prevents abuse of the Mining Law.

The ANPR specifically requested that comments provide examples of uses of unclaimed lands for mining operations that go beyond exploration activities on the public lands. None of the comments provided any past or current examples of miners or mining companies using unclaimed lands for such mining operations under the Mining Law. One comment purported to describe such an example, but upon further investigation the mining operation described did not occur on unclaimed lands. Other comments described activities in support of mining, such as access and storage. However, when these ancillary uses are conducted in relation to mining claims or mill sites, they need not be evaluated in light of FLPMA's fair market policy. As noted in the ANPR, Judge Kennedy of the Federal district court concluded that the Mining Law authorizes operations, including possession, occupancy, and mineral extraction activities, without payment of fair market value for that use (292 F. Supp. 2d at pages 47 and 51). The court also concluded that the Mining Law authorizes exploration activities, mill site use, and ingress and egress to mining claims (id.). None of the comments presented factual scenarios in which such ancillary uses took place in association with operations on unclaimed lands that amount to more than initial exploration activities.

The response to the ANPR with regard to the use of unclaimed lands for mining operations was consistent with the BLM's expectations. The BLM is not aware of any miner or mining company that would be willing to invest money or resources in the development of a mine without some tenure in the land in the form of a mining claim or mill site. If a mining company were to file a plan of operations to extract minerals from unclaimed lands, a third party could easily locate mining claims over the area and assert adverse rights to the lands. Consequently, the fact that none of the handful of comments addressing the issues raised in the ANPR presented an example of an operator engaging in more than initial exploration on the public lands without a mining claim or mill site was not surprising.

This is an interim final rule. Although the rule is effective upon publication, there is a 60-day comment period that starts on the date of publication. After the comment period, we will review the comments and may issue a further final rule with any necessary changes.

Because this rule makes no substantive change in any rule or requirement, the BLM for good cause finds that notice and public comment are unnecessary and the rule may take effect upon publication pursuant to 5 U.S.C. 553(b)(B) and 553(d)(3).

III. Why We Are Publishing This Rule

As previously noted, the court concluded that the Mining Law authorizes operations, including possession, occupancy, and mineral extraction activities, on valid mining claims without payment of fair market value for that use (*Mineral Policy Center*, 292 F. Supp. 2d at page 51). The court instructed the BLM to evaluate whether the fair market value policy in FLPMA should be applied to ''invalidly claimed or unclaimed lands.''

The BLM is not aware of any mining operations taking place on ''invalidly claimed'' public lands (i.e., public lands where BLM has determined that the claims or sites are invalid) or unclaimed public lands (i.e., lands where there are no mining claims or mill sites). Because there are no mining operations occurring on unclaimed lands or lands determined to be invalidly claimed, the BLM concludes that there is nothing to evaluate in light of the fair market value policy.

For mining operations occurring on claimed lands, the BLM is publishing this rule to make it clear that mine operators are not required to pay any fee to use the surface of public lands for mining operations conducted under the Mining Law, other than the fees that mining claimants already pay in the form of the maintenance fee, the claim location fee, and services charges for other transactions associated with mining claims (see 43 CFR 3830.21).

As discussed above and in the ANPR, the BLM does not routinely undertake validity examinations for all mining claims located under the Mining Law. Even though the validity of most mining claims is unknown, the BLM treats all properly maintained mining claims as active claims. The BLM requires all mining claimants to comply with the statutory recording and maintenance requirements, as well as the prohibition against causing unnecessary or undue degradation of the public lands. The requirements to maintain a claim's active status include timely payment of location fees and annual maintenance fees. By law, claimants must pay the fees without regard to whether the BLM has determined the underlying validity of the claims.

Because Congress authorizes mining claimants to locate mining claims under the Mining Law and maintain them by making annual payments to the BLM while the validity of the claims is unknown or undetermined, the BLM

has concluded that it may not apply FLPMA's fair market value policy to approved mining operations that occur on mining claims of unknown validity. Likewise, the BLM has concluded that it may not apply FLPMA's fair market value policy to approved mining operations that occur on mining claims of known validity.

The BLM believes that its conclusions comport with the fair market value policy of FLPMA, which establishes a goal of receiving fair market value of the use of the public lands ''unless otherwise provided by statute.'' The Supreme Court has acknowledged that the Mining Law allows ''citizens to go onto unappropriated, unreserved public land to prospect for and develop certain minerals.'' *United States* v. *Locke*, 471 U.S. 84, 86 (1985). In particular, the Supreme Court has explained that the Mining Law ''extends an express invitation to all qualified persons to explore the lands of the United States for valuable mineral deposits, and * * * [t]hose who, being qualified, proceed in good faith to make such explorations and enter peaceably upon vacant lands of the United States for that purpose are not treated as mere trespassers, but as licensees or tenants at will.'' *Union Oil Co.* v. *Smith*, 249 U.S. 337, 346 (1919). The Ninth Circuit also has stated, ''Under the wise and beneficent policy of the government of the United States, all its public lands were thrown open to its citizens, and those who had declared their intention to become such, for exploration for the precious minerals and development thereof.'' *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 112 F. 4, 13 (9th Cir. 1901). The Mining Law has authorized public land use for mineral exploration and development without any requirement to pay fair market value for that use. Therefore, based on the express terms of FLPMA's policy statement, that use is exempt from FLPMA's fair market value policy and this rule adds a provision making it clear that, other than processing fees, location fees, and maintenance fees provided for in 43 CFR parts 3800, 3830, and 3834, the BLM does not require any other fees for surface use of the public lands for mining purposes.

Moreover, FLPMA states that its policies will become effective ''only as specific statutory authority for their implementation is enacted by [FLPMA] or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.'' 43 U.S.C. 1701(b). FLPMA did not enact specific authority requiring fair market value payments for mining uses of the public lands. However, Congress has enacted subsequent legislation that requires mining claimants to pay for the use of public lands encumbered with mining claims and mill sites through the maintenance fee. When Congress proposed the mining claim maintenance fee, the stated purpose was to generate some financial return to the public for use of Federal lands and the disposition of valuable mineral resources from those lands. See, e.g., 139 Cong. Rec. E 64 (Jan. 5, 1993). Since 1992, the BLM has collected over $300 million from mining claimants in maintenance fee payments for their use of the public lands for mining purposes. Congress has therefore addressed FLPMA's fair market value policy through specific statutory authority requiring annual maintenance fee payments for mining claims and mill sites.

IV. Section-by-Section Analysis

Section 3800.6 Am I required to pay any fees to use the surface of public lands for mining purposes?

This interim final rule adds section 3800.6, which states that anyone who is using the surface of public lands for mining purposes is not required to pay any fee for that use, other than the processing fees, location fees, and maintenance fees currently required.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This interim final rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This interim final rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. This interim final rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This interim final rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. This rule makes no substantive change in any rule or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise provided by statute or regulation.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this interim final rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the interim final rule clearly stated?
2. Does the interim final rule contain technical language or jargon that interferes with its clarity?
3. Does the format of the interim final rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example § 3800.6. Am I required to pay any fees to use the surface of public lands for mining purposes?)
5. Is the description of the interim final rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final rule? How could this description be more helpful in making the interim final rule easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has determined that this interim final rule, which makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise provided by statute or regulation, is a regulation of an administrative, financial, legal, technical, or procedural nature. Therefore, it is categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the interim final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures

adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule makes no substantive change in any rule or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation. We have identified no entity that has carried out or proposes to carry out mining operations on unclaimed land. The rule affirms that the BLM will not charge fair market value for mining use of unclaimed land, use that does not occur because there are strong practical disincentives. Therefore, the BLM has determined under the RFA that this interim final rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This interim final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule makes no substantive change in any regulation or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation.

Unfunded Mandates Reform Act

This interim final rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector, in the aggregate, of $100 million or more per year; nor does this interim final rule have a significant or unique effect on state, local, or tribal governments. The rule imposes no requirements on any of these entities. We have already shown, in the previous paragraphs of this section of the preamble, that this interim final rule will not have effects approaching $100 million per year on the private sector. Therefore, the BLM does not need to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This interim final rule is not a government action capable of interfering with constitutionally protected property rights. This rule makes no substantive change in any regulatory provision or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property and does not require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The interim final rule 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 levels of government. It does not apply to states or local governments or state or local governmental entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this interim final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, we have determined that this interim final rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this interim final rule does not include policies that have tribal implications. This rule makes no substantive change in any regulatory provision or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation.

Information Quality Act

In developing this interim final/final rule, we did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (section 515 of Public Law 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that the interim final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule makes no substantive change in any regulatory provision or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation.

Executive Order 13352—Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this interim final rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety. This rule makes no substantive change in any regulatory provision or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation.

Paperwork Reduction Act

These regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

Author

The principal author of this notice is Scott Haight of the Lewistown Field Office, Montana, assisted by Ted Hudson of the Division of Regulatory

Affairs, Washington Office, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure; Environmental protection; Intergovernmental relations; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

Dated: November 14, 2008.

C. Stephen Allred,

Assistant Secretary of the Interior, Land and Minerals Management.

■ For the reasons stated in the Preamble, and under the authorities stated below, the BLM amends 43 CFR part 3800 as follows:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

■ 1. Revise the authority citation for part 3800 to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 22–42, 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. No. 97–35, 95 Stat. 357.

Subpart 3800—General

■ 2. Add § 3800.6 to read as follows:

§ 3800.6 Am I required to pay any fees to use the surface of public lands for mining purposes?

You must pay all processing fees, location fees, and maintenance fees specified in 43 CFR parts 3800 and 3830. Other than the processing, location and maintenance fees, you are not required to pay any other fees to the BLM to use the surface of public lands for mining purposes.

[FR Doc. E8–28741 Filed 12–3–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2007–0006; 92210–1117–0000–B4]

RIN 1018–AU93

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for 12 Species of Picture-Wing Flies From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for 12 species of Hawaiian picture-wing flies (*Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. neoclavisetae*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 8,788 acres (ac) (3,556 hectares (ha)) fall within the boundaries of the final critical habitat designation. The critical habitat is located in four counties (City and County of Honolulu, Hawaii, Maui, and Kauai) in Hawaii.

DATES: This final rule becomes effective on January 5, 2009.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat are available on the Internet at *http://www.regulations.gov*. Supporting documentation we used in preparing this final rule will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850; telephone 808–792–9400; facsimile 808–792–9580.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**); telephone 808–792–9400; facsimile 808–792–9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this final rule. For additional information on the 12 Hawaiian picture-wing flies, refer to the final listing rule published in the **Federal Register** on May 9, 2006 (71 FR 26835), the revised proposed critical habitat rule published in the **Federal Register** on November 28, 2007 (72 FR 67428), and the recovery outline for the 12 Hawaiian picture-wing flies available on the Internet at *http://www.fws.gov/Pacific/ecoservices/endangered/recovery/documents/Drosophilarecoveryoutline-final.pdf.*

Previous Federal Actions

On November 28, 2007, we published a revised proposed rule in the **Federal Register** to designate critical habitat for the 12 Hawaiian picture-wing flies (72 FR 67428). The publication of the revised proposal opened a 60-day public comment period, which closed on January 28, 2008. On March 6, 2008, we published a document in the **Federal Register** announcing the reopening of the public comment period until April 25, 2008, and a notice of two public hearings (73 FR 12065). On April 4, 2008, we held a public hearing in Hilo, Hawaii, and on April 10, 2008, we held a public hearing in Honolulu, Hawaii. On August 12, 2008, we published a document in the **Federal Register** (73 FR 46860) announcing the availability of the draft economic analysis of the proposed critical habitat designation and reopening the public comment period until September 11, 2008. For more information on previous Federal actions concerning the 12 species of Hawaiian picture-wing flies, refer to the proposed designation of critical habitat published in the **Federal Register** on August 15, 2006 (71 FR 46994), and the final rule to list 11 picture-wing flies as endangered and one picture-wing fly as threatened published in the **Federal Register** on May 9, 2006 (71 FR 26835).

Summary of Comments and Recommendations

During the comment period that opened on November 28, 2007, and closed on January 28, 2008 (72 FR 67428), we received 10 comments, including 2 requests for public hearings. Three comments were from peer reviewers, three were from State of Hawaii agencies, and four were from nongovernmental organizations or individuals. During the comment period that opened on March 6, 2008, and closed on April 25, 2008 (73 FR 12065), we received nine comments from organizations or individuals. We also conducted public hearings in Hilo on the Island of Hawaii and in Honolulu on the Island of Oahu, Hawaii. During the comment period that opened on August 12, 2008, and closed on September 11, 2008 (73 FR 46860), we received seven comments. Three comments were from individuals (which includes two individuals that presented testimony at the public hearing in Honolulu, Hawaii on April 10, 2008), one comment was from the U.S. Navy, and three comments were received from the State of Hawaii Division of Forestry and Wildlife, Office of Hawaiian Affairs, and the State Historic Preservation Office.

Twelve comments supported the designation of critical habitat for the Hawaiian picture-wing flies and four opposed the designation. Two comments were received from individuals expressing general views on the Endangered Species Act, but were unrelated to the proposed designation of

critical habitat. We received two comments objecting to the exemption of military lands under section 4(a)(3) of the Act, and one comment requesting that we exclude a portion of one critical habitat unit based on ongoing private conservation activities. All comments that we received were reviewed for substantive issues and new information regarding the proposed critical habitat designation for the 12 Hawaiian picture-wing fly species. All comments that we received have been fully considered in the final rule.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 15 knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of the peer reviewers, as are discussed below.

Peer Reviewer Comments

(1) *Comment:* Three peer reviewers recommended that the critical habitat designation include additional areas for 7 of the 12 picture-wing fly species (*Drosophila hemipeza, D. heteroneura, D. montgomeryi, D. neoclavisetae, D. obatai, D. substenoptera,* and *D. tarphytrichia*). The additional areas that they recommended are either within historical habitat, or within potentially suitable habitat that has not been surveyed that is located adjacent to occupied habitat. These peer reviewers stated that the amount of habitat or the number of units we proposed is insufficient to provide for conservation of the species, and that the inclusion of additional lands adjacent to the areas proposed would improve the likelihood of conserving the species. The peer reviewers stated that for some species, the lands adjacent to the proposed units contain habitat that is known or likely to contain relatively intact native forest. Some peer reviewers stated that the designation of additional lands adjacent to the proposed critical habitat units may help preserve the species' historical distribution or facilitate dispersal between localized subpopulations. Some peer reviewers also recommended that we include unsurveyed areas believed to support undocumented populations of picture-wing species, and that we include areas that are likely to support host plant populations.

Our Response: The Act defines critical habitat as:

- The specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
- Specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. The Act also states that ''Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.''

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Although the peer reviewers recommended areas to add to the critical habitat designation, they did not provide information on habitat suitability or why they believed that the recommended areas contained the physical and biological features essential to the conservation of these species.

The areas recommended by the peer reviewers are either unoccupied or they have not been surveyed. We did not include areas that were not occupied at the time of listing because: (1) It is unclear why the species were extirpated from previously occupied areas; and (2) we could not conclude from the available data whether or not the previously occupied areas currently support, or even could support in the future, the physical and biological features (including their host plants) essential for the conservation of the species. Furthermore, some of the areas recommended for inclusion have never been surveyed for the flies, nor surveyed for the presence of host plants. Therefore based on the available information, we are unable to conclude that these areas were occupied at the time of listing, or that they contain the physical and biological features essential for the conservation of the species.

We used the best available, most recent survey data for adult flies to determine which sites we would identify as occupied and which sites we would identify as unoccupied. The primary dataset we used to document observations of these 12 picture-wing flies spans the years 1965–1999 (K. Kaneshiro, in litt. 2005a, pp. 1–16). We also reviewed a variety of peer-reviewed and other articles for this final rule, which included background information on the biology of each of the 12 species. Additional data were obtained from personal communications with landowners, scientists, and land managers familiar with particular species and locations. Specific information from all of these sources included estimates of historic and current distribution, abundance, and territory sizes for the 12 species, as well as information on habitat requirements. The physical and biological features essential to the conservation, or primary constituent elements (PCEs), of the 12 picture-wing flies include both the host plants used by the larvae, as well as the native forest components used by foraging adults. We used known adult location data to identify each critical habitat unit, and included the surrounding area encompassing the physical and biological features essential to the conservation of the species. We did not include within this critical habitat designation sites in which a species had been observed according to the most recent survey data but that did not include the PCEs.

Based on the best available information, we believe that our final designation accurately encompasses sufficient areas for the conservation of the 12 Hawaiian picture-wing fly species. Therefore, we have not included the additional areas proposed by the peer reviewers. However, surveying historical habitat sites and adjacent potentially suitable habitat for extant populations of picture-wing flies and host plants will be a high priority during the recovery planning process, and we may consider amending the critical habitat designation at that time if new information indicates that these areas are essential to the recovery of these species.

(2) *Comment:* One peer reviewer commented that the Waiea Tract, which is adjacent to the proposed *Drosophila heteroneura*—Unit 2—Kona Refuge on the Island of Hawaii, contains higher densities of Clermontia sp. (the species' primary host plant) than the area that we proposed as critical habitat. The peer reviewer stated that the Waiea Tract should therefore be a high priority for conservation.

Our Response: The peer reviewer did not present scientific data with which we could evaluate whether the Waiea Tract includes areas that contain the physical and biological features essential to the conservation of *D. heteroneura,* or whether the areas currently proposed for designation for this species are inadequate. The Act defines critical habitat in part as areas containing the physical or biological features (PCEs) essential to the conservation of the species. To determine what is essential, we

determine the amount and spatial arrangement of PCEs necessary to recover the species. We believe that the areas designated in this rule will adequately provide for the conservation and recovery of the species; that is, the currently designated areas provide the PCEs in the quantity and configuration sufficient to meet the conservation and recovery needs of the species. Although the Waiea Tract is known to be occupied and contains high densities of *Clermontia* species, we do not believe this additional area is essential to the conservation of *D. heteroneura.* We proposed a total of 4,628 ac (1,855 ha) of critical habitat for *Drosophila heteroneura,* which includes 3,604 ac (1,459 ha) of lands adjacent to the Waiea Tract (*Drosophila heteroneura*—Unit 2—Kona Refuge). Based on the best scientific data available, we believe these areas accurately encompass the areas necessary for the conservation of *D. heteroneura* as required by the Act.

(3) *Comment:* One peer reviewer stated that the absence of nonnative wasps (Vespula sp.) within suitable habitat should be included as a primary constituent element for *Drosophila heteroneura.* This peer reviewer stated that based on field surveys, nonnative wasps are capable of entirely excluding *D. heteroneura* from habitat that is otherwise suitable.

Our Response: Primary constituent elements are those physical and biological features that are essential to the conservation of a species and that may require special management considerations or protection (50 CFR 424.12(b)). Predation by nonnative wasps has been identified as a significant threat to the 12 picture-wing fly species, and we intend to pursue recovery actions to minimize the impacts of nonnative wasps in currently occupied habitat and in areas within the flies' historical range. However, we disagree that the absence of predatory wasps should be included as a primary constituent element, since management strategies to address this specific threat remain to be developed.

(4) *Comment:* Two peer reviewers stated that since each of the 12 Hawaiian picture-wing flies feed within decomposing portions of their host plants, critical habitat should encompass all host plant life stages (e.g., from seedlings to senescent individuals), and be large enough to support healthy, reproducing host plant populations. One peer reviewer also recommended that reproducing host plant populations be included as a primary constituent element.

Our Response: Based on the best scientific data available, we believe that the areas designated as critical habitat in this final rule are large enough to provide for all host plant life stages (see our response to Comment (1), above, for a discussion about the information we used to designate critical habitat for the 12 Hawaiian picture-wing flies). We agree with the peer reviewer that including reproducing host plant populations as an additional primary constituent element for each of the 12 Hawaiian picture-wing fly species would improve precision in identifying the physical and biological features essential to the conservation of a species in the field. Accordingly, we have incorporated this recommendation into this final rule, although the addition of this new primary constituent element did not result in any boundary changes to any of the designated critical habitat units.

(5) *Comment:* One peer reviewer emphasized that additional in-field management activities are necessary on the Island of Oahu to protect *Urera glabra* and *U. kaalae*, which are host plants for *Drosophila aglaia, D. hemipeza*, and *D. montgomeryi*.

Our Response: We agree that management of the remaining Urera spp. populations on the Island of Oahu is necessary to prevent their continued decline and to support the long-term conservation of *Drosophila aglaia, D. hemipeza,* and *D. montgomeryi.* On a broader scale, specific management actions that relate to the conservation of host plants for each of the 12 Hawaiian picture-wing fly species will likely be an important recovery task as recovery plans and other conservation programs are developed. However, identifying specific management is beyond the scope of this final critical habitat designation.

(6) *Comment:* One peer reviewer noted that the proposed rule lacks a formal analysis of how the critical habitat proposed for the 12 picture-wing flies will function under different scenarios of climate change. The reviewer suggested that the designation should take into account the potential for shifting distributions of both the picture-wing flies and their host plants along natural temperature and moisture gradients in response to climate change.

Our Response: Although we agree that the impact of climate change to the distribution of picture-wing flies and their host plant populations is a potential concern, the effects of climate change are difficult to predict at the local or regional level. In addition, future changes in precipitation are uncertain because they depend in part on how El Niño (a disruption of the ocean atmospheric system in the Tropical Pacific having important global consequences for weather and climate) might change, and reliable projections of changes in El Niño have yet to be made (Hawaii Climate Change Action Plan 1998, pp. 2–10). As such, we do not have sufficient scientific information with which to formally analyze the potential effects of climate change on the Hawaiian picture-wing flies and their habitat at this time. To the extent that climate change leads to a future shift in the location of the PCEs for these species, we would need to address that in future critical habitat revisions.

Federal Agency Comments

(7) *Comment:* The U.S. Navy, on behalf of the National Aeronautics and Space Administration requested that we exclude parts of Kokee Sites B and D that intersect the proposed critical habitat. They characterized the areas as being fenced and developed, stating that these areas would be unlikely to support Hawaiian picture-wing flies. They also advised that they planned to survey for the endangered fly, *Drosophila musaphila,* at the Kokee Sites to determine its presence or absence, and that measures to benefit the fly will be included in the Pacific Missile Range Facility Integrated Natural Resources Management Plan if the fly is discovered.

Our Response: We have attempted to exclude manmade structures using aerial photos and other available imagery. However, we were not always able to successfully exclude these structures from critical habitat maps because the resolution of our imagery does not allow us to locate small structures. Existing manmade features and structures within the boundaries of the areas mapped as critical habitat, such as buildings, roads, existing fences, telecommunications equipment towers and associated structures and equipment, communication facilities and regularly maintained associated rights-of-way, radars, telemetry antennas, paved areas, and other landscaped areas, do not contain one or more of the primary constituent elements described for *D. musaphilia.* Accordingly, the text of the rule makes clear that these types of areas are not included in the critical habitat designation, even if they occur within the boundary of the mapped critical habitat unit *Drosophila musaphilia*—Unit 1—Kokee.

Comments From the State of Hawaii

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his

failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State regarding the proposal to designate critical habitat for *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia* are addressed below.

(8) *Comment:* The State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) supported the critical habitat designations on private lands, provided the designations have landowner support. The DOFAW commented that it supports the targeted site-specific approach to designate critical habitat within larger areas being managed for watershed and native species protection and restoration of native ecosystems, and agrees with the proposals for the islands of Kauai, Oahu, and Molokai where designations are proposed on DOFAW lands. It requested additional review and coordination on sites proposed on DOFAW forest reserves on the Island of Hawaii that are included in the Tri-Mountain Watershed Partnership and Kohala Mountain Watershed Partnership for possible exclusion based on their protected status and adequacy of their management programs. It also requested that site visits be conducted for all areas proposed as critical habitat to confirm the adequacy of the site, to confirm appropriateness for exclusion, and to locate boundaries. Finally, it suggested that the critical habitat designation process could be improved if done concurrently with recovery planning. In addition, DOFAW stated that critical habitat designations for host plants may be adequate to meet the needs of the picture-wing flies.

Our Response: We appreciate and commend the State's implementation of management plans that benefit the Hawaiian picture-wing flies' critical habitat areas that we are designating in this final rule. The Secretary has discretion to exclude lands that have been proposed under section 4(b)(2) of the Act, upon a determination that the benefits of such exclusion outweigh the benefits of specifying a particular area as part of the critical habitat (unless the failure to designate such an area would result in the extinction of the species). We have fully considered the State's request that we exclude certain parts of its lands from critical habitat designation. However, the units we are designating in this final rule meet the definition of critical habitat, contain the PCEs that are essential to the conservation of these species, and require special management. In addition, based on our economic analysis and the best available information, we are unaware of any substantive economic or other relevant impacts that would result from such designation on State lands. Accordingly, we have not excluded the State lands from the designation of critical habitat. On May 12, 2008, and September 17, 2008, we met with DOFAW personnel regarding their comments on the proposed critical habitat units on the Island of Hawaii. The State provided us with a copy of the 2008 Waiakea Timber Management Map, which was developed based on their 1997 timber inventory. This map indicated that portions of two units, (*Drosophila mulli*—Unit 3—Waiakea Forest [373 acres/151 ha], and *Drosophila mulli*—Unit 2—Stainback Forest [76 acres/31 ha]), were planted in the 1960s with several timber crop species including *Eucalyptus sp., Flindersia brayleyana* (Queensland maple), and *Toona ciliata* (Australia red cedar). The DOFAW staff advised us that *Drosophila mulli's* host plant (*Pritchardia beccariana*) is scattered within the timber-planted areas and within the above critical habitat units. Although the two critical habitat units encompass areas planted with *Eucalyptus* sp. and other nonnative timber species, they contain the primary constituent elements, are occupied by *D. mulli,* and incorporate the physical and biological features essential to the conservation of this species.

We agree that the process of designating critical habitat may be improved if it were completed concurrently with the development of a recovery plan. However, the Act and its implementing regulations require that we specify critical habitat to the maximum extent prudent and determinable at the time a species is proposed for listing (50 CFR 424.12(a)). In the case of the 12 picture-wing flies, we are also under a court-ordered deadline to complete the critical habitat designations by November 15, 2008 (*Center for Biological Diversity* v. *Allen,* CV–05–274–HA).

During the development of the revised proposed rule, we aligned the proposed critical habitat areas with areas that were already designated as critical habitat for other species to the maximum extent practicable on State and private lands. On the Island of Oahu, critical habitat has only been designated for one plant (*Urera kaalae*), which is a host plant for *Drosophila hemipeza* and *D. montgomeryi*. There is no designated critical habitat for the host plants of *D. heteroneura, D. mulli,* and *D. ochrobasis* on the Island of Hawaii. Therefore, we were not able to align existing host plant critical habitat with proposed critical habitat for the picture-wing flies on the Island of Hawaii. We believe that the lands designated as critical habitat in this final rule accurately represent areas that will provide for the conservation of the 12 picture-wing flies.

(9) *Comment:* The State of Hawaii Department of Land and Natural Resources, Division of State Parks commented that four areas within the proposed unit *Drosophila musaphilia*—Unit 1—Kokee, appeared to include roads, lawns, and buildings, and other structures. The State presented maps depicting the areas in question, and requested that we remove them from the designation if the primary constituent elements were not present.

Our Response: Our analysis of satellite imagery determined that the developed areas in question are not within the *Drosophila musaphilia*—Unit 1—Kokee critical habitat unit. Accordingly, the area in question is not included in the area that we originally proposed and are herein designating as critical habitat.

(10) *Comment:* The State of Hawaii Office of Hawaiian Affairs commented that they support the reconsideration of the Hawaiian picture-wing fly critical habitat, and that the revised designation more accurately reflects the best scientific data available as required by the Act. The State Historic Preservation Office commented that the designation of critical habitat does not affect historic properties.

Our Response: Based on the best scientific data available, we agree that this final rule more accurately reflects the physical and biological requirements of the 12 Hawaiian picture-wing flies. We also agree that the designation of critical habitat does not affect historic properties.

Public Comments Related to the Military and Exemption of Military Lands From the Designation

(11) *Comment:* Four individuals or non-governmental organizations submitted written comments or testimony at the public hearings stating opposition to the exemption of Oahu military lands from the designation. They also requested that we provide information on our finding that the Oahu Integrated Natural Resources Management Plan will protect the two picture-wing fly species involved (*Drosophila substenoptera* and *D. aglaia*), and that we justify the exemption of military lands from the critical habitat designation.

Our Response: The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) states that ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' Accordingly, those portions of the Integrated Natural Resources Management Plan (INRMP) applicable to areas we were considering for critical habitat designation for *Drosophila aglaia* and *D. substenoptera* were evaluated according to the requirements of section 4(B)(i) of the Act.

The U.S. Army Oahu INRMP for the West Range of the Schofield Barracks Military Reservation was completed in 2000. This INRMP includes several conservation measures that benefit *Drosophila aglaia* and *D. substenoptera.* The measures include: (1) Outplanting of native plants, which provides for the natural forest conditions necessary for adult fly foraging by both species; (2) feral ungulate control, which prevents both direct loss of the larval stage host plants and adult foraging substrate of both species and prevents habitat alteration by feral ungulates; (3) wildland wildfire control, which prevents both loss and alteration of habitat for *D. aglaia*; and (4) nonnative plant control, which prevents habitat alteration for both species. Accordingly, we determined that the plan provides a benefit to *D. aglaia* and *D. subsenoptera*, and we therefore did not designate approximately 78 acres (31 ha) as critical habitat for *D. aglaia* and *D. substenoptera* under section 4(a)(3)(B)(i) of the Act. However, since these areas are important for the recovery of these species, we intend to work closely with the U.S. Army to identify recovery tasks and implement recovery efforts for these two species as recovery plans are developed. The other 10 species of picture-wing flies do not occur on Army land.

(12) *Comment:* One individual provided testimony at a public hearing stating that the military is continually expanding their presence in the Hawaiian Islands at the expense of environmental protection. This commenter cited the recent expansion of training activities by the U.S. Navy and introduction of the U.S. Army's Stryker Brigade as examples.

Our Response: The Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people. In this regard, it is paramount that we work cooperatively with all partners (including the military) to promote environmental stewardship. Although the U.S. Navy training activities and the presence of the U.S. Army Stryker Brigade are beyond the scope of this final critical habitat designation, we look forward to working with them to improve the status of imperiled species on their lands.

Public Comments Related to the Effects of the Designation on Private Landownership

(13) *Comment:* Two individuals provided written comments stating opposition to the designation because they believe it will negatively impact the rights of private landowners. One commenter did not want tax money to contribute to fruit flies stripping fellow citizens of their property rights.

Our Response: The effect of a critical habitat designation is that activities authorized, funded, or carried out by a Federal agency require consultation with the Service under section 7 of the Act to ensure they are not likely to destroy or adversely modify critical habitat. For example, activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) or a section 10(a)(1)(B) permit from us, or activities on private or State lands funded by a Federal agency, such as the Federal Highway Administration or Federal Emergency Management Agency funding, would be subject to the section 7 consultation process. Activities on State, Tribal, local, or private lands that are not carried out, funded, or authorized by a Federal agency are not subject to any regulatory requirements as a result of critical habitat designation. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area, and the designation of critical habitat does not allow government or public access to private lands. Most activities that require a Federal agency to consult with us generally can proceed without modification.

(14) *Comment:* One land manager expressed opposition to the designation of critical habitat on private lands within the proposed *Drosophila neoclavisetae*—Unit 1—Puu Kukui. This commenter questioned whether the current conservation program in place for the Puu Kukui Watershed Preserve by the Maui Land and Pineapple Company might preclude the need for designation in light of the perceived loss of real property rights within the area.

Our Response: We agree with the commenter that developing and maintaining public and private partnerships for species conservation are important. After fully evaluating the Puu Kukui conservation program, we are excluding a portion of the proposed *Drosophila neoclavisetae*—Unit 1—Puu Kukui from the final designation, since the private landowner is proactively managing the area for the conservation benefit of the *D. neoclavisetae* and numerous other listed species. We believe that there is a higher likelihood that beneficial conservation activities will continue if we do not include this area in this critical habitat designation. We have determined that the benefits of exclusion outweigh the benefits of including this area as critical habitat, as is discussed in detail in the ''Exclusions Under Section 4(b)(2) of the Act'' section below.

Other Public Comments

(15) *Comment:* One individual expressed opposition to the listing process that determined Federal status for the 12 Hawaiian picture-wing flies, and criticized the fact that comprehensive surveys were not conducted during the listing process.

Our Response: Our November 28, 2007, proposed rule (72 FR 67428) specifically solicited comments on the proposed critical habitat revision. Comments relating to the May 9, 2006, final listing rule (71 FR 26835) are hereby acknowledged, but are beyond the scope of this final critical habitat designation.

Summary of Changes From the Proposed Rule

In preparing the final critical habitat designation for the 12 Hawaiian picture-wing flies, we reviewed and considered comments from the public and peer reviewers on the November 28, 2007, proposed designation of critical habitat (72 FR 67428), the March 6, 2008, document announcing the public hearings and the reopening of the comment period (73 FR 12065), and the August 12, 2008, document announcing the availability of the draft economic analysis and an amended required determinations section of the proposed rule and the reopening of the comment period (73 FR 46860). As a result of

comments received, we made the following changes to our proposed designation:

(1) The final designation includes the following revision of the primary constituent elements used to identify critical habitat for each of the 12 picture-wing fly species: Populations of the larval stage host plant(s) that exhibit one or more life stages (from seedlings to senescent individuals). This change does not affect the boundaries of the proposed designation.

(2) We have excluded 450 ac (182 ha) of lands owned by the Maui Land and Pineapple Company (MLP) that we proposed as critical habitat for *Drosophila neoclavisetae*, within the *Drosophila neoclavisetae*—Unit 1—Puu Kukui, from the final designation (see the ''Exclusions under Section 4(b)(2) of the Act'' section of this final rule for further details on this exclusion).

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

(a) essential to the conservation of the species and

(b) 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 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(a)(2) of the Act requires consultation on Federal actions that may affect 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. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an activity that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of the critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. 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 those physical and biological features essential to the conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species. For the 12 Hawaiian picture-wing flies, we have determined that it is not necessary to designate critical habitat in unoccupied areas, as there are adequate occupied areas that contain the physical and biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our 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 should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may 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.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designation is unimportant or may not promote the recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the Federal agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may require consultation under section 7 of the Act and may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the primary

constituent elements laid out in the appropriate quantity and spatial arrangement for the conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring;

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We derived the specific primary constituent elements required for the 12 species of picture-wing flies from their biological needs, as described in the revised proposed critical habitat rule published in the **Federal Register** on November 28, 2007 (72 FR 67428), and below.

As required by 50 CFR 424.12(b), we are to list the known PCEs with our description of critical habitat. The PCEs provided by the physical and biological features upon which the designation is based may include, but are not limited to, the following: Roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinators, geological formations, vegetation types, tides, and specific soil types.

Primary Constituent Elements (PCEs) for Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera, and D. tarphytrichia

We identified the PCEs for the 12 Hawaiian picture-wing flies based on our knowledge of the life history, biology, and ecology of the species, and the physical and biological features of the habitat necessary to sustain their essential life history functions. To determine what is essential for these species, we determined the amount and spatial arrangement of PCEs necessary to provide for their conservation. Not all areas that contain one or more of the PCEs would necessarily be included in the designation if those PCEs were not in the quantity and configuration requisite to meeting the conservation needs of the species. For example, areas may not be included in the designation if they are in excess of the habitat that has been determined to be sufficient to meet the conservation and recovery needs of the species. Additional information about how we identified the PCEs can also be found in the revised proposed critical habitat rule published on November 28, 2007 (72 FR 67428). All areas designated as critical habitat for the 12 picture-wing flies are currently occupied, within the species' historical geographic range, contain all relevant PCEs, and support both the larval and adult foraging stages of the 12 Hawaiian picture-wing flies.

Space for Individual and Population Growth and for Normal Behavior

The general life cycle of Hawaiian Drosophilidae is typical of that of most flies. After mating, females lay eggs from which larvae (the immature stage) hatch. As larvae grow, they molt (shed their skin) through three successive stages (instars). When they are fully grown, the larvae change into pupae (a transitional form) in which they metamorphose and emerge as adults. Breeding for each of the 12 species of Hawaiian picture-wing flies included in this final rule generally occurs year-round, but egg laying and larval development increase following the rainy season as the availability of decaying matter, upon which the flies feed, increases in response to the heavy rains (K. Kaneshiro, in litt. 2005b, pp. 1–2). In general, *Drosophila* lay between 50 and 200 eggs at a single time. Eggs develop into adults in about a month, and adults generally become sexually mature 1 month later. Adults generally live for 1 to 2 months (Science Panel 2005).

It is unknown how much space is needed for these flies to engage in courtship and territorial displays, and mating activities. Adult behavior may be disrupted or modified by less than ideal conditions, such as decreased forest cover or loss of suitable food material (K. Kaneshiro, in litt. 2005b, pp. 1–2). Additionally, adult behavior may be disrupted, and the flies themselves may be susceptible to the hunting activities of nonnative Hymenoptera, including yellow jacket wasps and ants (Kaneshiro and Kaneshiro 1995, pp. 41–42). The larvae generally pupate within the soil located below their host plant material, and it is presumed that they require relatively undisturbed and unmodified soil conditions to complete this stage before reaching adulthood (Science Panel 2005, p. 5). Lastly, it is well-known that these 12 species and most other picture-wing flies are susceptible to even slight temperature increases, an issue that may be exacerbated by loss of suitable forest cover or the impacts from drought (K. Kaneshiro, in litt. 2005b, pp. 1–2).

Food

Each of the 12 species of Hawaiian picture-wing flies described in this document is found on a single island, and the larvae of each are dependent upon only a single or a few related species of plants. The adult flies feed on a variety of decomposing plant matter. The water or moisture requirements for all 12 of these species is unknown; however, during drier seasons or during times of drought, it is expected that available adult and larval stage food material in the form of decaying plant matter may decrease (K. Kaneshiro, in litt. 2005b, pp. 1–2). Because the larval stage of each of the 12 species feeds only on the decomposing portions of their specific host plants, designated lands must encompass an area sufficient to support healthy, reproducing host plant populations exhibiting one or more life stages (e.g., from seedlings to senescent individuals).

Based on our current knowledge of the life history, biology, and ecology of each species, and the habitat requirements to sustain the essential life history functions of the 12 Hawaiian picture-wing flies, we provide the PCEs for the larval and adult life stages of *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia* below:

Oahu Species

The PCEs for *Drosophila aglaia* are: (1) Dry to mesic, lowland, ohia, koa, and *Diospyros* sp., forest between the elevations of 1,865–2,985 feet (ft) (568–910 meters (m)); and (2) the larval stage host plant *Urera glabra*, which exhibits one or more life stages (from seedlings to senescent individuals).

The PCEs for *Drosophila hemipeza* are: (1) Dry to mesic, lowland, ohia and koa forest between the elevations of 1,720–3,005 ft (524–916 m); and (2) the larval stage host plants *Cyanea angustifolia, C. calycina, C. grimesiana* ssp. *grimesiana* (Endangered (E)), *C. grimesiana* ssp. *obatae* (E), *C. membranacea, C. pinnatifida* (E), C. *superba* ssp. *superba* (E), *Lobelia hypoleuca, L. niihauensis* (E), *L. yuccoides*, and *Urera kaalae* (E), which exhibit one or more life stages (from seedlings to senescent individuals).

The PCEs for *Drosophila montgomeryi* are: (1) Mesic, lowland, diverse ohia and koa forest between the elevations of 1,720–2,985 ft (524–910 m); and (2) the larval stage host plant *Urera kaalae* (E), which exhibits one or more life stages

(from seedlings to senescent individuals).

The PCEs for *Drosophila obatai* are: (1) Dry to mesic, lowland, ohia and koa forest between the elevations of 1,475–2,535 ft (450–773 m); and (2) the larval stage host plant *Pleomele forbesii*, which exhibits one or more life stages (from seedlings to senescent individuals).

The PCEs for *Drosophila substenoptera* are: (1) Mesic to wet, lowland to montane, ohia and koa forest between the elevations of 1,920–4,030 ft (585–1,228 m); and (2) the larval stage host plants *Cheirodendron platyphyllum* ssp. *platyphyllum, C. trigynum* ssp. *trigynum, Tetraplasandra kavaiensis,* and *T. oahuensis,* which exhibit one or more of the life stages (from seedlings to senescent individuals).

The PCEs for *Drosophila tarphytrichia* are: (1) Dry to mesic, lowland, ohia and koa forest between the elevations of 1,720–2,985 ft (524–910 m); and (2) the larval stage host plant *Charpentiera obovata*, which exhibits one or more life stages (from seedlings to senescent individuals).

Hawaii (Big Island) Species

The PCEs for *Drosophila heteroneura* are: (1) Mesic to wet, montane, ohia and koa forest between the elevations of 2,980–5,755 ft (908–1,754 m); and (2) the larval stage host plants *Cheirodendron trigynum* ssp. *trigynum, Clermontia clermontioides, C. clermontioides* ssp. *rockiana, C. hawaiiensis, C. kohalae, C. lindseyana* (E), *C. montis-loa, C. parviflora, C. peleana* (E), *C. pyrularia* (E), and *Delissea parviflora*, which exhibit one or more life stages (from seedlings to senescent individuals).

The PCEs for *Drosophila mulli* are: (1) Wet, montane, ohia forest between the elevations of 1,955–3,585 ft (596–1,093 m); and (2) the larval stage host plant *Pritchardia beccariana*, which exhibits one or more life stages (from seedlings to senescent individuals).

The PCEs for *Drosophila ochrobasis* are: (1) Mesic to wet, montane, ohia, koa, and *Cheirodendron* sp. forest between the elevations of 3,850–5,390 ft (1,173–1,643 m); and (2) the larval stage host plants *Clermontia calophylla, C. clermontioides, C. clermontioides* ssp. *rockiana, C. drepanomorpha* (E), *C. hawaiiensis, C. kohalae, C. lindseyana* (E), *C. montis-loa, C. parviflora, C. peleana* (E), *C. pyrularia* (E), *C. waimeae, Marattia douglasii, Myrsine lanaiensis, M. lessertiana,* and *M. sandwicensis,* which exhibit one or more life stages (from seedlings to senescent individuals).

Kauai Species

The PCEs for *Drosophila musaphilia* are: (1) Mesic, montane, ohia and koa forest between the elevations of 3,310–3,740 ft (1,009–1128 m); and (2) the larval stage host plant Acacia koa, which exhibits one or more life stages (from seedlings to senescent individuals).

Maui Species

The PCEs for *Drosophila neoclavisetae* are: (1) Wet, montane, ohia forest between the elevations of 3,405–4,590 ft (1,036–1,399 m), and (2) the larval stage host plants *Cyanea kunthiana* and *C. macrostegia* ssp. *macrostegia*, which exhibit one or more life stages (from seedlings to senescent individuals).

Molokai Species

The PCEs for *Drosophila differens* are: (1) Wet, montane, ohia forest between the elevations of 3,645–4,495 ft (1,111–1,370 m); and (2) the larval stage host plants *Clermontia arborescens* ssp. *waihiae, C. granidiflora* ssp. *munroi, C. kakeana, C. oblongifolia* ssp. *brevipes* (E), and *C. pallida*, which exhibit one or more life stages (from seedlings to senescent individuals).

This final critical habitat designation identifies the known physical or biological features in the quantity and spatial arrangement on the landscape essential to support the life history functions of the species. Each of the areas designated in this rule contains the PCEs to provide for one or more of the life history functions of *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia.*

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas occupied at the time of listing contain the physical and biological features essential to the conservation of the species, and whether these features may require special management considerations or protections.

Nonnative plants and animals pose the greatest threats to these 12 picture-wing flies. In order to counter the ongoing degradation and loss of habitat caused by feral ungulates and invasive nonnative plants, active management or control of nonnative species is necessary for the conservation of all populations of the 12 picture-wing flies (Kaneshiro and Kaneshiro 1995, pp. 37–38). Without active management or control, native habitat containing the features that are essential for the conservation of the 12 picture-wing flies will continue to be degraded or destroyed. In addition, habitat degradation and destruction as a result of wildfire, competition with nonnative insects, and predation by nonnative insects, such as the western yellow-jacket wasp (*Vespula pensylvanica*), may significantly threaten many of the populations of the 12 picture-wing flies. Active management is necessary to control these threats, as well.

The threats to the physical and biological features in the areas we are designating as critical habitat for the 12 picture-wing flies that may require special management considerations or protection include feral ungulates, rats, invasive nonnative plants, and yellow-jacket wasps. In addition, the units in dry or mesic habitats may also require special management to address wildfire and ants. Each of these threats is summarized below. For a more detailed discussion of each threat refer to the proposed revised critical habitat rule published in the **Federal Register** on November 28, 2007 (72 FR 67434).

Feral Ungulates

Feral ungulates have devastated native vegetation in many areas of the Hawaiian Islands (Cuddihy and Stone 1990, pp. 60–66). Because the endemic Hawaiian flora evolved without the presence of browsing and grazing ungulates, many plant groups have lost their adaptive defenses such as spines, thorns, stinging hairs, and defensive chemicals (University of Hawaii Department of Geography 1998, p. 138). Pigs (*Sus scrofa*), goats (*Capra hircus*), and cattle (*Bos taurus*) disturb the soil, and readily eat native plants (including the native host plants for 1 or more of the 12 picture-wing flies), and distribute nonnative plant seeds that can alter the ecosystem. In addition, browsing and grazing by feral ungulates in steep and remote terrain causes severe erosion of entire watersheds due to foraging and trampling behaviors (Cuddihy and Stone 1990, pp. 60–64 and 66).

Rats (Rattus spp.)

Several species of nonnative rats, including the Polynesian rat (*Rattus exulans*), the roof rat (*Rattus rattus*), and the Norway rat (*Rattus norvegicus*), are present on the Hawaiian Islands and cause considerable environmental degradation (Staples and Cowie 2001). The seeds, bark, and flowers of several of the picture-wing flies' host plants, including *Clermontia* sp., *Pleomele* sp., and *Pritchardia beccariana*, are susceptible to herbivory by all the rat species (Science Panel 2005; K.

Magnacca, in litt. 2005; S. Montgomery, pers. comm. 2005b). The herbivory by rats causes host plant mortality, diminished vigor, and seed predation, resulting in reduced host plant fecundity and viability (Science Panel 2005; K. Magnacca, in litt. 2005; S. Montgomery, pers. comm. 2005b).

Nonnative Plants

The invasion of nonnative plants contributes to the degradation of native forests and the host plants of picture-wing flies (Kaneshiro and Kaneshiro 1995, pp. 38–39; Wagner *et al.* 1999, pp. 52–53 and 971; Science Panel 2005, p. 28), and threatens all populations of the 12 picture-wing flies. Some nonnative plants form dense stands, thickets, or mats that shade or out-compete native plants. Nonnative vines cause damage or death to native trees by overloading branches, causing breakage, or forming a dense canopy cover that intercepts sunlight and shades out native plants below. Nonnative grasses readily burn. They often grow at the border of forests, and carry wildfire into areas with woody native plants (Smith 1985, pp. 228–229; Cuddihy and Stone 1990, pp. 88–94). The nonnative grasses are more wildfire-adapted and can spread prolifically after a wildfire, ultimately creating a stand of nonnative grasses where native forest once existed. These nonnative plants cannot be used as host plants by the flies. Some nonnative plant species produce chemicals that inhibit the growth of other plant species (Smith 1985, p. 228; Wagner et al. 1999, p. 971).

Wildfire

Wildfire threatens habitat of the Hawaiian picture-wing flies in dry to mesic grassland, shrubland, and forests on the islands of Kauai (*Drosophila musaphilia*), Oahu (*D. aglaia, D. hemipeza, D. mongomeryi, D. obatai,* and *D. tarphytrichia*), and Hawaii (D. heteroneura). Dry and mesic regions in Hawaii have been altered in the past 200 years by an increase in wildfire frequency, a condition to which the native flora is not adapted. The invasion of wildfire-adapted alien plants, facilitated by ungulate disturbance, has contributed to wildfire frequency. This change in wildfire regime has reduced the amount of forest cover for native species (Hughes *et al.* 1991, p. 743; Blackmore and Vitousek 2000, p. 625) and resulted in an intensification of fire threat and feral ungulate disturbance in the remaining native forest areas. Habitat damaged or destroyed by wildfire is more likely to be revegetated by nonnative plants that cannot be used as host plants by these picture-wing flies (Kaneshiro and Kaneshiro 1995, p. 47).

Nonnative Insect Competitors

The Hawaiian Islands now support several established species of nonnative insects which compete with some of the 12 picture-wing flies within their larval stage host plants. The most important group of nonnative insect competitors includes tipulid flies (crane flies, family Tipulidae). The larvae of some species within this group feed within the decomposing bark of some of the host plants utilized by picture-wing flies, including *Charpentiera, Cheirodendron, Clermontia,* and *Pleomele* spp. (Science Panel 2005, p. 11; K. Magnacca, U.S. Geological Survey, in litt. 2005, p. 1; S. Montgomery, in litt. 2005a, p. 1). Each of the picture-wing flies addressed in this rule, except for Drosophila mulli, D. musaphilia, and D. neoclavisetae, face larval-stage resource competition from nonnative tipulid flies. The Hawaiian Islands also support several species of nonnative beetles (family Scolytidae, genus *Coccotrypes*), a few of which bore into and feed on the nuts produced by certain native plant species including *Pritchardia beccariana*, the host plant of *Drosophila mulli*. Affected *Pritchardia* spp., including *P. beccariana*, drop their fruit before the nuts reach maturity due to the boring action of the scolytid beetles. Little natural regeneration of this host plant species has been observed in the wild since the arrival of this scolytid beetle (K. Magnacca, in litt. 2005, p. 1; Science Panel 2005, p. 11). Compared to the host plants of the other picture-wing flies, *P. beccariana* is long lived (up to 100 years), but over time scolytid beetles may have a significant impact on the availability of habitat for *D. mulli.*

Nonnative Insect Predators

Nonnative arthropods pose a serious threat to Hawaii's native *Drosophila*, both through direct predation or parasitism as well as competition for food or space (Howarth and Medeiros 1989, pp. 82–83; Howarth and Ramsay 1991, pp. 80–83; Kaneshiro and Kaneshiro 1995, pp. 40–45 and 47; Staples and Cowie 2001, pp. 41, 54–57). Due to their large colony sizes and systematic foraging habits, species of social Hymenoptera (ants and some wasps) and parasitic wasps pose the greatest predation threat to the Hawaiian picture-wing flies (Carson 1982, p. 1, 1986, p. 7; Gambino *et al.* 1987, pp. 169–170; Kaneshiro and Kaneshiro 1995, pp. 40–45 and 47).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial information available in determining the specific areas within the geographical occupied by each of the picture-wing flies, *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia* at the time of listing that (1) contain PCEs in the quantity and spatial arrangement to support life history functions essential for the conservation of each of these species; and (2) may require special management considerations or protection. We relied on information in our prior rulemaking and new information gained through the peer review and public comment process. Each area that we are designating as critical habitat is occupied, contains the PCEs, and supports both the larval and adult foraging stages of the 12 Hawaiian picture-wing fly species. The discussion below summarizes the criteria used to identify critical habitat. For additional information, refer to the proposed critical habitat rule that was published in the **Federal Register** on November 28, 2007 (72 FR 67435).

The following geospatial, tabular data sets were used in preparing this final critical habitat designation: (1) Occurrence data for all 12 species (K. Kaneshiro, in litt. 2005a, pp. 1–16); (2) vegetation mapping data for the Hawaiian Islands (Gap Analysis Program (GAP) Data—Hawaiian Islands 2005); (3) color mosaic 1:19,000 scale digital aerial photographs for the Hawaiian Islands dated April to May 2005; and (4) 1:24,000 scale digital raster graphics of U.S. Geological Survey (USGS) topographic quadrangles. Land ownership was determined from geospatial data sets associated with parcel data from Oahu County (2006); Hawaii County (2005); Kauai County (2005); and Maui County (2004).

We also reviewed a variety of peer-reviewed and other articles in preparing this final rule, including: (1) Background information on the biology of each of the 12 species (e.g., Montgomery 1975, pp. 83, 94, 96–98, and 100; Foote and Carson 1995, pp. 1–4; Kaneshiro and Kaneshiro 1995, pp. 1–47); (2) plant ecology and biology (Wagner et al. 1999, pp. 45, 52–53, 971, 1,314–1,315, and 1,351–1,352); and (3) the ecology of the Hawaiian Islands and the areas we are designating in this final rule (e.g., Smith 1985, pp. 227–233;

Stone 1985, pp. 251–253, 256, and 260–263; Cuddihy and Stone 1990, pp. 59–66, 73–76, and 88–94). Additional information reviewed included: (1) The October 29, 1991, final rule listing the plant species *Urera kaalae* (a host plant for two of the fly species) as endangered (56 FR 55770); (2) the June 17, 2003, final critical habitat designation for *U. kaalae* (68 FR 35950); (3) the May 9, 2006, final listing rule for the 12 species of picture-wing flies (71 FR 26835); (4) the August 15, 2006, proposed critical habitat designation for 11 species of picture-wing flies (71 FR 46994); (5) unpublished reports by The Nature Conservancy of Hawaii (TNCH); and (6) aerial photographs and satellite imagery of the Hawaiian Islands.

We obtained additional information through personal communications with landowners, scientists, and land managers familiar with the 12 species and their habitats, including individuals affiliated with the University of Hawaii, University of California at Berkeley, the U.S. Geological Survey, the Bishop Museum, Hawaii State Department of Land and Natural Resources, TNCH, and the U.S. Army. Specific information from these sources included estimates of historic and current distribution, abundance, and territory sizes for the 12 species, as well as data on resources and habitat requirements.

The primary constituent elements of this final critical habitat designation include both the host plants used by the larvae, as well as the native forest components used by foraging adults. We used known adult location data to identify each critical habitat unit, and included the surrounding area encompassing the physical and biological features essential to the conservation of the species. While there has been considerable survey work conducted for Hawaiian picture-wing flies in an overall sense, some areas where these 12 species are found have not been surveyed in many years. We used the best available, most recent survey data for adult flies to determine which sites we would identify as occupied and which sites we would identify as unoccupied. We did not designate critical habitat in areas where a species had been observed, but where the areas had either become degraded (e.g., due to loss or degradation of native vegetation, increase in nonnative vegetation, or documented presence of yellow-jacket wasps) and lacked PCEs, or if multiple surveys over the course of several years failed to detect the species. The final critical habitat unit boundaries included in this rule reflect the results of this analysis, after taking into account the presence of known developed areas, as described below.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs within the 32 critical habitat units designated by this final rule for *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia.* However, because of the scale of the maps, the maps may not reflect the exclusion of such developed areas. Accordingly, any developed areas that fall within the critical habitat boundaries reflected on the maps in this final rule have been excluded by text in this rule, and are not included within the critical habitat designation. Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

We are designating 32 units as critical habitat for *Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia.*

In total, approximately 8,788 ac (3,556 ha) occur within the boundaries of this critical habitat designation. The critical habitat areas described below constitute our current best assessment of areas determined to be occupied at the time of listing, contain the primary constituent elements essential for the conservation of the 12 Hawaiian picture-wing flies, and may require special management. The 32 areas designated as critical habitat are:

TABLE 1—CRITICAL HABITAT UNITS AND ISLAND

Island	Unit name
Oahu	Drosophila aglaia—Unit 1—Palikea.
Oahu	Drosophila aglaia—Unit 2—Puu Kaua.
Oahu	Drosophila hemipeza—Unit 1—Kaluaa Gulch.
Oahu	Drosophila hemipeza—Unit 2—Makaha Valley.
Oahu	Drosophila hemipeza—Unit 3—Palikea.
Oahu	Drosophila hemipeza—Unit 4—Puu Kaua.
Oahu	Drosophila montgomeryi—Unit 1—Kaluaa Gulch.
Oahu	Drosophila montgomeryi—Unit 2—Palikea.
Oahu	Drosophila montgomeryi—Unit 3—Puu Kaua.
Oahu	Drosophila obatai—Unit 1—Puu Pane.
Oahu	Drosophila obatai—Unit 2—Wailupe.
Oahu	Drosophila substenoptera—Unit 1—Mt. Kaala.
Oahu	Drosophila substenoptera—Unit 2—Palikea.
Oahu	Drosophila tarphytrichia—Unit 1—Kaluaa Gulch.
Oahu	Drosophila tarphytrichia—Unit 2—Palikea.
Oahu	Drosophila tarphytrichia—Unit 3—Puu Kaua.
Hawaii (Big Island)	Drosophila heteroneura—Unit 1—Kau Forest.
Hawaii (Big Island)	Drosophila heteroneura—Unit 2—Kona Refuge.
Hawaii (Big Island)	Drosophila heteroneura—Unit 3—Lower Kahuku.
Hawaii (Big Island)	Drosophila heteroneura—Unit 4—Pit Crater.
Hawaii (Big Island)	Drosophila heteroneura—Unit 5—Waihaka Gulch.
Hawaii (Big Island)	Drosphila mulli—Unit 1—Olaa Forest.
Hawaii (Big Island)	Drosphila mulli—Unit 2—Stainback Forest.
Hawaii (Big Island)	Drosphila mulli—Unit 3—Waiakea Forest.
Hawaii (Big Island)	Drosophila ochrobasis—Unit 1—Kipuka 9.
Hawaii (Big Island)	Drosophila ochrobasis—Unit 2—Kipuka 14.
Hawaii (Big Island)	Drosophila ochrobasis—Unit 3—Kohala Mountains East.
Hawaii (Big Island)	Drosophila ochrobasis—Unit 4—Kohala Mountains West.

TABLE 1—CRITICAL HABITAT UNITS AND ISLAND—Continued

Island	Unit name
Hawaii (Big Island)	Drosophila ochrobasis—Unit 5—Upper Kahuku.
Kauai	Drosophila musaphilia—Unit 1—Kokee.
Maui	Drosophila neoclavisetae—Unit 1—Puu Kukui.
Molakai	Drosophila differens—Unit 1—Puu Kolekole.

The areas identified as containing the features essential to the conservation of each of the 12 Hawaiian picture-wing flies for which we are designating critical habitat include a variety of undeveloped, forested areas that are used for larval stage development and adult fly stage foraging. Designated critical habitat includes land under Federal, State, City and County, and private ownership. The approximate area, land ownership, and area excluded from each designated critical habitat unit are shown in Table 2.

TABLE 2—DESIGNATED CRITICAL HABITAT UNITS FOR DROSOPHILA AGLAIA, D. DIFFERENS, D. HEMIPEZA, D. HETERONEURA, D. MONTGOMERYI, D. MULLI, D. MUSAPHILIA, D. NEOCLAVISETAE, D. OBATAI, D. OCHROBASIS, D. SUBSTENOPTERA, AND D. TARPHYTRICHIA.

[Area estimates reflect all land within critical habitat unit boundaries and are given in acres (ac) (hectares (ha)). Areas in parentheses overlap with other units; therefore, the total area designated as critical habitat for each species will not equal the total area designated for the 12 species combined]

Species—unit	Land ownership [ac/ha]				Lands meeting the definition of critical habitat [ac/ha]	Lands excluded [ac/ha]	Critical habitat [ac/ha]
	Federal	State	City and Co. of Honolulu	Private			
Oahu Units							
Drosophila aglaia—Unit 1—Palikea	0	4	0	204	208	0	208
		2		83	84	0	84
Drosophila aglaia—Unit 2—Puu Kaua	0	0	0	87	87	0	87
				35	35	0	35
Drosophila hemipeza—Unit 1—Kaluaa Gulch	0	0	0	527	527	0	527
				213	213	0	213
Drosophila hemipeza—Unit 2—Makaha Valley	0	40	71	0	111	0	111
		16	29		45	0	45
Drosophila hemipeza—Unit 3—Palikea	0	(4)	0	(204)	(208)	0	(208)
		(2)		(83)	(84)	0	(84)
Drosophila hemipeza—Unit 4—Puu Kaua	0	0	0	(87)	(87)	0	(87)
				(35)	(35)	0	(35)
Drosophila montgomeryi—Unit 1—Kaluaa Gulch	0	0	0	(527)	(527)	0	(527)
				(213)	(213)	0	(213)
Drosophila montgomeryi—Unit 2—Palikea	0	(4)	0	(204)	(208)	0	(208)
		(2)		(84)	(84)	0	(84)
Drosophila montgomeryi—Unit 3—Puu Kaua	0	0	0	(87)	(87)	0	(87)
				(35)	(35)	0	(35)
Drosophila obatai—Unit 1—Puu Pane	0	33	0	0	33	0	33
		13			13	0	13
Drosophila obatai—Unit 2—Wailupe	0	45	0	32	77	0	77
		18		13	31	0	31
Drosophila substenoptera—Unit 1—Mt. Kaala	0	59	57	0	116	0	116
		24	23		47	0	47
Drosophila substenoptera—Unit 2—Palikea	0	(4)	0	(204)	(208)	0	(208)
		(2)		(83)	(84)	0	(84)
Drosophila tarphytrichia—Unit 1—Kaluaa Gulch	0	0	0	(527)	(527)	0	(527)
				(213)	(213)	0	(213)
Drosophila tarphytrichia—Unit 2—Palikea	0	(4)	0	(204)	(208)	0	(208)
		(2)		(83)	(84)	0	(84)
Drosophila tarphytrichia—Unit 3—Puu Kaua	0	0	0	(87)	(87)	0	(87)
				(35)	(35)	0	(35)
Big Island Units							
Drosophila heteroneura—Unit 1—Kau Forest	0	125	0	0	125	0	125
		51			51	0	51
Drosophila heteroneura—Unit 2 Kona Refuge	3,604	0	0	0	3,604	0	3,604
	1,459				1,459	0	1,459
Drosophila heteroneura—Unit 3—Lower Kahuku	687	0	0	0	687	0	687
	278				278	0	278

TABLE 2—DESIGNATED CRITICAL HABITAT UNITS FOR DROSOPHILA AGLAIA, D. DIFFERENS, D. HEMIPEZA, D. HETERONEURA, D. MONTGOMERYI, D. MULLI, D. MUSAPHILIA, D. NEOCLAVISETAE, D. OBATAI, D. OCHROBASIS, D. SUBSTENOPTERA, AND D. TARPHYTRICHIA.—Continued

[Area estimates reflect all land within critical habitat unit boundaries and are given in acres (ac) (hectares (ha)). Areas in parentheses overlap with other units; therefore, the total area designated as critical habitat for each species will not equal the total area designated for the 12 species combined]

Species—unit	Land ownership [ac/ha]				Lands meeting the definition of critical habitat [ac/ha]	Lands excluded [ac/ha]	Critical habitat [ac/ha]
	Federal	State	City and Co. of Honolulu	Private			
Drosophila heteroneura—Unit 4—Pit Crater	0	0	0	46 18	46 18	0 0	46 18
Drosophila heteroneura—Unit 5—Waihaka Gulch	0	120 49	0	0	120 49	0 0	120 49
Drosophila mulli—Unit 1—Olaa Forest	0	244 99	0	0	244 99	0 0	244 99
Drosophila mulli—Unit 2—Stainback Forest	0	76 31	0	0	76 31	0 0	76 31
Drosophila mulli—Unit 3—Waiakea Forest	0	373 151	0	0	373 151	0 0	373 151
Drosophila ochrobasis—Unit 1—Kipuka 9	0	9 4	0	0	9 4	0 0	9 4
Drosophila ochrobasis—Unit 2—Kipuka 14	0	15 6	0	0	15 6	0 0	15 6
Drosophila ochrobasis—Unit 3—Kohala Mountains East	0	193 78	0	0	193 78	0 0	193 78
Drosophila ochrobasis—Unit 4—Kohala Mountains West	0	41 17	0	91	132 54	0 0	132 54
Drosophila ochrobasis—Unit 5—Upper Kahuku	64 26	24 10	0	0	88 36	0 0	88 36
Kauai Unit							
Drosophila musaphilia—Unit 1—Kokee	0	794 321	0	0	794 321	0 0	794 321
Maui Unit							
Drosophila neoclavisetae—Unit 1—Puu Kukui	0	134 54	0	450 182	584 237	450 182	134 54
Molokai Unit							
Drosophila differens—Unit 1—Puu Kolekole	0	0	0	988 400	988 400	0 0	988 400
Total (32 units)	4,356 1,763	2,331 943	128 52	2,424 981	9,238 3,738	450 182	8,788 3,556

The critical habitat areas described below constitute our best assessment of the physical and biological features essential for the recovery and conservation of the 12 Hawaiian picture-wing flies. Brief descriptions of all units and the rationale for why each unit meets the definition of critical habitat for the 12 picture-wing flies are presented below. Each of the designated critical habitat units for the 12 Hawaiian picture-wing flies was occupied by the species at the time of listing, contains PCEs that provide for both the larval and adult life stage of one or more of the 12 species of picture-wing flies, and may require special management considerations or protection (see Table 3).

TABLE 3—THREATS AND OCCUPANCY IN AREAS CONTAINING PHYSICAL AND BIOLOGICAL FEATURES ESSENTIAL TO THE CONSERVATION OF DROSOPHILA AGLAIA, D. DIFFERENS, D. HEMIPEZA, D. HETERONEURA, D. MONTGOMERYI, D. MULLI, D. MUSAPHILIA, D. NEOCLAVISETAE, D. OBATAI, D. OCHROBASIS, D. SUBSTENOPTERA, AND D. TARPHYTRICHIA

Species—unit	Threats requiring special management or protections	Occupied at the time of listing	Currently occupied
Oahu Units			
Drosophila aglaia—Unit 1—Palikea	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila aglaia—Unit 2—Puu Kaua	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila hemipeza—Unit 1—Kaluaa Gulch.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila hemipeza—Unit 2—Makaha Valley.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila hemipeza—Unit 3—Palikea	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila hemipeza—Unit 4—Puu Kaua.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila montgomeryi—Unit 1—Kaluaa Gulch.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila montgomeryi—Unit 2—Palikea.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila montgomeryi—Unit 3—Puu Kaua.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila obatai—Unit 1—Puu Pane	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila obatai—Unit 2—Wailupe	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila substenoptera—Unit 1—Mt. Kaala.	Feral ungulates, nonnative plants, and nonnative competitors	Yes	Yes.
Drosophila substenoptera—Unit 2—Palikea.	Feral ungulates, nonnative plants, and nonnative competitors	Yes	Yes.
Drosophila tarphytrichia—Unit 1—Kaluaa Gulch.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila tarphytrichia—Unit 2—Palikea.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila tarphytrichia—Unit 3—Puu Kaua.	Feral ungulates, rats, nonnative plants, ants, nonnative competitors, and wildfire.	Yes	Yes.
Big Island Units			
Drosophila heteroneura—Unit 1—Kau Forest.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, ants, and nonnative competitors.	Yes	Yes.
Drosophila heteroneura—Unit 2—Kona Refuge.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, ants, and nonnative competitors.	Yes	Yes.
Drosophila heteroneura—Unit 3—Lower Kahuku.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, ants, and nonnative competitors.	Yes	Yes.
Drosophila heteroneura—Unit 4—Pit Crater.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, ants, nonnative competitors, and wildfire.	Yes	Yes.
Drosophila heteroneura—Unit 5—Waihaka Gulch.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, ants, and nonnative competitors.	Yes	Yes.
Drosophila mulli—Unit 1—Olaa Forest	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.
Drosophila mulli—Unit 2—Stainback Forest.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.
Drosophila mulli—Unit 3—Waiakea Forest.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.
Drosophila ochrobasis—Unit 1—Kipuka 9.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.
Drosophila ochrobasis—Unit 2—Kipuka 14.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.
Drosophila ochrobasis—Unit 3—Kohala Mountains East.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.
Drosophila ochrobasis—Unit 4—Kohala Mountains West.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.
Drosophila ochrobasis—Unit 5—Upper Kahuku.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.

TABLE 3—THREATS AND OCCUPANCY IN AREAS CONTAINING PHYSICAL AND BIOLOGICAL FEATURES ESSENTIAL TO THE CONSERVATION OF DROSOPHILA AGLAIA, D. DIFFERENS, D. HEMIPEZA, D. HETERONEURA, D. MONTGOMERYI, D. MULLI, D. MUSAPHILIA, D. NEOCLAVISETAE, D. OBATAI, D. OCHROBASIS, D. SUBSTENOPTERA, AND D. TARPHYTRICHIA—Continued

Species—unit	Threats requiring special management or protections	Occupied at the time of listing	Currently occupied
Kauai Unit			
Drosophila musaphilia—Unit 1—Kokee	Feral ungulates, nonnative plants, yellow-jacket wasps, ants, and wildfire	Yes	Yes.
Maui Unit			
Drosophila neoclavisetae—Unit 1—Puu Kukui.	Feral ungulates, nonnative plants, and yellow-jacket wasps	Yes	Yes.
Molokai Unit			
Drosophila differens—Unit 1—Puu Kolekole.	Feral ungulates, rats, nonnative plants, yellow-jacket wasps, and nonnative competitors.	Yes	Yes.

Oahu Units

Drosophila aglaia—Unit 1—Palikea consists of 208 ac (84 ha) of lowland, mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,920–2,985 ft (585–910 m), this unit is privately and State-owned, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. aglaia* at the time of listing. This unit includes the known elevation range, moisture regime, and the native forest components used by foraging adults and identified as the PCEs for this species. This unit also includes populations of *Urera glabra,* the larval stage host plant associated with this species.

Drosophila aglaia—Unit 2—Puu Kaua consists of 87 ac (35 ha) of lowland, diverse mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,865–2,855 ft (570–870 m), this unit is privately owned and is part of a larger area called the Honouliuli Preserve, which is administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. aglaia* at the time of listing. It includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Urera glabra*, the larval stage host plant associated with this species.

Drosophila hemipeza—Unit 1—Kaluaa Gulch consists of 527 ac (213 ha) of diverse, mesic forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,720–2,785 ft (525–850 m), this unit is privately owned and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. hemipeza* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Urera kaalae, Cyanea* sp., and *Lobelia sp.*, the larval stage host plants associated with this species.

Drosophila hemipeza—Unit 2—Makaha Valley consists of 111 ac (45 ha) of lowland, mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,995–3,005 ft (610–915 m), this unit is owned by the City and County of Honolulu and the State of Hawaii, and is largely managed as a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 4–5), this unit was occupied by *D. hemipeza* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Urera kaalae, Cyanea* sp., and *Lobelia* sp., the larval stage host plants associated with this species.

Drosophila hemipeza—Unit 3—Palikea consists of 208 ac (84 ha) of lowland, mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,920–2,985 ft (585–910 m), this unit is privately and State-owned, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. hemipeza* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Urera kaalae, Cyanea* sp., and *Lobelia* sp., the larval stage host plants associated with this species.

Drosophila hemipeza—Unit 4—Puu Kaua consists of 87 ac (35 ha) of lowland, diverse, mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,865–2,855 ft (570–870 m), this unit is privately owned and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. hemipeza* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Urera kaalae, Cyanea* sp., and *Lobelia* sp., the larval stage host plants associated with this species.

Drosophila montgomeryi—Unit 1—Kaluaa Gulch consists of 527 ac (213 ha) of diverse, mesic forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,720–2,785 ft (525–850 m), this unit is privately owned and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH.

According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. montgomeryi* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Urera kaalae*, the larval stage host plant associated with this species.

Drosophila montgomeryi—Unit 2—Palikea consists of 208 ac (84 ha) of lowland, mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,920–2,985 ft (585–910 m), this unit is both privately and State-owned, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. montgomeryi* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Urera kaalae*, the larval stage host plant associated with this species.

Drosophila montgomeryi—Unit 3—Puu Kaua consists of 87 ac (35 ha) of lowland, diverse, mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,865–2,855 ft (570–870 m), this unit is privately owned and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. montgomeryi* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Urera kaalae*, the larval stage host plant associated with this species.

Drosophila obatai—Unit 1—Puu Pane consists of 33 ac (13 ha) of lowland, mesic, koa and ohia forest within the northeastern Waianae Mountains of Oahu. Ranging in elevation between 1,760–2,535 ft (535–770 m), this unit is owned by the State of Hawaii and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 6), this unit was occupied by *D. obatai* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Pleomele forbesii*, the larval stage host plant associated with this species.

Drosophila obatai—Unit 2—Wailupe consists of 77 ac (31 ha) of lowland, mesic, koa and ohia forest within the southeastern Koolau Mountains of Oahu. Ranging in elevation between 1,475–2,155 ft (445–655 m), this unit is privately and State-owned, and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 6), this unit was occupied by *D. obatai* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Pleomele forbesii*, the larval stage host plant associated with this species.

Drosophila substenoptera—Unit 1—Mt. Kaala consists of 116 ac (47 ha) of montane, wet, ohia forest within the northern Waianae Mountains of Oahu. Ranging in elevation between 2,750–4,030 ft (840–1,230 m), this unit is owned by the City and County of Honolulu and the State of Hawaii, and is largely managed as part of a State forest reserve and natural area reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 7), this unit was occupied by *D. substenoptera* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Cheirodendron* sp. and *Tetraplasandra* sp., the larval stage host plants associated with this species.

Drosophila substenoptera—Unit 2—Palikea consists of 208 ac (84 ha) of lowland, mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,920–2,985 ft (585–910 m), this unit is privately and State-owned, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. substenoptera* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Cheirodendron* sp. and *Tetraplasandra* sp., the larval stage host plants associated with this species.

Drosophila tarphytrichia—Unit 1—Kaluaa Gulch consists of 527 ac (213 ha) of diverse, mesic forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,720–2,785 ft (525–850 m), this unit is privately owned and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. tarphytrichia* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Charpenteira obovata*, the larval stage host plant associated with this species.

Drosophila tarphytrichia—Unit 2—Palikea consists of 208 ac (84 ha) of lowland, mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,920–2,985 ft (585–910 m), this unit is privately and State-owned, and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. tarphytrichia* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Charpenteira obovata*, the larval stage host plant associated with this species.

Drosophila tarphytrichia—Unit 3—Puu Kaua consists of 87 ac (35 ha) of lowland, diverse mesic, koa and ohia forest within the southern Waianae Mountains of Oahu. Ranging in elevation between 1,865–2,855 ft (570–870 m), this unit is privately owned and is part of a larger area called the Honouliuli Preserve, administered and managed by TNCH. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 1–10), this unit was occupied by *D. tarphytrichia* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Charpenteira obovata*, the larval stage host plant associated with this species.

Hawaii (Big Island) Units

Drosophila heteroneura—Unit 1—Kau Forest consists of 125 ac (51 ha) of

montane, wet, ohia forest, and is located on the southern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 5,215–5,510 ft (1,590–1,680 m), this unit is owned by the State of Hawaii, and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 8), this unit was occupied by *D. heteroneura* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Cheirodendron trigynum, Clermontia* sp., and *Delissea parviflora*, the larval stage host plants associated with this species.

Drosophila heteroneura—Unit 2—Kona Refuge consists of 3,604 ac (1,459 ha) of montane, mesic, closed koa and ohia forest, and is located on the western flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 2,980–5,755 (910–1,755 m), this unit is owned by the Service, and is managed as part of the Kona Unit of the Hakalau Forest National Wildlife Refuge. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 8), this unit was occupied by *D. heteroneura* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Cheirodendron trigynum, Clermontia* sp., and *Delissea parviflora*, the larval stage host plants associated with this species.

Drosophila heteroneura—Unit 3—Lower Kahuku consists of 687 ac (278 ha) of montane, mesic to wet, ohia forest, and is located on the southern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 3,705–4,685 ft (1,130–1,430 m), this unit is owned and managed by the National Park Service (NPS), Hawaii Volcanoes National Park. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 8), this unit was occupied by *D. heteroneura* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Cheirodendron trigynum, Clermontia* sp., and *Delissea parviflora*, the larval stage host plants associated with this species.

Drosophila heteroneura—Unit 4—Pit Crater consists of 46 ac (18 ha) of montane, mesic, open ohia forest with mixed grass species, and is located on the western flank of Hualalai and south of the Kaupulehu lava flow on the island of Hawaii. Ranging in elevation between 3,835–4,525 ft (1,170–1,380 m), this unit is privately owned and managed. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 8), this unit was occupied by *D. heteroneura* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Cheirodendron trigynum, Clermontia* sp., and *Delissea parviflora*, the larval stage host plants associated with this species.

Drosophila heteroneura—Unit 5—Waihaka Gulch consists of 120 ac (49 ha) of montane, wet, koa and ohia forest, and is located on the southern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 4,065–4,390 ft (1,240–1,340 m), this unit is owned by the State of Hawaii, and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 8), this unit was occupied by *D. heteroneura* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Cheirodendron trigynum, Clermontia* sp., and *Delissea parviflora*, the larval stage host plants associated with this species.

Drosophila mulli—Unit 1—Olaa Forest consists of 244 ac (99 ha) of montane, wet, ohia forest and is located to the northeast of Kilauea Caldera on the southeastern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 3,120–3,300 ft (950–1,005 m), this unit is owned by the State of Hawaii and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 10), this unit was occupied by *D. mulli* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Pritchardia beccariana*, the larval stage host plant associated with this species.

Drosophila mulli—Unit 2—Stainback Forest consists of 76 ac (31 ha) of montane, wet, ohia forest, and is located to the northeast of Kilauea Caldera on the southeastern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 1,955–2,165 ft (595–660 m), this unit is owned by the State of Hawaii and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 10), this unit was occupied by *D. mulli* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Pritchardia beccariana*, the larval stage host plant associated with this species.

Drosophila mulli—Unit 3—Waiakea Forest consists of 373 ac (151 ha) of montane, wet, ohia forest, and is located to the northeast of Kilauea Caldera on the southeastern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 3,130–3,585 ft (955–1,095 m), this unit is owned by the State of Hawaii and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 10), this unit was occupied by *D. mulli* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Pritchardia beccariana*, the larval stage host plant associated with this species.

Drosophila ochrobasis—Unit 1—Kipuka 9 consists of 9 ac (4 ha) of montane, wet, ohia forest with native shrubs, and is located within the Saddle Road area on the northeastern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 5,075–5,125 ft (1,545–1,560 m), this unit is owned by the State of Hawaii and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 10), this unit was occupied by *D. ochrobasis* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Clermontia* sp., *Marattia douglasii*, and *Myrsine* sp., the larval stage host plants associated with this species.

Drosophila ochrobasis—Unit 2—Kipuka 14 consists of 15 ac (6 ha) of montane, wet, ohia forest with native shrubs, and is located within the Saddle Road area on the northeastern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 5,105–5,145 ft (1,555–1,570 m), this unit is owned by the State of Hawaii and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a,

pp. 12–13), this unit was occupied by *D. ochrobasis* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Clermontia* sp., *Marattia douglasii*, and *Myrsine* sp., the larval stage host plants associated with this species.

Drosophila ochrobasis—Unit 3—Kohala Mountains East consists of 193 ac (78 ha) of montane, wet, ohia forest with native shrubs and mixed grass species, and is located on the southeastern flank of the Kohala Mountains on the island of Hawaii. Ranging in elevation between 3,850–4,140 ft (1,175–1,260 m), this unit is owned by the State of Hawaii and is largely managed as part of a State forest reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 12–13), this unit was occupied by *D. ochrobasis* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Clermontia* sp., *Marattia douglasii*, and *Myrsine* sp., the larval stage host plants associated with this species.

Drosophila ochrobasis—Unit 4—Kohala Mountains West consists of 132 ac (54 ha) of montane, wet, ohia forest with native shrubs and mixed grass species, and is located on the southwestern flank of the Kohala Mountains on the island of Hawaii. Ranging in elevation between 4,945–5,325 ft (1,510–1,625 m), this unit is privately and State-owned, and is largely managed as part of a State forest reserve. *Drosophila ochrobasis* was not historically known from this area, but was first observed here during field surveys conducted in October of 2006 (K. Magnacca, in litt. 2006, p. 1), only four months from the date of listing of the species (June 2006). Given the fact that this area was surveyed so soon after the listing of the species, and contains relatively intact, closed-canopy, native forest, including the fly's host plant species, we have determined that it was occupied by *D. ochrobasis* at the time of the listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Clermontia* sp., *Marattia douglasii*, and *Myrsine* sp., the larval stage host plants associated with this species.

Drosophila ochrobasis—Unit 5—Upper Kahuku consists of 88 ac (36 ha) of montane, wet, ohia forest, and is located on the southern flank of Mauna Loa on the island of Hawaii. Ranging in elevation between 5,235–5,390 ft (1,595–1,645 m), this unit is owned by the State of Hawaii and the NPS Hawaii Volcanoes National Park. The area within this unit is largely managed as part of a State forest reserve and as a national park. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, pp. 12–13), this unit was occupied by *D. ochrobasis* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Clermontia* sp., *Marattia douglasii*, and *Myrsine* sp., the larval stage host plants associated with this species.

Kauai Unit

Drosophila musaphilia—Unit 1—Kokee consists of 794 ac (321 ha) of montane, mesic, koa and ohia forest, and is located in the Kokee region of northwestern Kauai. Ranging in elevation between 3,310–3,740 ft (1,010–1,140 m), this unit is owned by the State of Hawaii and occurs on lands managed as part of a State park, forest reserve, and natural area reserve. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 11), this unit was occupied by *D. musaphilia* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Acacia koa*, the larval stage host plant associated with this species.

Maui Unit

Drosophila neoclavisetae—Unit 1—Puu Kukui consists of 584 ac (237 ha) of montane, wet, ohia forest within the west Maui mountains on the island of Maui. Ranging in elevation between 3,405–4,590 ft (1,040–1,400 m), this unit is both privately and State-owned. All of the area within this unit occurs within the boundary of the Puu Kukui Watershed Preserve, lands jointly managed by TNCH, the State of Hawaii, and the MLP Company. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 11), this unit was occupied by *D. neoclavisetae* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Cyanea kunthiana* and *C. macrostegia* ssp. *macrostegia*, the larval stage host plant associated with this species. As described below, we are excluding 450 ac (182 ha) of this unit from the critical habitat designation for *D. neoclavisetae* (see ''Exclusions Under Section 4(b)(2) of the Act'' section).

Molokai Unit

Drosophila differens—Unit 1—Puu Kolekole consists of 988 ac (400 ha) of montane, wet, ohia forest within the eastern Molokai mountains on the island of Molokai. Ranging in elevation between 3,645–4,495 ft (1,110–1,370 m), this unit is privately owned and is managed by TNCH as part of the Kamakou and Pelekunu preserves. According to the most recent survey data (K. Kaneshiro, in litt. 2005a, p. 11), this unit was occupied by *D. differens* at the time of listing. This unit includes the known elevation range, moisture regime, and native forest components used by foraging adults that have been identified as the PCEs for this species. This unit also includes populations of *Clermontia* sp., the larval stage host plant associated with this species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (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)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under 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 its intended conservation role for the species.

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 the 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, we document compliance with the requirements of section 7(a)(2) through our 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 (BO) for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a BO concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' 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;
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;
- Are economically and technologically feasible; and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying 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 need to request reinitiation of consultation with us on actions for which consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat in a manner not previously analyzed.

Federal activities that may affect *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. neoclavisetae*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia* or their designated critical habitat will require consultation under section 7(a)(2) of the Act. Activities on State, local, or private lands requiring a Federal permit, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10(a)(1)(B) of the Act, or involving some other Federal action such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency are examples of agency actions that may 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(a)(2) consultations.

Application of the Adverse Modification Standard

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 to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the 12 picture-wing flies.

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, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for the 12 picture-wing flies include, but are not limited to:

(1) Actions that may degrade or remove host plant habitat or result in the loss and degradation of the 12 picture-wing flies' habitat. For example, this could occur through activities such as controlled burns, clearing or cutting of native live trees and shrubs, introducing or encouraging the spread of nonnative plants, recreational use, or the use of off-road vehicles in a manner that degrades native vegetation.

(2) Actions that may result in the removal, thinning, or other modification of the 12 picture-wing flies' host plants. For example, this may occur through plowing, grading, development, road or fence building, burning or taking other actions that pose a risk of fire, mechanical weed control, herbicide application, recreational use, and activities associated with wildfire fighting (e.g., staging areas, surface disturbance).

(3) Actions that may affect habitat value or quality through indirect effects (e.g., outplanting efforts that enable the spread of nonnative species or fragmentation).

All of the units designated as critical habitat, including the Maui Land and Pineapple Co. portion of the *Drosophila neoclavisetae*—Unit 1—Puu Kukui, which was excluded under section 4(b)(2) of the Act, contain the physical and biological features essential to the conservation of the 12 picture-wing flies. Each of the 32 units that have been designated as critical habitat are within the geographic ranges of these species, were known to be occupied by the species at the time of listing, and are currently occupied. Federal agencies already consult with us on activities in areas that are currently occupied by these species in cases where they may be affected, to ensure that their actions do not jeopardize the continued existence of the 12 picture-wing flies.

Exclusions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now states that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources

found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

We coordinate with the military on the development and implementation of INRMPs for installations with listed species. INRMPs developed by military installations located within the range of the critical habitat designation for *Drosophila aglaia* and *D. substenoptera* were analyzed for purposes of section 4(a)(3) of the Act.

Approved INRMPs

West Range of Schofield Barracks Military Reservation

The U.S. Army completed its Oahu INRMP in 2000. Conservation measures included in the INRMP that benefit *Drosophila aglaia* and *D. substenoptera* include (1) Outplanting of native plants, which provides for the natural forest conditions necessary for adult fly foraging by both species; (2) feral ungulate control, which prevents both direct loss of the larval stage host plants and adult foraging substrate of both species and prevents habitat alteration by feral ungulates; (3) wildland wildfire control, which prevents both loss and alteration of habitat for *D. aglaia*; and (4) nonnative plant control, which prevents habitat alteration for both species.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the U.S. Army Garrison Hawaii Oahu Training Areas Natural Resource Management Final Report (U.S. Army, 2000(b)) and the 2002–2006 Oahu Integrated Natural Resources Management Plan (U.S. Army, 2000(a)) provide benefits to *Drosophila aglaia* and *D. substenoptera* where they occur within or adjacent to the West Range of Schofield Barracks Military Reservation. Therefore, this installation is exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 78 ac (31 ha) of habitat on Oahu in this final critical habitat designation because of this exemption. The other 10 species of picture-wing flies do not occur on U.S. Army land, and are not subject to consideration under section 4(a)(3)(B)(i) of the Act.

Recently, the Army informed us that they are updating their 2000 INRMP and incorporating the conservation measures found in the 2002–2006 Oahu Integrated Natural Resources Management Plan. Revisions to the INRMP are expected to be completed in 2009 (M. Mansker, in litt. 2008).

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat 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 legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, 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 based on this analysis we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

In the following sections, we address a number of general issues that are relevant to the exclusion considered in this final critical habitat rule.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: The jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements.

For 30 years prior to the Ninth Circuit's decision in *Gifford Pinchot*, consistent with the 1986 regulations, we essentially combined the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating Federal actions that affected currently occupied critical habitat. However, the court of appeals ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on species recovery. Thus, a critical habitat designation may provide greater regulatory benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or

adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential to the conservation of the species is not appreciably reduced as a result of a Federal action. Critical habitat designation alone, however, does not require property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

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 suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species or adverse modification of its critical habitat or both, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat. We believe that in many instances the benefit to a species or its habitat or both realized through the designation of critical habitat is low when compared to the conservation benefit that can be achieved through voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly additional listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project only, and not to providing conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that considers enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that 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 12 picture-wing flies. In general, critical habitat designation always has educational benefits, and may inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

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 (US Department of Agriculture 2002), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Eighty-eight percent of the State of Hawaii is made up of non-Federal lands. Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species in the United States were found almost exclusively on Federal lands (90–100 percent of their known occurrences restricted to Federal lands) and that 50 percent of 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, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery, and the Service promotes these private-sector efforts. Conservation agreements with non-Federal landowners (*e.g.*, Habitat Conservation Plans, Safe Harbor Agreements, State and local regulations, and other conservation agreements or easements) enhance species conservation by extending species protections beyond those available through section 7 consultations. We encourage 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 regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of promoting endangered species conservation on 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, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). Many landowners fear a decline in the value of their property, based on real or perceived restrictions on land-use options where threatened or endangered species occur. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because of a perceived risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648).

Some researchers believe that 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, p. 1263; Bean 2002,

p. 2; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this negative outcome is amplified in situations where active species conservation management measures (*e.g.*, reintroduction, wildfire management, control of invasive species) are necessary (Bean 2002, pp. 3–4). We believe that, in some instances, the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a greater level of species conservation than critical habitat designation alone.

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(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus the benefits of excluding areas that are covered by effective partnerships or other conservation commitments can often be high.

Benefits of Excluding Lands With Approved Management Plans

The benefits of excluding lands within approved long-term management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many conservation plans provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Designating lands within approved management plan areas as critical habitat would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, both HCP and Natural Community Conservation Plan (NCCP)-HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification, in accordance with the definition of harm referenced above.

The information provided in the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Areas Considered for Exclusion Under Section 4(b)(2) of the Act

Under section 4(b)(2) of the Act, we evaluate the effectiveness of management plans that address the enhancement or recovery of listed species when we weigh and balance the benefits of inclusion or exclusion of a particular area from critical habitat designation. We consider the following guidelines in evaluating the management and protection provided by such plans:

(1) The plan is complete and provides for the conservation and protection of the physical and biological features essential to the conservation of the species;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

Maui Land and Pineapple (MLP) Company's Puu Kukui Watershed Preserve, Located in the West Maui Mountains

Significant progress has been made in habitat restoration on MLP lands within the Puu Kukui Watershed Preserve (PKWP), located in the West Maui Mountains. We proposed to designate approximately 450 ac (182 ha) within MLP's PKWP as critical habitat on Maui for *Drosophila neoclavisetae* within *Drosophila neoclavisetae*—Unit 1—Puu Kukui (72 FR 67428). Since 1988, MLP has proactively managed their 450 ac (182 ha) within the PKWP and is currently in its 15th year of contract with the State of Hawaii's Natural Area Partnership (NAP) Program to preserve the native biodiversity of the company's conservation lands. At slightly over 8,600 ac (3,483 ha), the PKWP is the largest privately owned preserve in the State.

In 1993, MLP became the first private landowner participant in the NAP program. They are pursuing four management programs stipulated in their PKWP Management Plan (2005) that emphasize reducing nonnative species that immediately threaten the management area (MLP 1999). The primary management goals within PKWP are to: (1) Eliminate ungulate activity in all Puu Kukui management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) reduce the negative impacts of nonnative invertebrates and small animals; (4) monitor and track biological and physical resources in the watershed in order to improve management understanding of the watershed's resources; and (5) prevent the extinction of rare species within the watershed. Specific management actions that address feral ungulates include the construction of fences surrounding 10 management units and removal of ungulates within the PKWP.

The nonnative plant control program within PKWP focuses on weeds that modify habitat, prioritizing weeds according to the degree of threat to native ecosystems, and preventing the introduction of new weeds. The weed control program includes mapping and monitoring along established transects and controlling weeds through manual or mechanical means. Monitoring and research activities conducted under the plan track biological and physical resources, and detect and evaluate changes to these resources to guide management programs. Vegetation is monitored using permanent photographic points. Nonnative species,

as well as rare, endemic, and indigenous species, are monitored along permanent transects. MLP also provides logistical and other support for approved research projects, interagency cooperative agreements, and remote survey trips within the watershed.

Benefits of Inclusion

The benefits of including lands in critical habitat can be regulatory or educational, which can aid in promoting the recovery of species. The principal regulatory benefit of designating critical habitat in this area would be that Federal actions affecting *D. neoclavisetae* would require consultation under section 7 of the Act. Consultation would ensure that a proposed action does not result in the destruction or adverse modification of critical habitat. The most likely Federal nexus would be associated with Service funding for management activities that target invasive species removal, and a potential outcome of a section 7 consultation would be conservation recommendations to avoid stands of *Cyanea kunthiana* and *Cyanea macrostegia* ssp. *macrostegia* when, for example, constructing a new fence or applying herbicides. However, these conservation recommendations would still be included within the PKWP invasive species control program even in the absence of critical habitat designation. Accordingly, we believe that few additional regulatory benefits would be derived from including the MLP lands within the area designated as critical habitat for *Drosophila neoclavisetae* beyond those conservation benefits already being achieved through the implementation of the PKWP Management Plan (2005).

In addition, we conclude that few regulatory benefits would be gained from a designation of critical habitat on these lands because the consultations conducted under both the jeopardy and adverse modification standards for this species would not be likely to result in materially different outcomes. The area is occupied by the species, and the most likely Federal nexus would be management activities funded in part through the Service's Partners for Fish and Wildlife and Private Stewardship Grants programs. These programs have historically contributed funds toward the construction of fences to exclude feral ungulates from the Preserve. Service funds may also be provided for new surveys of invasive, nonnative weeds within the Puu Kukui Watershed Preserve. While we acknowledge that the legal standards for jeopardy and adverse modification differ, with the latter focused on effects to recovery, in view of the nature of the actions likely to be consulted on—programs to enhance species habitat—the outcome of consultation is likely to be the same.

There have been no section 7 consultations involving *Drosophila neoclavisetae* or its host plants with the PKWP to date. The economic analysis anticipates that there will be two informal consultations associated with projects in the PKWP to remove nonnative species over the next 13 years, although no formal consultations would be likely to occur over the 20-year timeframe of the analysis. The two informal section 7 consultations anticipated by the economic analysis would occur based on the species' presence in the area even if critical habitat is not designated. We do not foresee any additional consultations beyond those anticipated by the economic analysis, and predict that the section 7 consultation process for critical habitat would be unlikely to result in any additional protections for the species for the reasons discussed above. Consequently, there is little regulatory benefit of designating critical habitat on the MLP lands within *Drosophila neoclavisetae*—Unit 1—Puu Kukui.

The final listing rule for the 12 picture-wing flies (71 FR 26835) acknowledged the importance of this area to the overall conservation of *Drosophila neoclavisetae* (Service 2006). Maui Land and Pineapple Co. is aware of the areas where *D. neoclavisetae* occurs on their property, and is implementing conservation actions to benefit the species (MLP 2008, p. 2). Because of this proactive approach, we believe that any additional educational benefits resulting from the designation of critical habitat on these lands would be minimal. Although the designation of critical habitat may provide benefits to the recovery of a species, in this case the MLP is already committed to implementing conservation actions on their lands under the existing PKWP Management Plan (2005). Accordingly, any additional benefits to the recovery of this species beyond those already being accrued would be limited.

Benefits of Exclusion

The continued implementation of the PKWP Management Plan will provide conservation benefits to *Drosophila neoclavisetae.* Maui Land and Pineapple Co. is currently managing *D. neoclavisetae* habitat through the control of invasive species and the implementation of native species restoration activities. Implementation of the PKWP Management Plan also provides a significant conservation benefit to *D. neoclavisetae's* host plant populations in the area.

Existing MLP conservation agreements with Federal and State agencies and other private organizations advance their mission of practicing prudent stewardship of their land and water resources to ensure the protection of rare and endangered plant and animal species, and water resources that are crucial to the community. Their continued implementation of the PKWP Management Plan will specifically benefit *Drosophila neoclavisetae* through actions that manage invasive species and restore native species habitat. The PKWP Management Plan provides a significant conservation benefit to *D. neoclavisetae*'s host plant populations in the area, and we have a reasonable expectation that the strategies and measures will be effective. We have been informed by MLP that the area proposed for designation of critical habitat is already being preserved in perpetuity for the conservation and protection of native habitat for picture-wing flies and other native Hawaiian biota, and they believe that the designation of critical habitat is unnecessary (MLP 2008, p. 2). In addition, during an April 21, 2008, meeting between MLP and Service staff, MLP stated their objection to the designation of critical habitat on their lands (Scott McCarthy, Service, in litt. 2008).

Drosophila neoclavisetae is benefiting substantially from MLP's voluntary management actions, which include reducing ungulate browsing and habitat conversion, reducing competition with nonnative weeds, and reducing the risk of wildfire. MLP's management actions also include the reintroduction of currently extirpated native species into restored habitats.

We believe that exclusion of approximately 450 ac (182 ha) within MLP's portion of the proposed *Drosophila neoclavisetae*—Unit 1—Puu Kukui will acknowledge this conservation commitment and facilitate their continued cooperation and partnership with the Service. Since this area has been actively managed as a preserve since 1988, we have a reasonable expectation that the conservation management strategies and actions will continue to be implemented for the benefit of *D. neoclavisetae* and its habitat in the future. There is a risk that designating critical habitat on these MLP lands could undermine our existing conservation partnership, remove MLP's incentive to accept the additional time and expense of management planning, strain the positive working relationship we share,

and hinder future cooperative conservation projects with MLP and other potential partners.

The economic analysis also identifies some incremental economic impacts of designating critical habitat in the proposed *Drosophila neoclavisetae*—Unit 1—Puu Kukui. These costs are attributed to habitat preservation and watershed management activities. The expected post-designation incremental cost of watershed management activities is $18,150 using a 3 percent discount rate and $14,430 using a 7 percent discount rate. According to the economic analysis, these costs would be borne mostly by the MLP. While these amounts are small, excluding critical habitat from the MLP lands would remove these costs, and thus is a benefit of exclusion.

We believe that excluding this area from critical habitat will help maintain and improve our partnership relationship with this landowner by acknowledging their positive contribution to conservation on Maui. This recognition may provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, particularly where there is no regulatory requirement to implement such actions. We also note a small economic benefit to excluding this area from critical habitat.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe the proactive management of *Drosophila neoclavisetae* habitat provided under MLP's PKWP Management Plan (2005) provides significant benefits to this species. Also, excluding this area from critical habitat will help maintain and improve our partnership relationship with this landowner. Furthermore, excluding this area from critical habitat will have a small economic benefit. In contrast, the benefits of including MLP's land as critical habitat would likely be minor. This determination is based on the fact that: (1) There have been no section 7 consultations in the area since *D. neoclavisetae* was listed in 2006; (2) we anticipate few future consultations in the PKWP management area; (3) any future Federal actions would be subject to section 7 consultation since the area is occupied; and (4) future Federal actions in this area are expected to be beneficial to the species.

In conclusion, although there may be some limited regulatory, educational, or recovery benefits that would arise from the inclusion of the MLP lands as critical habitat, they are outweighed by the benefits of excluding these lands from the critical habitat designation. The continued implementation of MLP's ongoing management programs will provide comparable or greater net conservation benefits than those that would result from critical habitat designation. The significant conservation benefits that would result from the exclusion of these lands relate to MLP's ongoing and continued actions to control invasive species, protect and restore host plant habitat, and monitor native species. We, therefore, are excluding 450 ac (182 ha) of Maui Land and Pineapple Co.'s lands within the proposed *Drosophila neoclavisetae*—Unit 1—Puu Kukui from the critical habitat designation under section 4(b)(2) of the Act.

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of MLP's portion of the proposed *Drosophila neoclavisetae*—Unit 1—Puu Kukui from the final designation of critical habitat will not result in the extinction of *D. neoclavisetae.* Maui Land and Pineapple Co.'s management programs provide tangible conservation benefits that reduce the likelihood of extinction for *D. neoclavisetae* and increase the species' recovery potential. Further, we are unaware of any threats in the PKWP associated with Federal actions that would require section 7 consultation. As such, extinction of the species as a consequence of not designating critical habitat is unlikely. In addition, since this area is occupied by *D. neoclavisetae,* consultations under section 7 of the Act would be required, and any Federal actions that may affect the species would be evaluated under the jeopardy standard of section 7 of the Act. This evaluation provides assurances that the species would not become extinct as a result of those actions.

With regard to other protections, section 195D–4 of Hawaii Revised Statutes (endangered species and threatened species) stipulates that species determined to be endangered or threatened under the Federal Act shall be deemed endangered or threatened under the State law. It is unlawful under the State law, with some exceptions, to ''take'' such species, or to possess, sell, carry or transport them. The statutory protections for this species under State law provide additional assurances that exclusion of this area from critical habitat will not result in extinction of *Drosophila neoclavisetae.*

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusions exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effects of the designation. The draft analysis addressed the economic impacts of designating critical habitat for the 12 Hawaiian picture-wing flies, and was made available for public review on August 12, 2008 (73 FR 46860). We accepted comments on the draft analysis until September 11, 2008. Following the close of the comment period, a final analysis of the potential economic effects of the designation was developed taking into consideration the public comments and any new information.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the 12 species of Hawaiian picture-wing flies (*Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia*). This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis addressed the distribution of any potential impacts of the designation, including an assessment of the potential effects on small entities. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focused on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans or best management practices applied by State and other Federal agencies. Economic

impacts that result from these types of protections are considered to be part of the regulatory and policy baseline. The economic impacts that were evaluated were divided into two periods: (1) Pre-designation, covering the time period from the date the picture-wing flies were listed (May 9, 2006; 71 FR 26835) to the date the final critical habitat designation was expected to occur (about year-end 2008), and (2) post-designation, covering the 20-year period following the designation (from about 2009 through 2028).

The economic analysis considers the potential economic effects of all actions relating to the conservation of the 12 picture-wing flies, including costs associated with sections 4, 7, and 10 of the Act, as well as those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that assist in habitat conservation for the 12 picture-wing flies in those areas that contain the physical and biological features essential to their conservation. In the case of habitat conservation, economic effects generally reflect costs associated with committing resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The analysis quantifies the economic impacts of picture-wing fly critical habitat designation associated primarily with the following activities: (1) Preservation and watershed management in all but the Pit Crater unit on the Big Island; (2) game management and public recreational hunting in most of the units where land is owned by the State; (3) potential future development of approximately 3 acres (1.2 hectares) within the Pit Crater unit on the Big Island; (4) harvesting of commercial timber from portions of the Stainback Forest and Waiakea Forest units; and (5) section 7 consultation administrative costs.

The total pre-designation baseline costs during the period from 2006 to 2008 in the area proposed for critical habitat designation are estimated to range from $750,130 using a 3 percent discount rate to $808,100 using a 7 percent discount rate. Because these costs are projected to occur whether critical habitat is designated or not, they are not considered in the Service's determination of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area. These costs are related to preservation and watershed management activities, and all or nearly all of the pre-designation baseline costs have been or will be borne by Federal and State agencies. A portion of the preservation and watershed management costs has been borne by a few private landowners.

The annualized post-designation baseline costs during the period 2009 to 2028 for preservation and water management activities are estimated to range from $348,845 using a 3 percent discount rate to $379,753 using a 7 percent discount rate. Because these costs are projected to occur whether critical habitat is designated or not, they are not considered in the Service's determination of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area. All or nearly all of the post-designation baseline costs would be borne by Federal and State agencies, although a portion of the preservation and watershed management costs would be borne by a few private landowners. The combined post-designation baseline cost for these conservation activities is estimated by the final economic analysis (FEA) to be $5,345,730 at a 3 percent discount rate, and $4,305,470 at a 7 percent discount rate.

The economic analysis estimates that the annualized post-designation incremental costs for the activities described below during the period 2009 to 2028 may range from $44,733 using a 3 percent discount rate to $46,916 using a 7 percent discount rate. The activity having the highest incremental cost ranking is preservation and watershed management, with an annualized value of approximately $23,969 using a 3 percent discount rate to $25,568 using a 7 percent discount rate. The second highest cost reflects a possible opportunity loss of harvesting trees in *Drosophila mulli*—Unit 2—Stainback Forest and *Drosophila mulli*—Unit 3—Waiakea Forest, resulting in an annualized value of approximately $12,693 using a 3 percent discount rate to $12,176 using a 7 percent discount rate.

There may also be post-designation incremental costs of $68,590 using a 3 percent discount rate to $56,000 using a 7 percent discount rate from 2009–2028, related to future section 7 consultations for preservation and watershed management activities. All or nearly all of the post-designation incremental costs would be borne by Federal and State agencies, although a portion of the preservation and watershed management costs would be borne by a few private landowners. The combined total present values of estimated post-designation incremental impacts from 2009 through 2028 for all activities considered in the analysis are about $682,000 and $529,000, respectively, for the 3 and 7 percent discount rates based on the FEA (USFWS 2008, ES–4).

Only the incremental costs of designating critical habitat, over and above the costs associated with species protection under the Act more generally, are considered in determining whether areas should be excluded under section 4(b)(2). Therefore, the methodology for distinguishing these two categories of costs is important. This is particularly true in the current case, because approximately 90 percent of the total costs of species conservation over the next 20 years are projected to be baseline costs, and 10 percent are projected to be incremental costs attributable to critical habitat designation.

In the absence of critical habitat, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered species or threatened species. Costs associated with such actions are considered baseline costs. Once an area is designated as critical habitat, proposed actions that have a Federal nexus also require consultation and potential revision to ensure that the action does not result in the destruction or adverse modification of designated critical habitat. Costs associated with these actions are considered incremental costs. The economic analysis explains that incremental section 7 consultation that takes place as a result of critical habitat designation may fall into one of three categories: (1) Additional effort to address adverse modification in a consultation that also involves jeopardy; (2) re-initiation of a previously concluded consultation to address adverse modification; and (3) new consultation resulting entirely from critical habitat designation (i.e., where a proposed action may affect unoccupied critical habitat). The economic analysis estimates that there would be three project-level informal consultations related to Federal grants that would need to be reinitiated in 2009 to address picture-wing fly critical habitat. There would also be one programmatic consultation that would need to be reinitiated in 2009 related to the Hawai'i Volcano National Park management plan, and subsequent programmatic consultations every 5 years. The economic analysis indicates that since these consultations would be for preservation and watershed management activities, no or only minimal project modifications would be anticipated.

The final economic analysis is available on the Internet at *http://*

www.regulations.gov and http://www.fws.gov/ or upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

Required Determinations

In our November 28, 2007, proposed rule (72 FR 67428), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. In this final rule, we affirm the information contained in the proposed rule concerning Executive Order (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951).

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) 5 U.S.C. 802(2)), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended 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. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this designation, as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., residential and commercial development and agriculture). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat affects only activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the 12 picture-wing flies. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In the final economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the 12 picture-wing flies and proposed designation of their critical habitat. This analysis estimated prospective economic impacts due to the implementation of the 12 picture-wing flies' conservation efforts for the following activities: (a) Preservation and watershed management in all but the Pit Crater unit on the Big Island; (b) game management and public recreational hunting in most of the units where land is owned by the State; (c) potential for future development on about 3 acres (1.2 hectares) of the Pit Crater unit on the Big Island; (d) harvesting of commercial timber from portions of Drosophila mulli—Unit 2—Stainback Forest and Drosophila mulli—Unit 3—Waiakea Forest; and (e) section 7 consultation administrative costs.

Our economic analysis indicates that all or nearly all of the post-designation incremental costs would be borne by Federal and State agencies, which are not small entities. In addition, according to our economic analysis, the following agencies, organizations, and private companies that may be impacted by the designation of critical habitat are not considered to be small entities: City and County of Honolulu, Kamehameha Schools, The Nature Conservancy, Queen Emma Foundation, James Campbell Co. LLC, MLP, and Molokai Ranch. Accordingly, we are certifying that this final designation of critical habitat for the 12 Hawaiian picture-wing fly species will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply,

distribution, or use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with the 12 picture-wing flies' conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make 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; Aid to Families with Dependent Children 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, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required. Based on the consultation history and the economic analysis on this critical habitat designation, we do not foresee any significant impact to small governments.

Executive Order 12630—Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of critical habitat for the 12 picture-wing flies. The takings implications assessment concludes that this designation of critical habitat for the 12 picture-wing flies does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Hawaii. The designation of critical habitat in areas currently occupied by the 12 picture-wing flies is not likely to impose any 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 because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the 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. We are designating critical habitat in accordance with the provisions of the ESA. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the 12 picture-wing flies.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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 (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the Jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by

NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S.1042 (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. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no tribal lands occupied at the time of listing containing the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of the 12 picture-wing flies. Therefore, designation of critical habitat for the 12 picture-wing flies has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**), or on the Internet at *http://www.regulations.gov* and at *http://www.fws.gov/pacificislands.*

Author(s)

The primary authors of this notice are staff members of the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.11(h), revise the entries for ''Fly, Hawaiian picture-wing'' (*Drosophila aglaia*), ''Fly, Hawaiian picture-wing'' (*Drosophila differens*), ''Fly, Hawaiian picture-wing'' (*Drosophila hemipeza*), ''Fly, Hawaiian picture-wing'' (*Drosophila heteroneura*), ''Fly, Hawaiian picture-wing'' (*Drosophila montgomeryi*), ''Fly, Hawaiian picture-wing'' (*Drosophila mulli*), ''Fly, Hawaiian picture-wing'' (*Drosophila musaphilia*), ''Fly, Hawaiian picture-wing'' (*Drosophila neoclavisetae*), ''Fly, Hawaiian picture-wing'' (*Drosophila obatai*), ''Fly, Hawaiian picture-wing'' (*Drosophila ochrobasis*), ''Fly, Hawaiian picture-wing'' (*Drosophila substenoptera*), and ''Fly, Hawaiian picture-wing'' (*Drosophila tarphytrichia*), under INSECTS in the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Fly, Hawaiian picture-wing.	*Drosophila aglaia*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila differens*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila hemipeza*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila heteroneura.*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila montgomeryi.*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila milli*	U.S.A. (HI)	NA	T	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila musaphilia*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila neoclavisetae.*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila obatai*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila ochrobasis.*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila substenoptera.*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
Fly, Hawaiian picture-wing.	*Drosophila tarphytrichia.*	U.S.A. (HI)	NA	E	756	17.95(i)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (i) by adding entries for ''Hawaiian picture-wing fly (*Drosophila aglaia*),'' ''Hawaiian picture-wing fly (*Drosophila differens*),'' ''Hawaiian picture-wing fly (*Drosophila hemipeza*),'' ''Hawaiian picture-wing fly (*Drosophila heteroneura*),'' ''Hawaiian picture-wing fly (*Drosophila montgomeryi*),'' ''Hawaiian picture-wing fly (*Drosophila mulli*),'' ''Hawaiian picture-wing fly (*Drosophila musaphilia*),'' ''Hawaiian picture-wing fly (*Drosophila neoclavisetae*),'' ''Hawaiian picture-wing fly (*Drosophila obatai*),'' ''Hawaiian picture-wing fly (*Drosophila ochrobasis*),'' ''Hawaiian picture-wing fly (*Drosophila substenoptera*),'' and ''Hawaiian picture-wing fly (*Drosophila tarphytrichia*),'' in the same alphabetical order in which these species appear in that table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Hawaiian picture-wing fly (*Drosophila aglaia*)

(1) Critical habitat units are depicted for County of Honolulu, island of Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for *Drosophila aglaia* are:

(i) Dry to mesic, lowland, *Diospyros* sp., ohia and koa forest between the elevations of 1,865–2,985 ft (568–910 m); and

(ii) The larval host plant *Urera glabra*, which exhibits one or more life stages (from seedlings to senescent individuals).

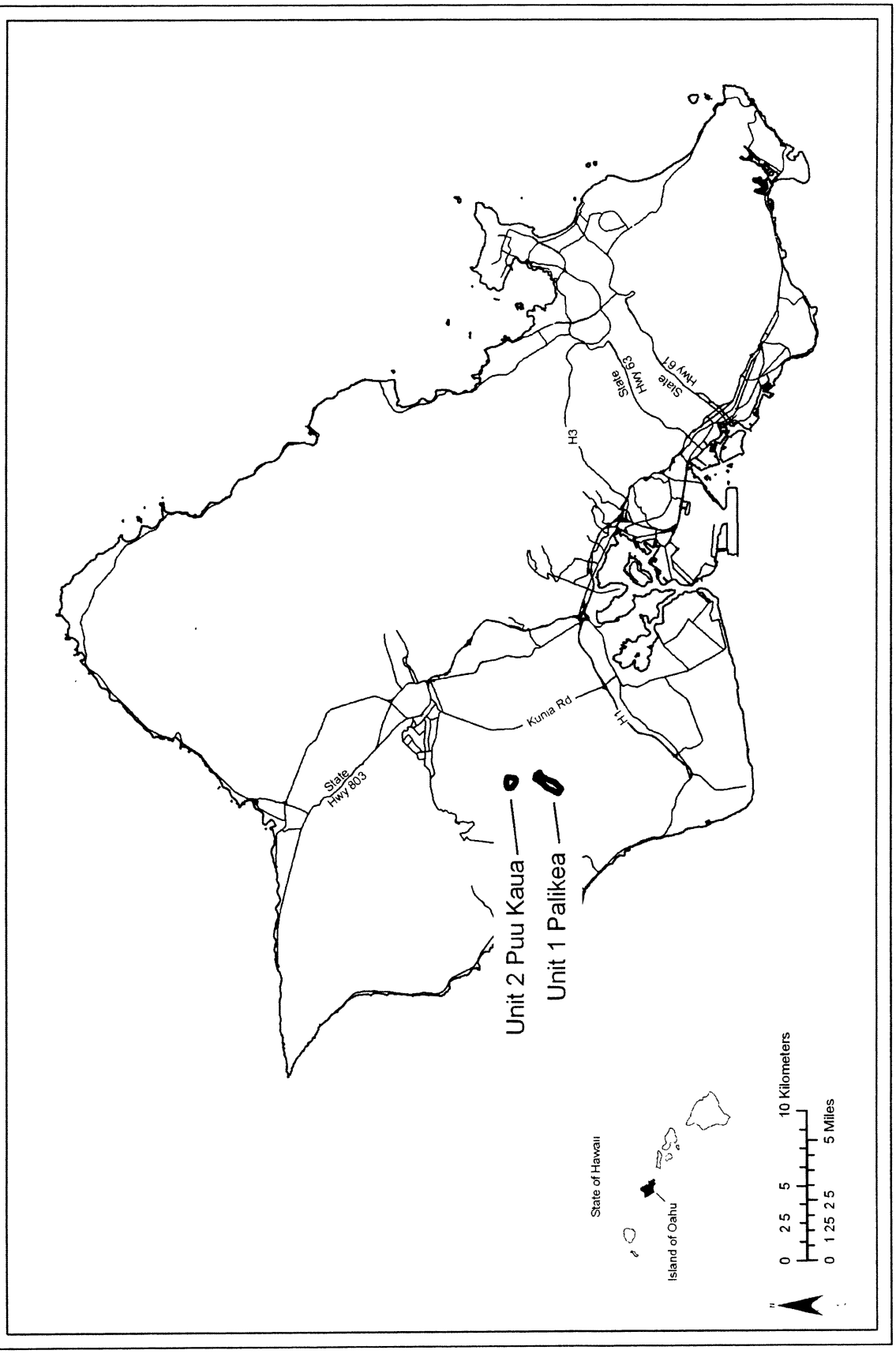
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of critical habitat units for *Drosophila aglaia* follows:

BILLING CODE 4310–55–P

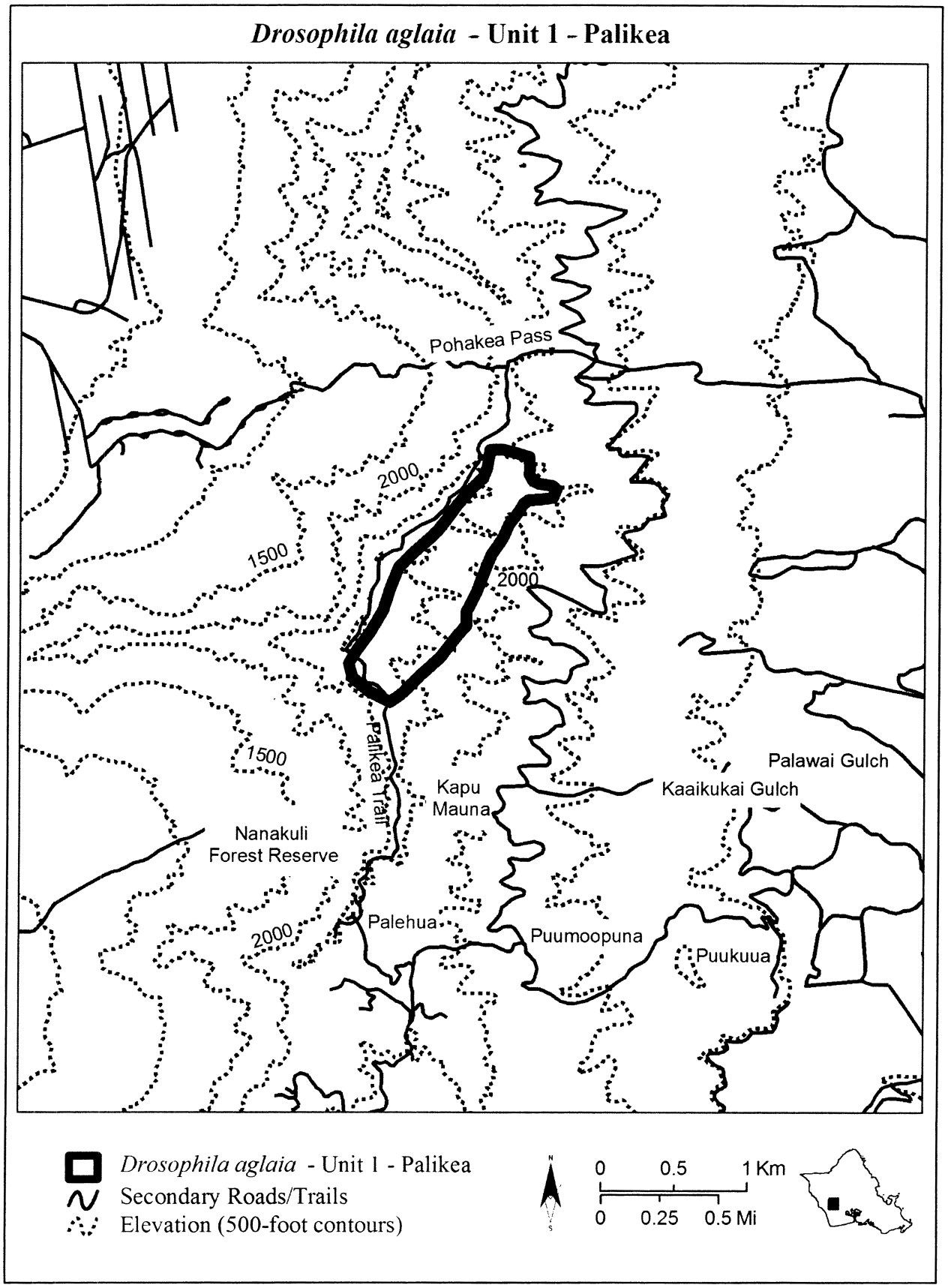
Index Map of Critical Habitat Units for *Drosophila aglaia*



(6) *Drosophila aglaia*—Unit 1—Palikea, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 593529, 2367854; 593448, 2367801; 593302, 2367874; 593242, 2367927; 593193, 2367967; 593165, 2368065; 593217, 2368150; 593314, 2368283; 593399, 2368425; 593448, 2368578; 593505, 2368716; 593622, 2368833; 593703, 2368906; 593764, 2368963; 593832, 2369044; 593901, 2369145; 594002, 2369262; 594079, 2369331; 594104, 2369396; 594120, 2369485; 594124, 2369521; 594148, 2369525; 594213, 2369525; 594310, 2369497; 594395, 2369473; 594399, 2369392; 594396, 2369356; 594417, 2369313; 594461, 2369290; 594551, 2369278; 594579, 2369250; 594559, 2369197; 594472, 2369183; 594391, 2369179; 594354, 2369153; 594302, 2369072; 594257, 2369015; 594213, 2368914; 594136, 2368809; 594083, 2368672; 594035, 2368550; 593966, 2368417; 593966, 2368324; 593909, 2368259; 593792, 2368105; 593675, 2368000.

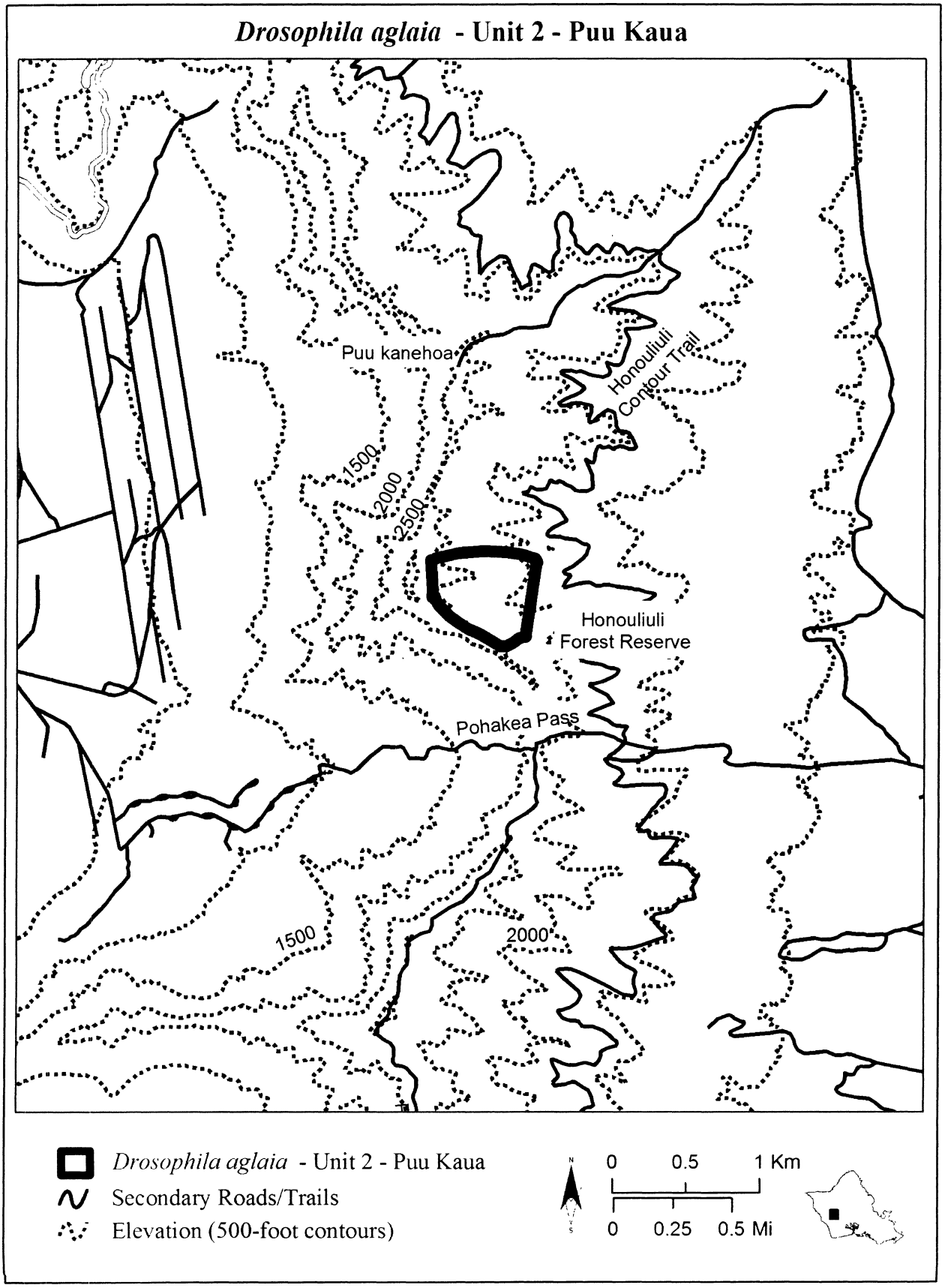
(ii) Note: Map of *Drosophila aglaia*—Unit 1—Palikea follows:


Drosophila aglaia - Unit 1 - Palikea
Pohakea Pass
2000
1500
2000
1500
Palikea Trail
Kapu Mauna
Palawai Gulch
Kaaikukai Gulch
Nanakuli Forest Reserve
Palehua
2000
Puumoopuna
Puukuua
Drosophila aglaia - Unit 1 - Palikea
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(7) *Drosophila aglaia*—Unit 2—Puu Kaua, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 594166, 2370854; 594166, 2370853; 594164, 2370854; 594122, 2370843; 594090, 2370815; 594040, 2370789; 593996, 2370789; 593930, 2370827; 593852, 2370875; 593778, 2370907; 593716, 2370947; 593642, 2370999; 593602, 2371041; 593574, 2371067; 593558, 2371095; 593539, 2371118; 593531, 2371121; 593534, 2371173; 593519, 2371375; 593533, 2371375; 593552, 2371390; 593628, 2371404; 593716, 2371426; 593794, 2371431; 593876, 2371437; 593974, 2371435; 594036, 2371431; 594138, 2371415; 594190, 2371399; 594232, 2371385; 594246, 2371359; 594239, 2371354; 594170, 2370879; 594172, 2370877; 594170, 2370855.

(ii) Note: Map of *Drosophila aglaia*—Unit 2—Puu Kaua follows:


Drosophila aglaia - Unit 2 - Puu Kaua
Puu kanehoa
Honouliuli Contour Trail
1500
2000
2500
Honouliuli Forest Reserve
Pohakea Pass
1500
2000
Drosophila aglaia - Unit 2 - Puu Kaua
Secondary Roads/Trails
Elevation (500-foot contours)
N
S
0 0.5 1 Km
0 0.25 0.5 Mi

Hawaiian picture-wing fly (*Drosophila differens*)

(1) Critical habitat is depicted for County of Maui, island of Molokai, Hawaii, on the map below.

(2) The primary constituent elements of critical habitat for *Drosophila differens* are:

(i) Wet, montane, ohia forest between the elevations of 3,645–4,495 ft (1,111–1,370 m); and

(ii) The larval host plants *Clermontia arborescens* ssp. *waihiae, C. granidiflora* ssp. *munroi, C. oblongifolia* ssp. *brevipes, C. kakeana*, and *C. pallida,* which exhibit one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

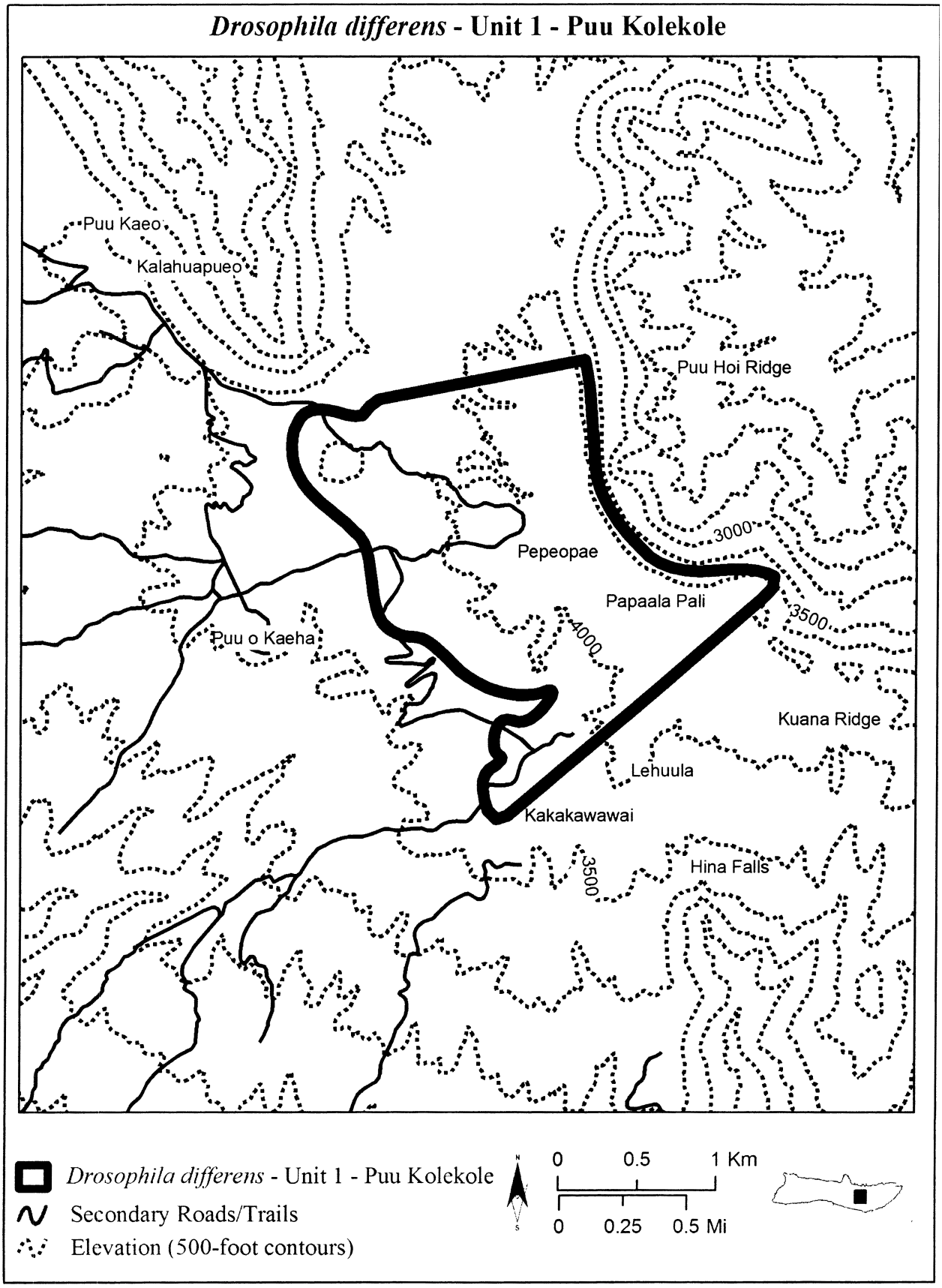
(4) Critical habitat map unit. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) *Drosophila differens*—Unit 1—Puu Kolekole, Maui County, island of Molokai, Hawaii.

(i) Land bounded by the following coordinates: 718527, 2337536; 718533, 2337451; 718538, 2337370; 718543, 2337298; 718547, 2337236; 718551, 2337182; 718555, 2337138; 718560, 2337098; 718571, 2337055; 718586, 2337010; 718607, 2336962; 718632, 2336912; 718662, 2336860; 718698, 2336807; 718739, 2336754; 718784, 2336700; 718835, 2336646; 718892, 2336593; 718958, 2336551; 719034, 2336520; 719119, 2336502; 719215, 2336497; 719320, 2336503; 719420, 2336509; 719506, 2336508; 719579, 2336500; 719639, 2336484; 719685, 2336462; 719675, 2336394; 719613, 2336327; 718980, 2335781; 718332, 2335236; 718002, 2334953; 717930, 2334932; 717877, 2334988; 717855, 2335060; 717846, 2335123; 717848, 2335175; 717862, 2335217; 717888, 2335249; 717921, 2335272; 717946, 2335291; 717961, 2335308; 717965, 2335322; 717958, 2335333; 717942, 2335342; 717928, 2335356; 717919, 2335377; 717915, 2335404; 717916, 2335438; 717923, 2335478; 717935, 2335515; 717952, 2335542; 717974, 2335558; 718001, 2335564; 718034, 2335559; 718070, 2335550; 718107, 2335553; 718144, 2335567; 718182, 2335593; 718221, 2335630; 718257, 2335675; 718280, 2335710; 718286, 2335733; 718277, 2335745; 718253, 2335744; 718213, 2335731; 718166, 2335721; 718115, 2335717; 718060, 2335719; 718001, 2335728; 717937, 2335742; 717873, 2335764; 717812, 2335793; 717753, 2335829; 717697, 2335873; 717643, 2335924; 717591, 2335977; 717543, 2336020; 717499, 2336052; 717458, 2336073; 717420, 2336083; 717385, 2336085; 717351, 2336089; 717319, 2336098; 717288, 2336110; 717258, 2336127; 717230, 2336148; 717204, 2336180; 717183, 2336223; 717165, 2336280; 717151, 2336348; 717140, 2336429; 717130, 2336510; 717118, 2336579; 717103, 2336636; 717085, 2336680; 717065, 2336713; 717041, 2336739; 717009, 2336769; 716968, 2336806; 716919, 2336847; 716862, 2336894; 716800, 2336946; 716745, 2337000; 716702, 2337055; 716669, 2337112; 716647, 2337171; 716635, 2337231; 716632, 2337289; 716634, 2337341; 716644, 2337388; 716660, 2337430; 716683, 2337468; 716713, 2337497; 716751, 2337516; 716797, 2337523; 716850, 2337520; 716912, 2337507; 716976, 2337488; 717031, 2337481; 717077, 2337486; 717126, 2337542; 717183, 2337585; 718403, 2337817; 718484, 2337833; 718487, 2337824; 718499, 2337760; 718510, 2337691; 718519, 2337616.

(ii) Note: Map of *Drosophila differens*—Unit 1—Puu Kolekole follows:

BILLING CODE 4310–55–P


Drosophila differens - Unit 1 - Puu Kolekole
Puu Kaeo
Kalahuapueo
Puu Hoi Ridge
3000
Pepeopae
Papaala Pali
3500
4000
Puu o Kaeha
Kuana Ridge
Lehuula
Kakakawawai
3500
Hina Falls
Drosophila differens - Unit 1 - Puu Kolekole
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

Hawaiian picture-wing fly (*Drosophila hemipeza*)

(1) Critical habitat units are depicted for County of Honolulu, island of Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for Drosophila hemipeza are:

(i) Dry to mesic, lowland, ohia and koa forest between the elevations of 1,720–3,005 ft (524–916 m); and

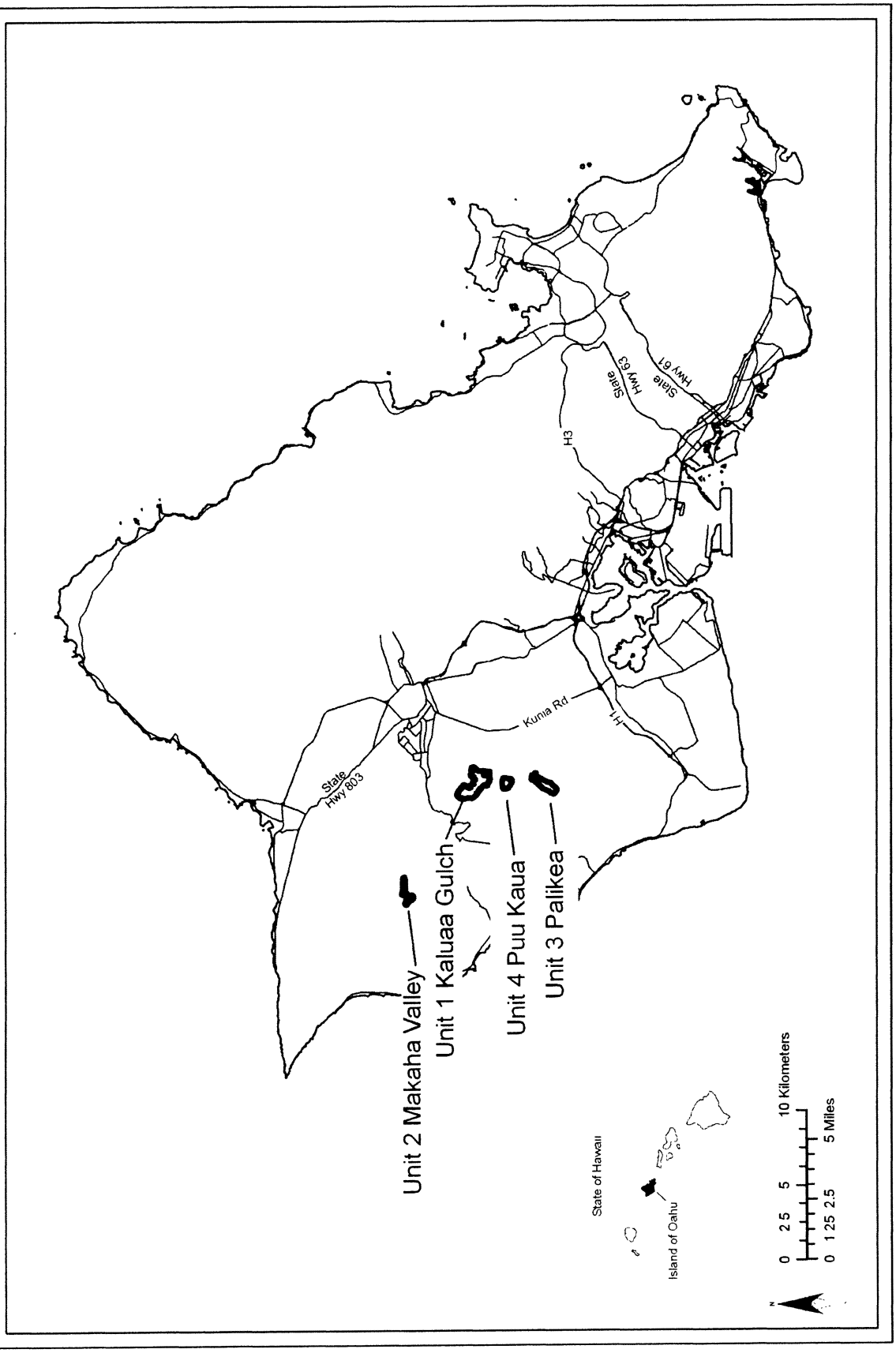
(ii) The larval host plants *Cyanea angustifolia, C. calycina, C. grimesiana* ssp. *grimesiana, C. grimesiana* ssp. *obatae, C. membranacea, C. pinnatifida, C. superba* ssp. *superba, Lobelia hypoleuca, L. niihauensis, L. yuccoides,* and *Urera kaalae,* which exhibit one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of critical habitat units for *Drosophila hemipeza* follows:

Index Map of Critical Habitat Units for *Drosophila hemipeza*

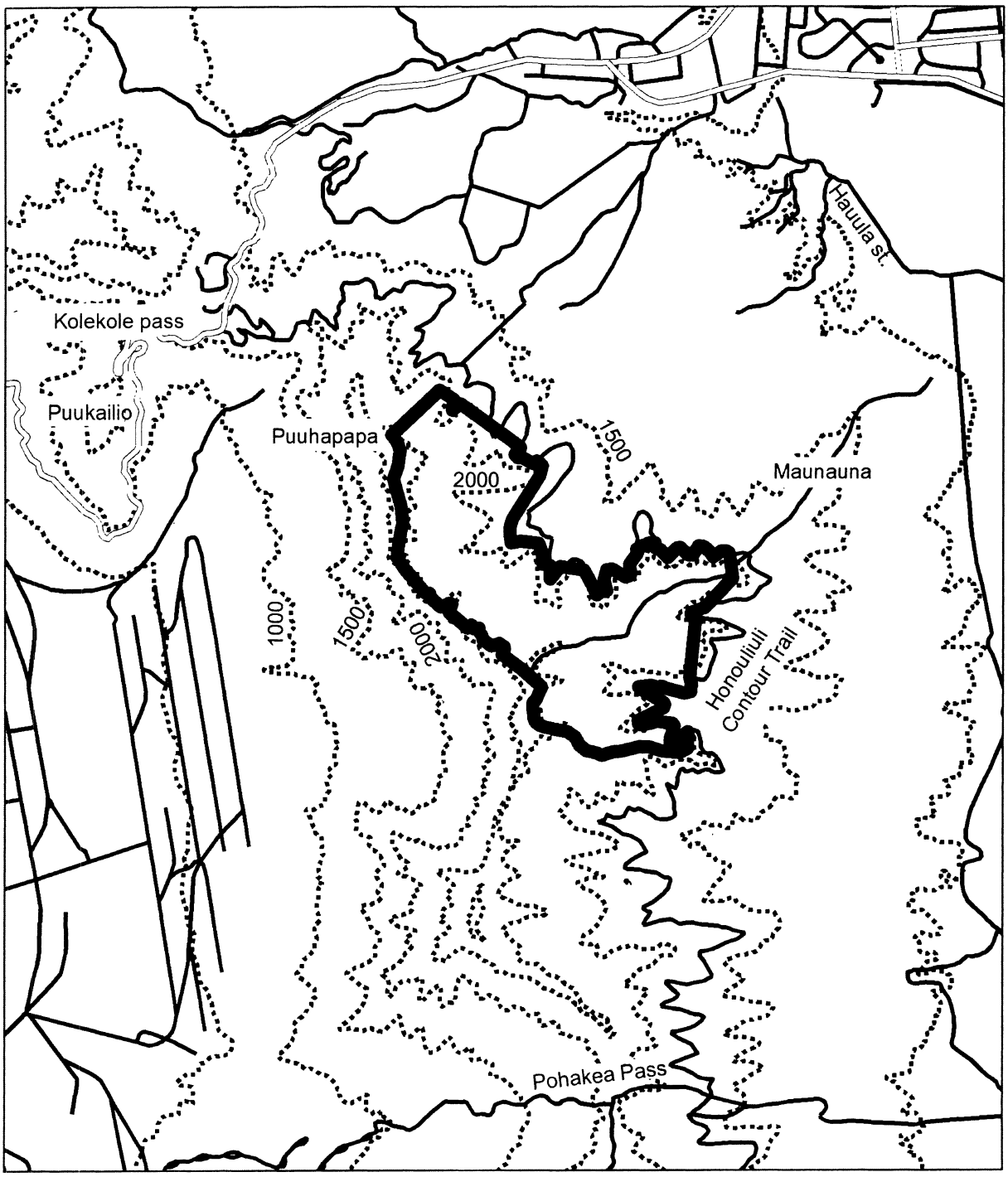


(6) *Drosophila hemipeza*—Unit 1—Kaluaa Gulch, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 593240, 2374436; 593231, 2374371; 593281, 2374410; 593315, 2374385; 593612, 2374173; 593656, 2374138; 593621, 2374096; 593641, 2374077; 593676, 2374072; 593703, 2374057; 593734, 2374039; 593758, 2374058; 593793, 2374029; 593779, 2373964; 593731, 2373894; 593660, 2373784; 593609, 2373702; 593592, 2373648; 593592, 2373594; 593598, 2373553; 593657, 2373561; 593770, 2373549; 593792, 2373496; 593797, 2373417; 593842, 2373411; 593842, 2373326; 593905, 2373404; 594053, 2373383; 594103, 2373292; 594134, 2373228; 594156, 2373250; 594194, 2373256; 594178, 2373323; 594196, 2373386; 594229, 2373390; 594312, 2373340; 594341, 2373350; 594339, 2373421; 594383, 2373487; 594381, 2373513; 594460, 2373552; 594496, 2373553; 594497, 2373518; 594526, 2373509; 594572, 2373460; 594632, 2373519; 594649, 2373523; 594699, 2373475; 594728, 2373476; 594762, 2373532; 594791, 2373529; 594828, 2373501; 594852, 2373465; 594903, 2373501; 594933, 2373500; 594952, 2373489; 594974, 2373334; 594800, 2373150; 594718, 2373120; 594718, 2373102; 594744, 2373091; 594710, 2372721; 594720, 2372686; 594716, 2372633; 594678, 2372623; 594566, 2372651; 594536, 2372666; 594506, 2372663; 594467, 2372672; 594395, 2372663; 594406, 2372650; 594546, 2372567; 594558, 2372553; 594551, 2372535; 594389, 2372452; 594395, 2372434; 594415, 2372428; 594511, 2372449; 594603, 2372437; 594614, 2372421; 594607, 2372385; 594593, 2372353; 594591, 2372317; 594618, 2372322; 594661, 2372357; 594700, 2372384; 594696, 2372334; 594697, 2372333; 594697, 2372283; 594652, 2372257; 594541, 2372266; 594454, 2372294; 594400, 2372294; 594293, 2372267; 594231, 2372261; 594168, 2372241; 594126, 2372258; 594075, 2372267; 594030, 2372303; 593999, 2372354; 593948, 2372388; 593889, 2372397; 593812, 2372413; 593781, 2372425; 593756, 2372442; 593742, 2372467; 593742, 2372490; 593736, 2372521; 593736, 2372560; 593757, 2372587; 593790, 2372662; 593663, 2372772; 593543, 2372859; 593558, 2372894; 593555, 2372910; 593526, 2372928; 593476, 2372912; 593422, 2372953; 593420, 2372976; 593403, 2372997; 593400, 2373025; 593373, 2373016; 593352, 2373044; 593328, 2373025; 593215, 2373118; 593230, 2373171; 593214, 2373176; 593163, 2373154; 593095, 2373213; 593091, 2373238; 593064, 2373243; 593019, 2373295; 592937, 2373388; 592889, 2373462; 592897, 2373535; 592908, 2373597; 592923, 2373668; 592914, 2373772; 592889, 2373866; 592868, 2373941; 592867, 2373950; 592894, 2374029; 592908, 2374120; 592894, 2374162; 592860, 2374213; 592854, 2374216; 593151, 2374494.

(ii) Note: Map of *Drosophila hemipeza*—Unit 1—Kaluaa Gulch follows:

Drosophila hemipeza **- Unit 1 - Kaluaa Gulch**



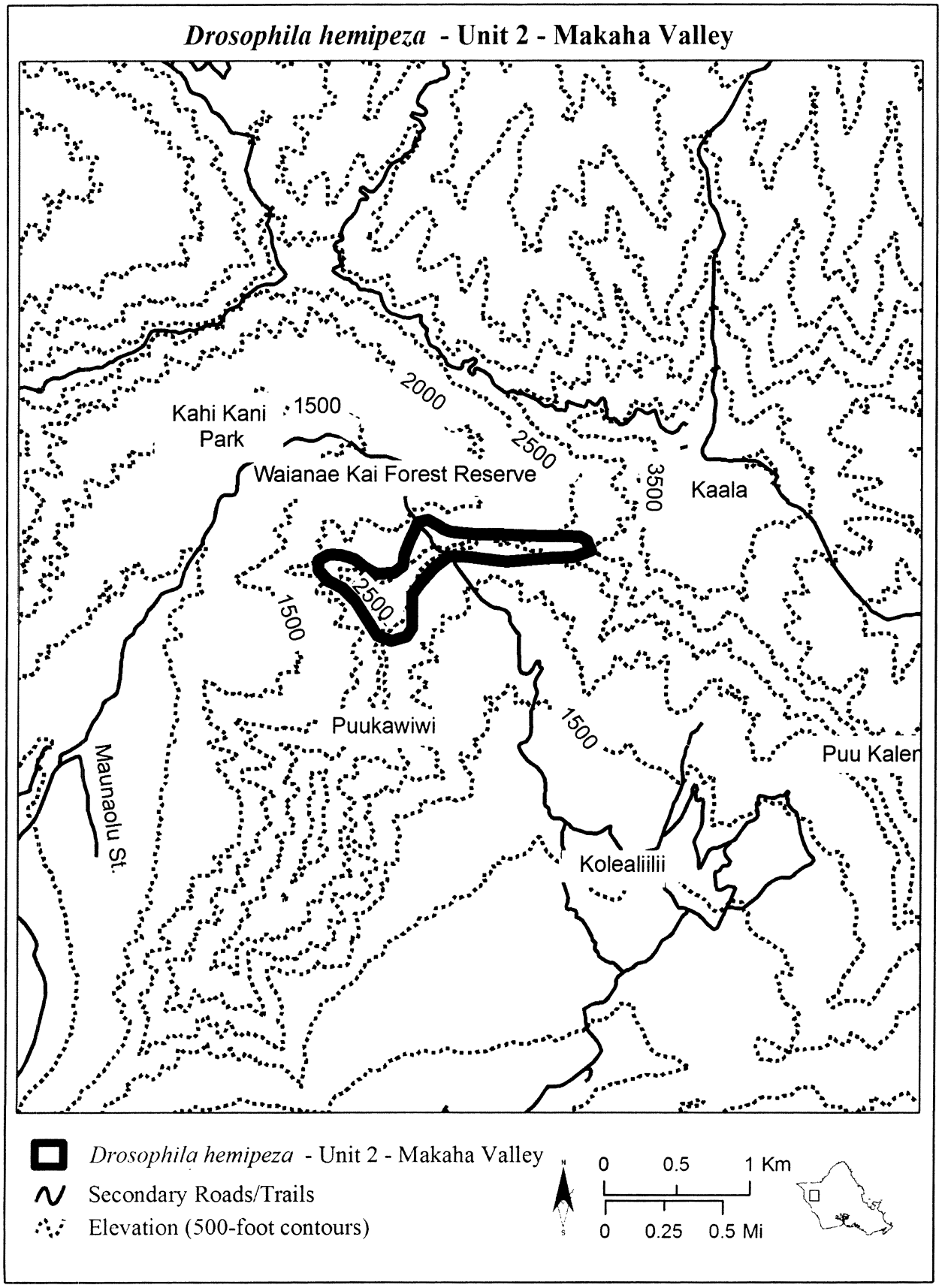
Drosophila hemipeza - Unit 1 - Kaluaa Gulch
Major Roads
Secondary Roads/Trails
Elevation (500-foot contours)

0 0.5 1 Km
0 0.25 0.5 Mi

(7) *Drosophila hemipeza*—Unit 2—Makaha Valley, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 586712, 2378108; 586877, 2378091; 587049, 2378091; 587173, 2378087; 587333, 2378079; 587506, 2378079; 587592, 2378075; 587641, 2378046; 587641, 2378038; 587666, 2377980; 587543, 2377935; 587399, 2377931; 587243, 2377919; 587090, 2377906; 586794, 2377943; 586696, 2377943; 586597, 2377869; 586507, 2377767; 586449, 2377684; 586449, 2377458; 586408, 2377397; 586305, 2377368; 586206, 2377405; 586054, 2377643; 585968, 2377726; 585869, 2377775; 585803, 2377849; 585803, 2377915; 585869, 2377952; 585894, 2377956; 585956, 2377952; 586050, 2377923; 586120, 2377869; 586194, 2377824; 586317, 2377828; 586383, 2377878; 586391, 2377956; 586420, 2378034; 586461, 2378116; 586482, 2378174; 586552, 2378190; 586630, 2378149; 586655, 2378128.

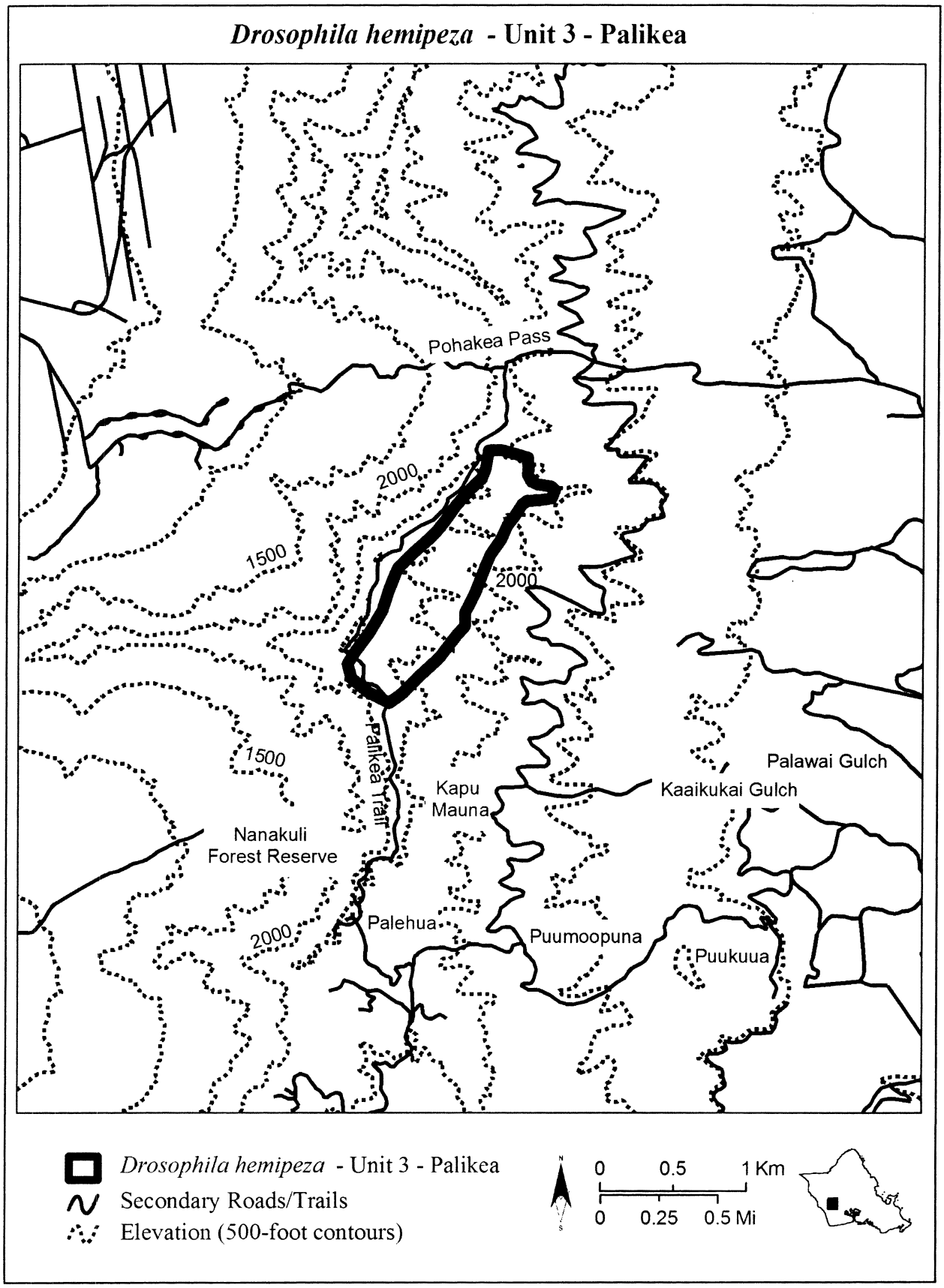
(ii) Note: Map of *Drosophila hemipeza*—Unit 2—Makaha Valley follows:


Drosophila hemipeza - Unit 2 - Makaha Valley
Kahi Kani Park
1500
2000
2500
Waianae Kai Forest Reserve
3500
Kaala
2500
1500
Puukawiwi
1500
Puu Kalen
Maunaolu St.
Kolealiilii
Drosophila hemipeza - Unit 2 - Makaha Valley
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(8) *Drosophila hemipeza*—Unit 3—Palikea, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 593529, 2367854; 593448, 2367801; 593302, 2367874; 593242, 2367927; 593193, 2367967; 593165, 2368065; 593217, 2368150; 593314, 2368283; 593399, 2368425; 593448, 2368578; 593505, 2368716; 593622, 2368833; 593703, 2368906; 593764, 2368963; 593832, 2369044; 593901, 2369145; 594002, 2369262; 594079, 2369331; 594104, 2369396; 594120, 2369485; 594124, 2369521; 594148, 2369525; 594213, 2369525; 594310, 2369497; 594395, 2369473; 594399, 2369392; 594396, 2369356; 594417, 2369313; 594461, 2369290; 594551, 2369278; 594579, 2369250; 594559, 2369197; 594472, 2369183; 594391, 2369179; 594354, 2369153; 594302, 2369072; 594257, 2369015; 594213, 2368914; 594136, 2368809; 594083, 2368672; 594035, 2368550; 593966, 2368417; 593966, 2368324; 593909, 2368259; 593792, 2368105; 593675, 2368000.

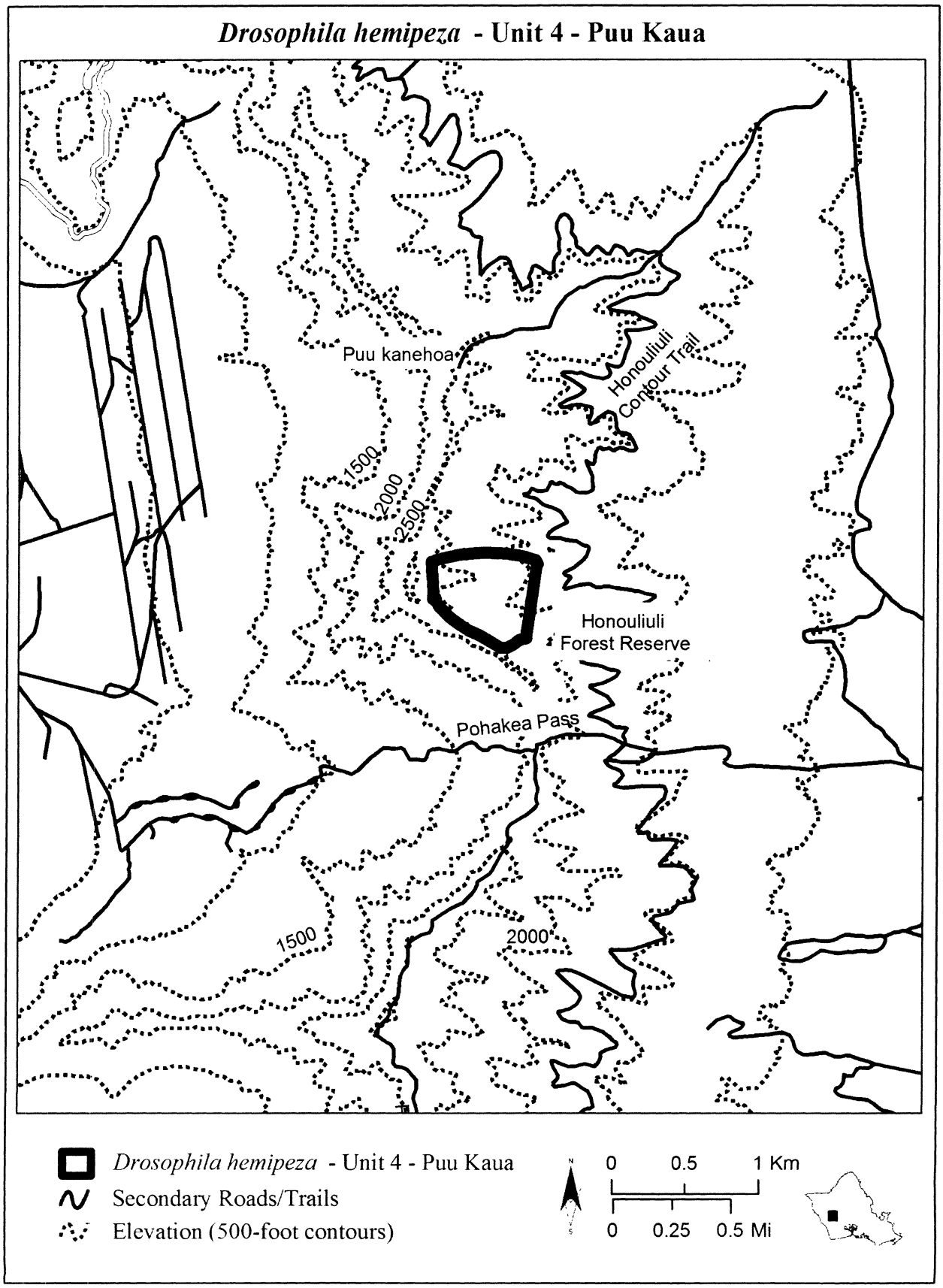
(ii) Note: Map of *Drosophila hemipeza*—Unit 3—Palikea follows:


Drosophila hemipeza - Unit 3 - Palikea
Pohakea Pass
2000
1500
2000
1500
Palikea Trail
Kapu Mauna
Palawai Gulch
Kaaikukai Gulch
Nanakuli Forest Reserve
Palehua
2000
Puumoopuna
Puukuua
Drosophila hemipeza - Unit 3 - Palikea
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(9) *Drosophila hemipeza*—Unit 4—Puu Kaua, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 594166, 2370854; 594166, 2370853; 594164, 2370854; 594122, 2370843; 594090, 2370815; 594040, 2370789; 593996, 2370789; 593930, 2370827; 593852, 2370875; 593778, 2370907; 593716, 2370947; 593642, 2370999; 593602, 2371041; 593574, 2371067; 593558, 2371095; 593539, 2371118; 593531, 2371121; 593534, 2371173; 593519, 2371375; 593533, 2371375; 593552, 2371390; 593628, 2371404; 593716, 2371426; 593794, 2371431; 593876, 2371437; 593974, 2371435; 594036, 2371431; 594138, 2371415; 594190, 2371399; 594232, 2371385; 594246, 2371359; 594239, 2371354; 594170, 2370879; 594172, 2370877; 594170, 2370855.

(ii) Note: Map of *Drosophila hemipeza*—Unit 4—Puu Kaua follows:


Drosophila hemipeza - Unit 4 - Puu Kaua
Puu kanehoa
Honouliuli Contour Trail
1500
2000
2500
Honouliuli Forest Reserve
Pohakea Pass
1500
2000
Drosophila hemipeza - Unit 4 - Puu Kaua
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

Hawaiian picture-wing fly (*Drosophila heteroneura*)

(1) Critical habitat units are depicted for County of Hawaii, island of Hawaii, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for *Drosophila heteroneura* are:

(i) Mesic to wet, montane, ohia and koa forest between the elevations of 2,908–5,755 ft (908–1,754 m); and

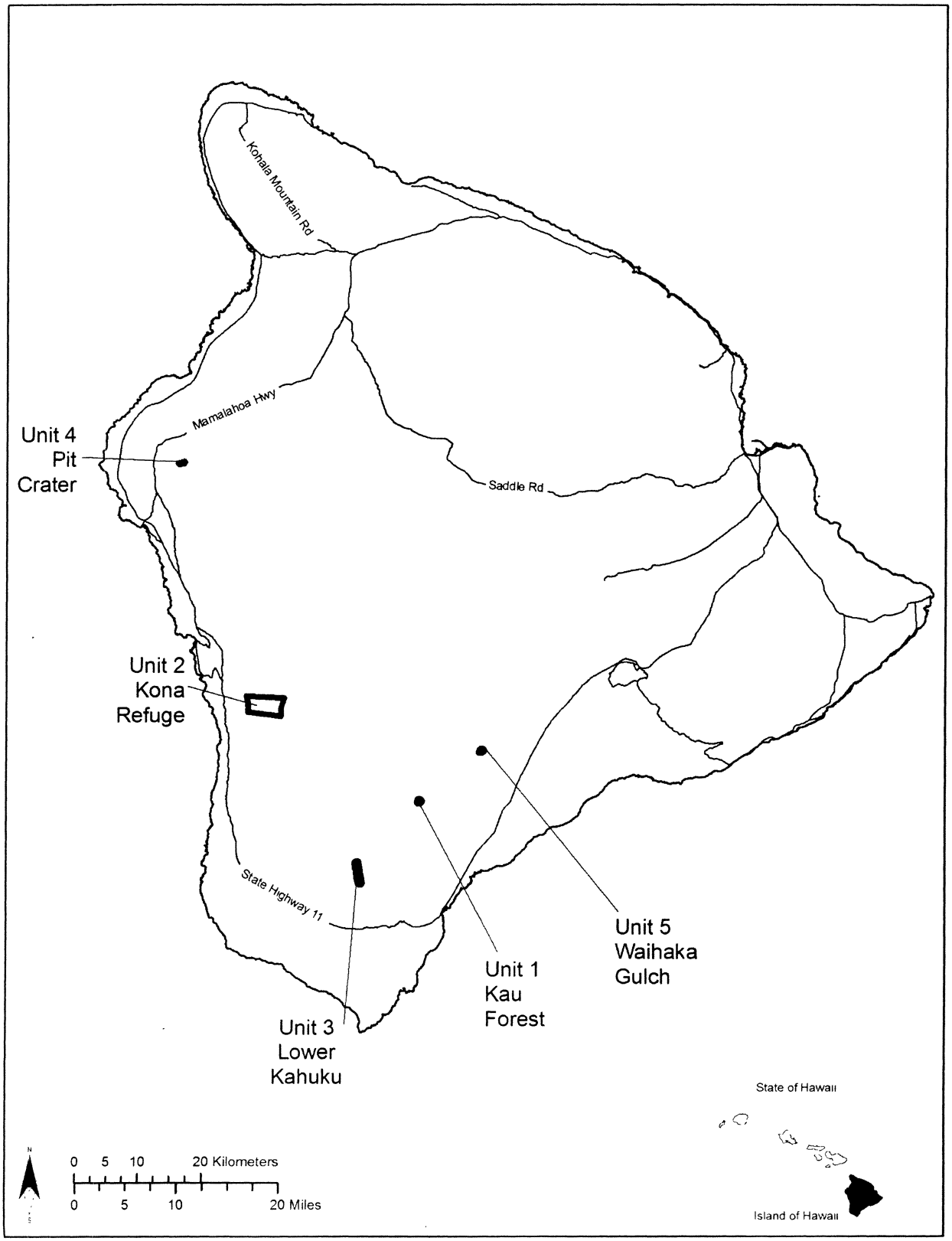
(ii) The larval host plants *Cheirodendron trigynum* ssp. *trigynum, Clermontia clermontioides, C. clermontioides ssp. rockiana, C. hawaiiensis, C. kohalae, C. lindseyana, C. montis-loa, C. parviflora, C. peleana, C. pyrularia,* and *Delissea parviflora,* which exhibit one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of critical habitat units for *Drosophila heteroneura* follows:

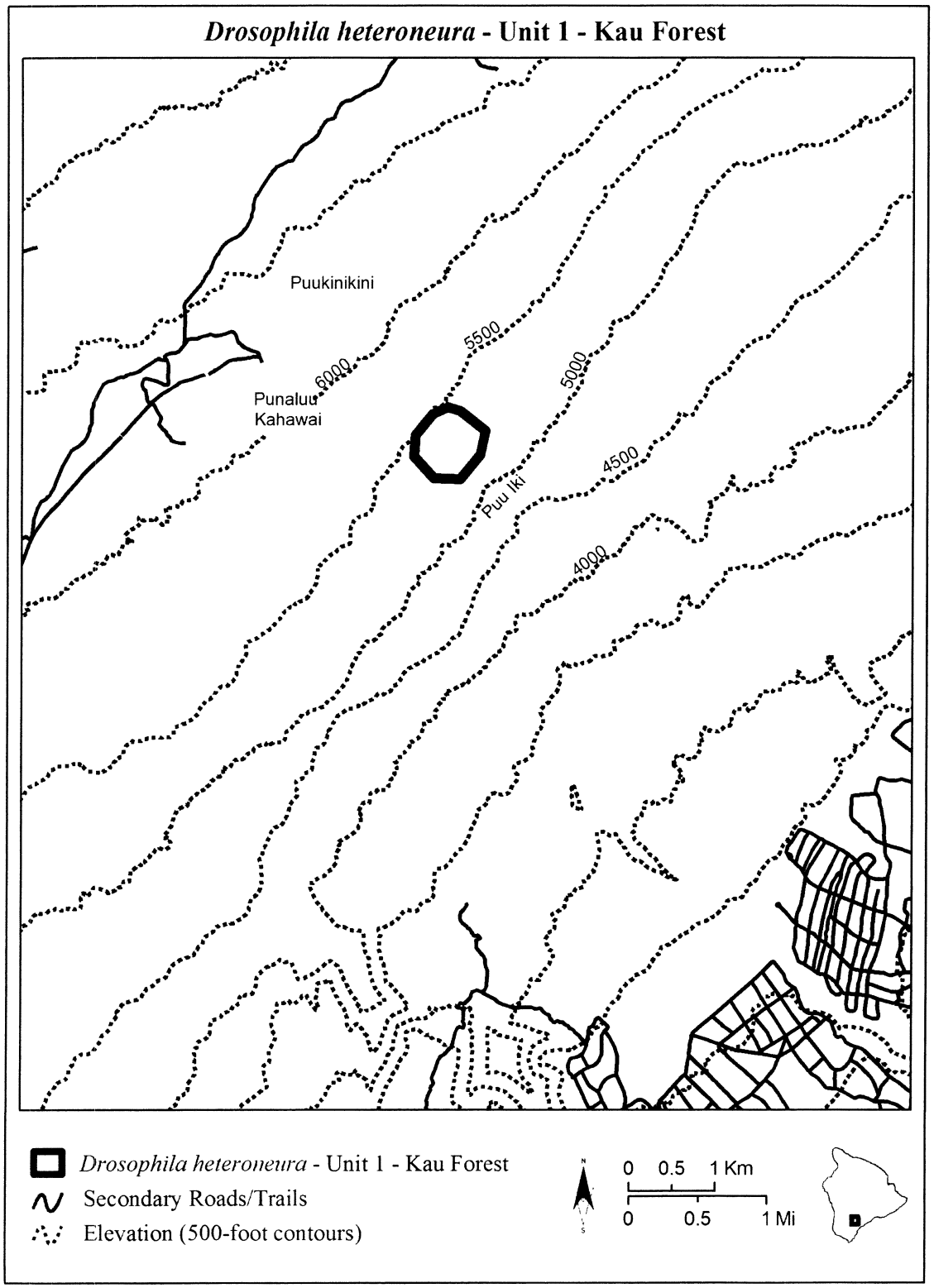
Index Map of Critical Habitat Units for *Drosophila heteroneura*



(6) *Drosophila heteroneura*—Unit 1—Kau Forest, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 859357, 2130685; 859117, 2130401; 858810, 2130412; 858577, 2130667; 858596, 2130918; 858800, 2131167; 858976, 2131240; 859117, 2131196; 859416, 2130970.

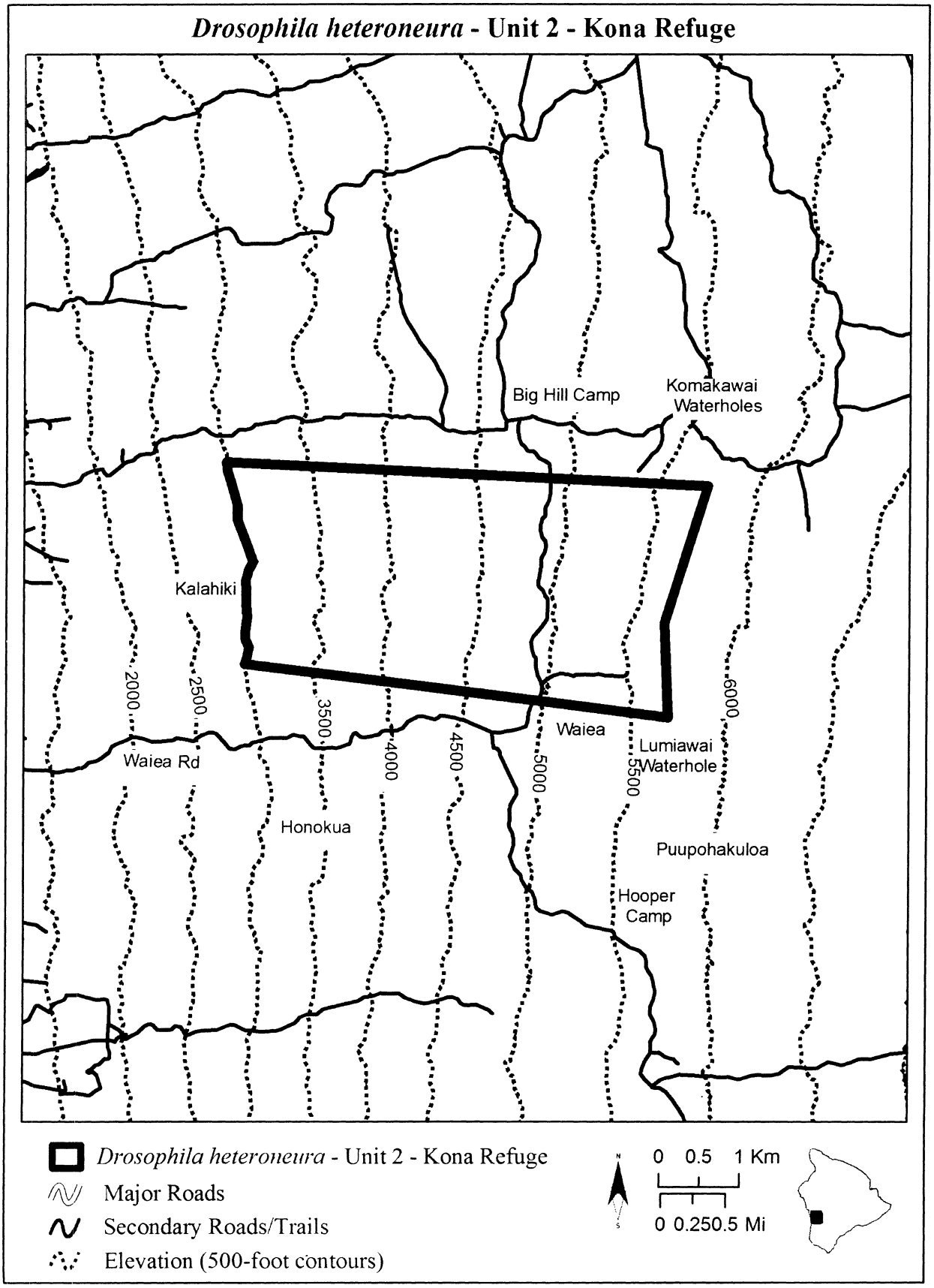
(ii) Note: Map of *Drosophila heteroneura*—Unit 1—Kau Forest follows:



(7) *Drosophila heteroneura*—Unit 2—Kona Refuge, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 836880, 2145492; 836927, 2144316; 836473, 2144373; 835378, 2144516; 831663, 2144980; 31685, 2145029; 831718, 2145184; 831669, 2145289; 831669, 2145387; 831694, 2145557; 31685, 2145727; 831685, 2145882; 831677, 2146020; 831710, 2146149; 831767, 2146247; 31685, 2146482; 831572, 2146766; 831572, 2146953; 831515, 2147156; 831442, 2147391; 31438, 2147486; 837419, 2147183.

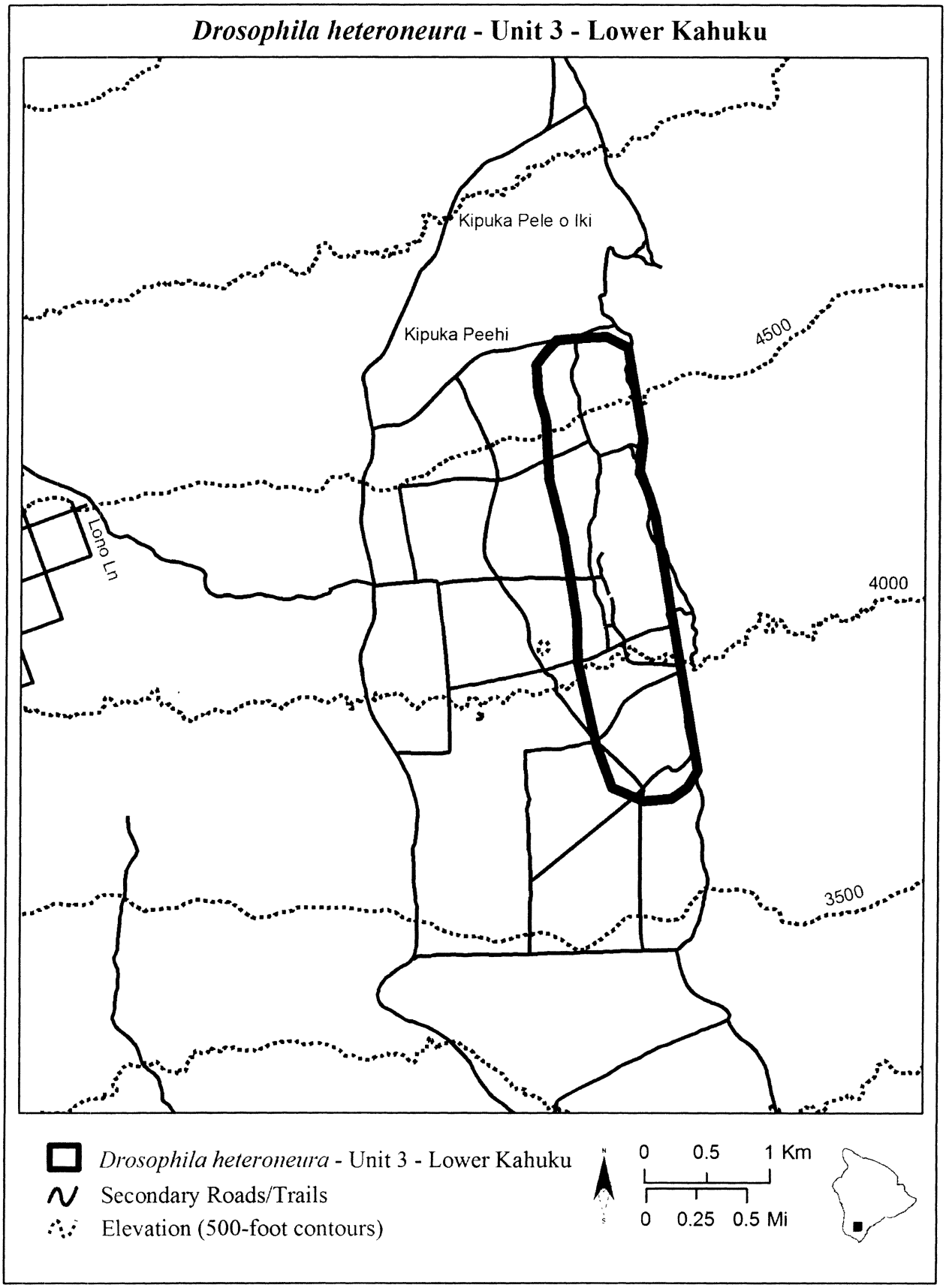
(ii) Note: Map of *Drosophila heteroneura*—Unit 2—Kona Refuge follows:


Drosophila heteroneura - Unit 2 - Kona Refuge
Big Hill Camp
Komakawai Waterholes
Kalahiki
2000
2500
3500
4000
4500
5000
5500
6000
Waiea
Waiea Rd
Lumiawai Waterhole
Honokua
Puupohakuloa
Hooper Camp
Drosophila heteroneura - Unit 2 - Kona Refuge
Major Roads
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.250.5 Mi

(8) *Drosophila heteroneura*—Unit 3—Lower Kahuku, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 849578, 2119874; 849925, 2117860; 849842, 2117726; 849716, 2117636; 849492, 2117618; 49240, 2117726; 849114, 2118058; 848962, 2118723; 848953, 2119065; 848845, 2119720; 48728, 2120187; 848701, 2120646; 848638, 2120870; 848620, 2121095; 848692, 2121194; 48782, 2121292; 849007, 2121310; 849177, 2121319; 849350, 2121233; 849475, 2120505; 49474, 2120484; 849447, 2120250; 849528, 2120044.

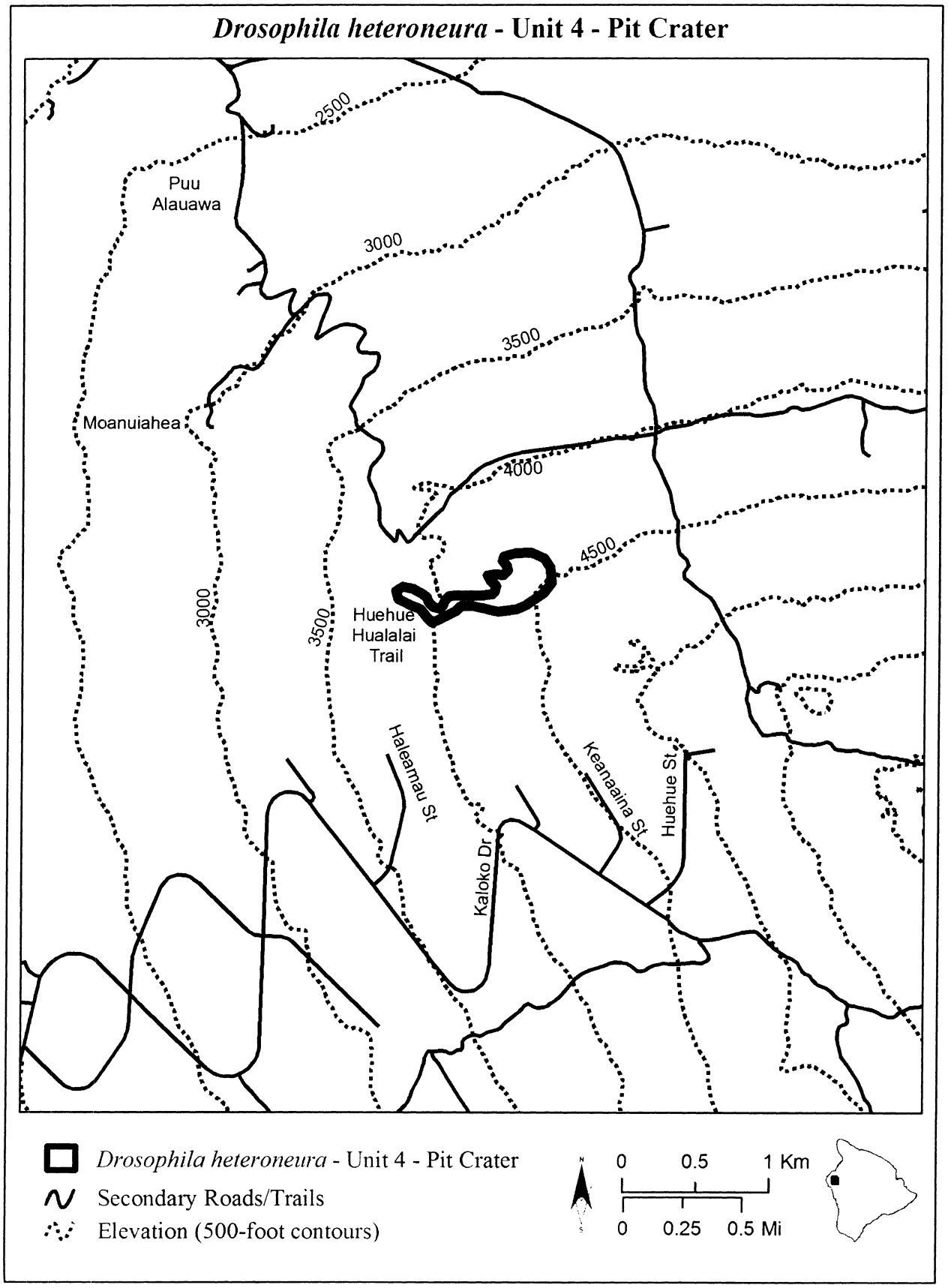
(ii) Note: Map of *Drosophila heteroneura*—Unit 3—Lower Kahuku follows:


Drosophila heteroneura - Unit 3 - Lower Kahuku
Kipuka Pele o Iki
Kipuka Peehi
4500
4000
3500
Lono Ln
Drosophila heteroneura - Unit 3 - Lower Kahuku
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(9) *Drosophila heteroneura*—Unit 4—Pit Crater, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 821660, 2184453; 821670, 2184348; 821617, 2184279; 821490, 2184191; 821428, 2184164; 821304, 2184150; 821131, 2184187; 821052, 2184187; 821012, 2184150; 820889, 2184086; 820850, 2184076; 820824, 2184102; 820778, 2184164; 820705, 2184193; 820626, 2184233; 820610, 2184289; 820657, 2184318; 820673, 2184316; 820707, 2184310; 820723, 2184306; 820747, 2184293; 820790, 2184269; 820818, 2184247; 820832, 2184215; 820861, 2184180; 820905, 2184168; 820929, 2184191; 820939, 2184221; 820974, 2184255; 821024, 2184261; 821109, 2184261; 821206, 2184261; 821264, 2184269; 821282, 2184285; 821292, 2184322; 821254, 2184360; 821232, 2184396; 821276, 2184404; 821341, 2184400; 821369, 2184431; 821363, 2184463; 821333, 2184499; 821345, 2184528; 821426, 2184550; 821531, 2184554; 821619, 2184513.

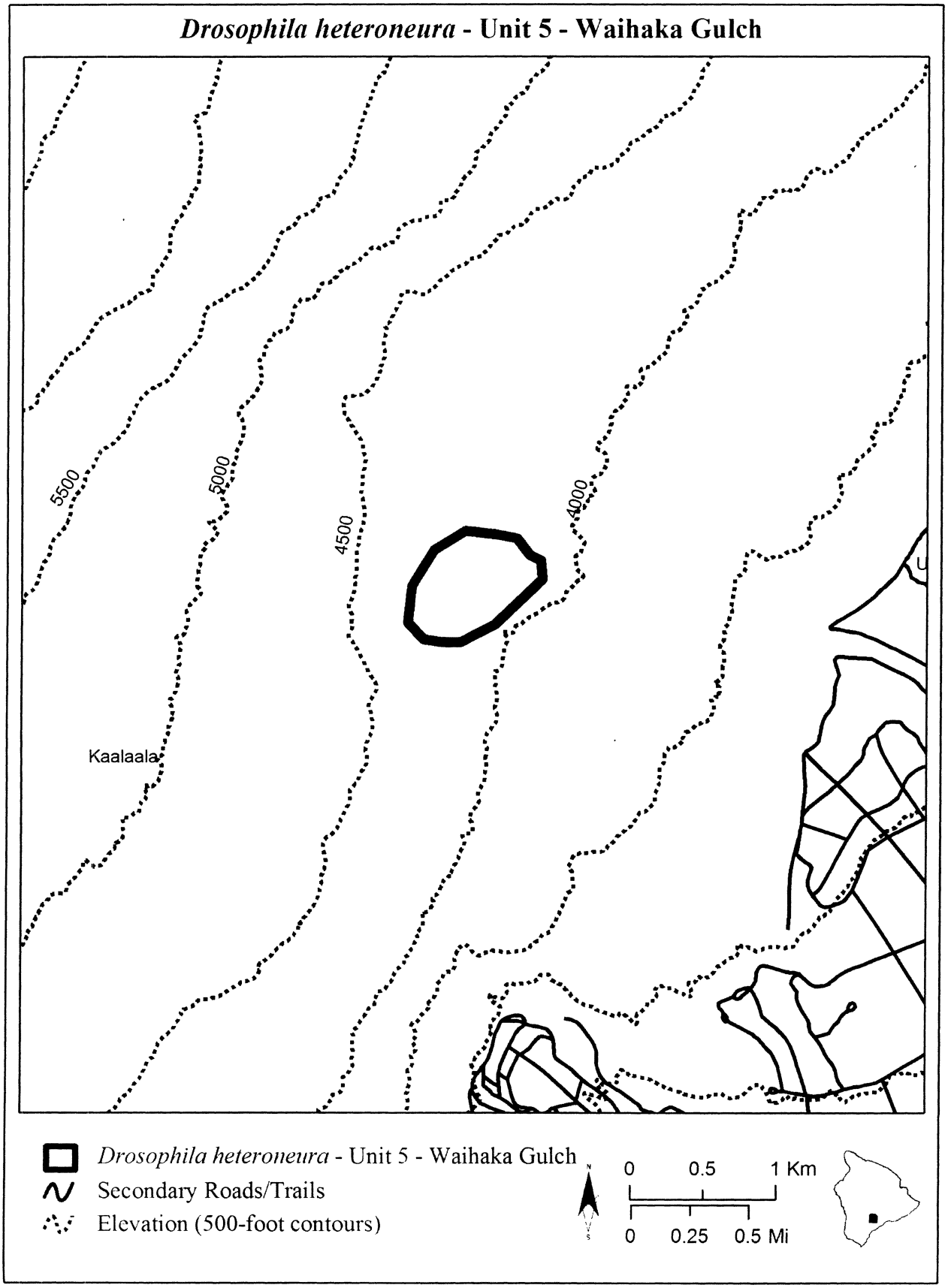
(ii) Note: Map of *Drosophila heteroneura*—Unit 4—Pit Crater follows:


Drosophila heteroneura - Unit 4 - Pit Crater
2500
Puu
Alauawa
3000
3500
Moanuiahea
4000
4500
3000
3500
Huehue
Hualalai
Trail
Haleamau St
Kaloko Dr
Keanaaina St
Huehue St
Drosophila heteroneura - Unit 4 - Pit Crater
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(10) *Drosophila heteroneura*—Unit 5—Waihaka Gulch, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 868924, 2138585; 868686, 2138463; 868564, 2138464; 868434, 2138482; 868325, 2138598; 868350, 2138841; 868378, 2138886; 868503, 2139088; 868720, 2139220; 868946, 2139193; 869076, 2139167; 869160, 2139055; 869238, 2139018; 869248, 2138892.

(ii) Note: Map of *Drosophila heteroneura*—Unit 5—Waihaka Gulch follows:


Drosophila heteroneura - Unit 5 - Waihaka Gulch
5500
5000
4500
4000
Kaalaala
Drosophila heteroneura - Unit 5 - Waihaka Gulch
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

Hawaiian picture-wing fly (*Drosophila montgomeryi*)

(1) Critical habitat units are depicted for County of Honolulu, Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for *Drosophila montgomeryi* are:

(i) Mesic, lowland, diverse ohia and koa forest between the elevations of 1,720–2,985 ft (524–910 m); and

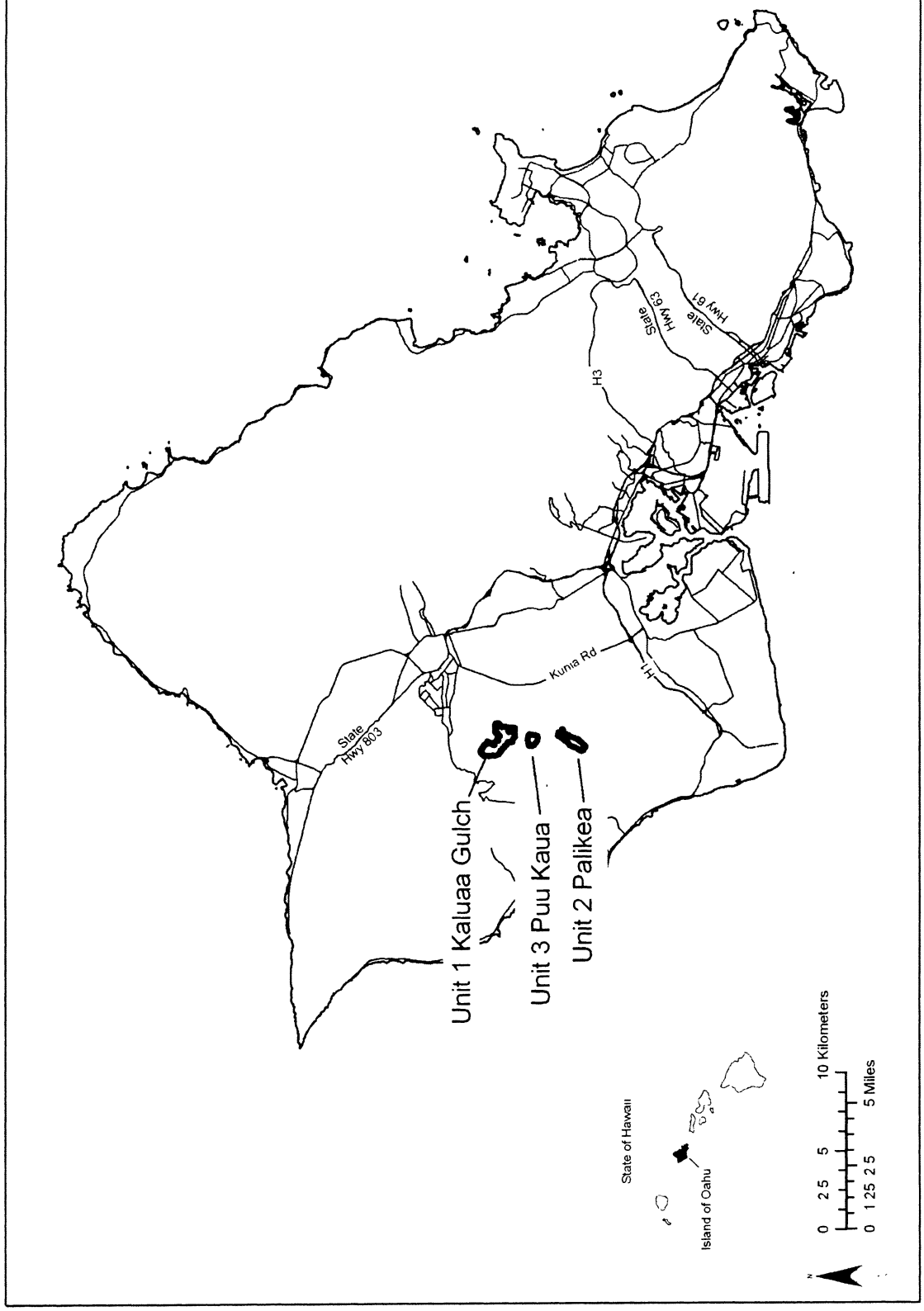
(ii) The larval host plant *Urera kaalae*, which exhibits one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of critical habitat units for *Drosophila montgomeryi* follows:

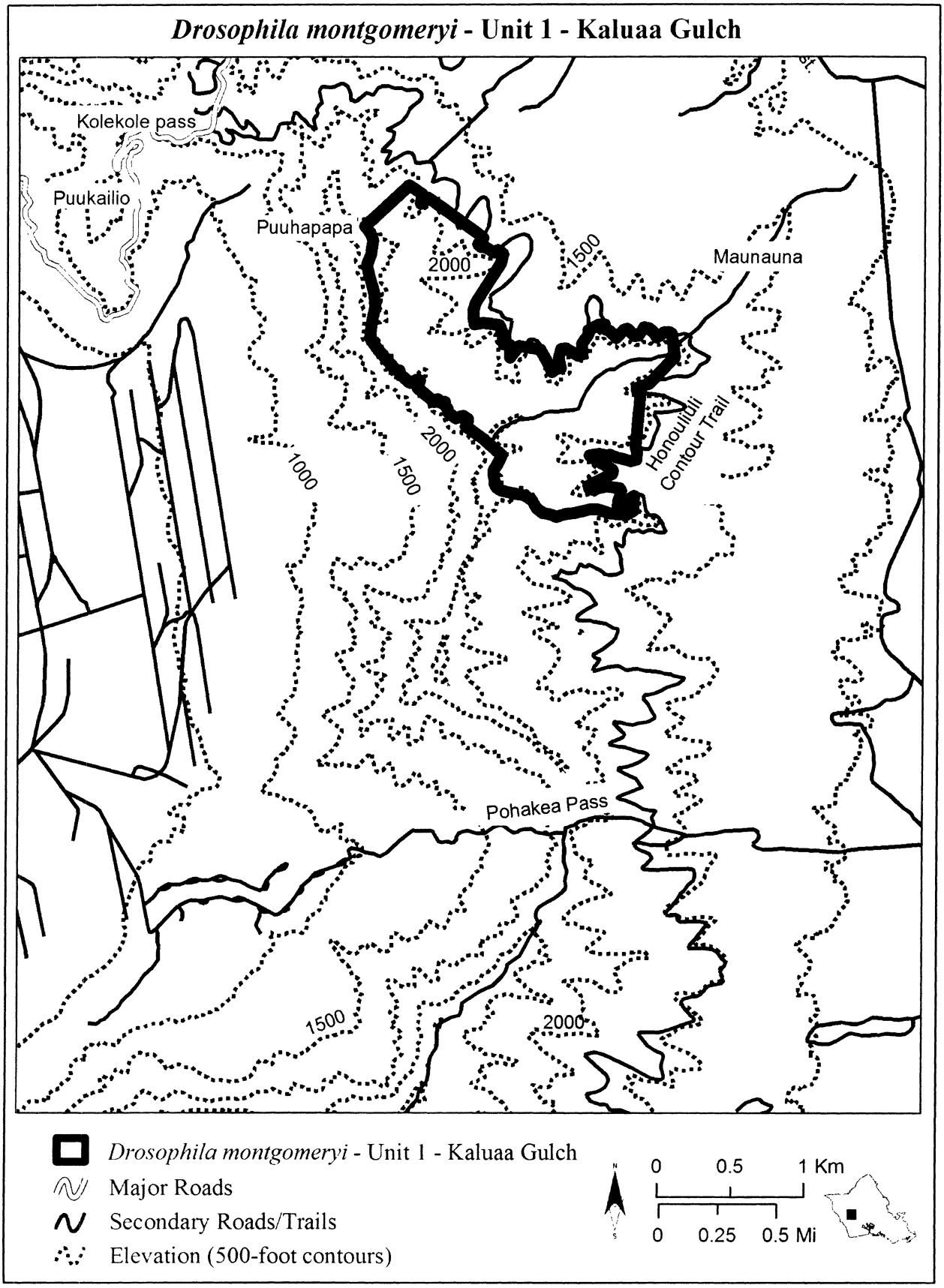
Index Map of Critical Habitat Units for *Drosophila montgomeryi*



(6) *Drosophila montgomeryi*—Unit 1—Kaluaa Gulch, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 593240, 2374436; 593231, 2374371; 593281, 2374410; 593315, 2374385; 593612, 2374173; 593656, 2374138; 593621, 2374096; 593641, 2374077; 593676, 2374072; 593703, 2374057; 593734, 2374039; 593758, 2374058; 593793, 2374029; 593779, 2373964; 593731, 2373894; 593660, 2373784; 593609, 2373702; 593592, 2373648; 593592, 2373594; 593598, 2373553; 593657, 2373561; 593770, 2373549; 593792, 2373496; 593797, 2373417; 593842, 2373411; 593842, 2373326; 593905, 2373404; 594053, 2373383; 594103, 2373292; 594134, 2373228; 594156, 2373250; 594194, 2373256; 594178, 2373323; 594196, 2373386; 594229, 2373390; 594312, 2373340; 594341, 2373350; 594339, 2373421; 594383, 2373487; 594381, 2373513; 594460, 2373552; 594496, 2373553; 594497, 2373518; 594526, 2373509; 594572, 2373460; 594632, 2373519; 594649, 2373523; 594699, 2373475; 594728, 2373476; 594762, 2373532; 594791, 2373529; 594828, 2373501; 594852, 2373465; 594903, 2373501; 594933, 2373500; 594952, 2373489; 594974, 2373334; 594800, 2373150; 594718, 2373120; 594718, 2373102; 594744, 2373091; 594710, 2372721; 594720, 2372686; 594716, 2372633; 594678, 2372623; 594566, 2372651; 594536, 2372666; 594506, 2372663; 594467, 2372672; 594395, 2372663; 594406, 2372650; 594546, 2372567; 594558, 2372553; 594551, 2372535; 594389, 2372452; 594395, 2372434; 594415, 2372428; 594511, 2372449; 594603, 2372437; 594614, 2372421; 594607, 2372385; 594593, 2372353; 594591, 2372317; 594618, 2372322; 594661, 2372357; 594700, 2372384; 594696, 2372334; 594697, 2372333; 594697, 2372283; 594652, 2372257; 594541, 2372266; 594454, 2372294; 594400, 2372294; 594293, 2372267; 594231, 2372261; 594168, 2372241; 594126, 2372258; 594075, 2372267; 594030, 2372303; 593999, 2372354; 593948, 2372388; 593889, 2372397; 593812, 2372413; 593781, 2372425; 593756, 2372442; 593742, 2372467; 593742, 2372490; 593736, 2372521; 593736, 2372560; 593757, 2372587; 593790, 2372662; 593663, 2372772; 593543, 2372859; 593558, 2372894; 593555, 2372910; 593526, 2372928; 593476, 2372912; 593422, 2372953; 593420, 2372976; 593403, 2372997; 593400, 2373025; 593373, 2373016; 593352, 2373044; 593328, 2373025; 593215, 2373118; 593230, 2373171; 593214, 2373176; 593163, 2373154; 593095, 2373213; 593091, 2373238; 593064, 2373243; 593019, 2373295; 592937, 2373388; 592889, 2373462; 592897, 2373535; 592908, 2373597; 592923, 2373668; 592914, 2373772; 592889, 2373866; 592868, 2373941; 592867, 2373950; 592894, 2374029; 592908, 2374120; 592894, 2374162; 592860, 2374213; 592854, 2374216; 593151, 2374494.

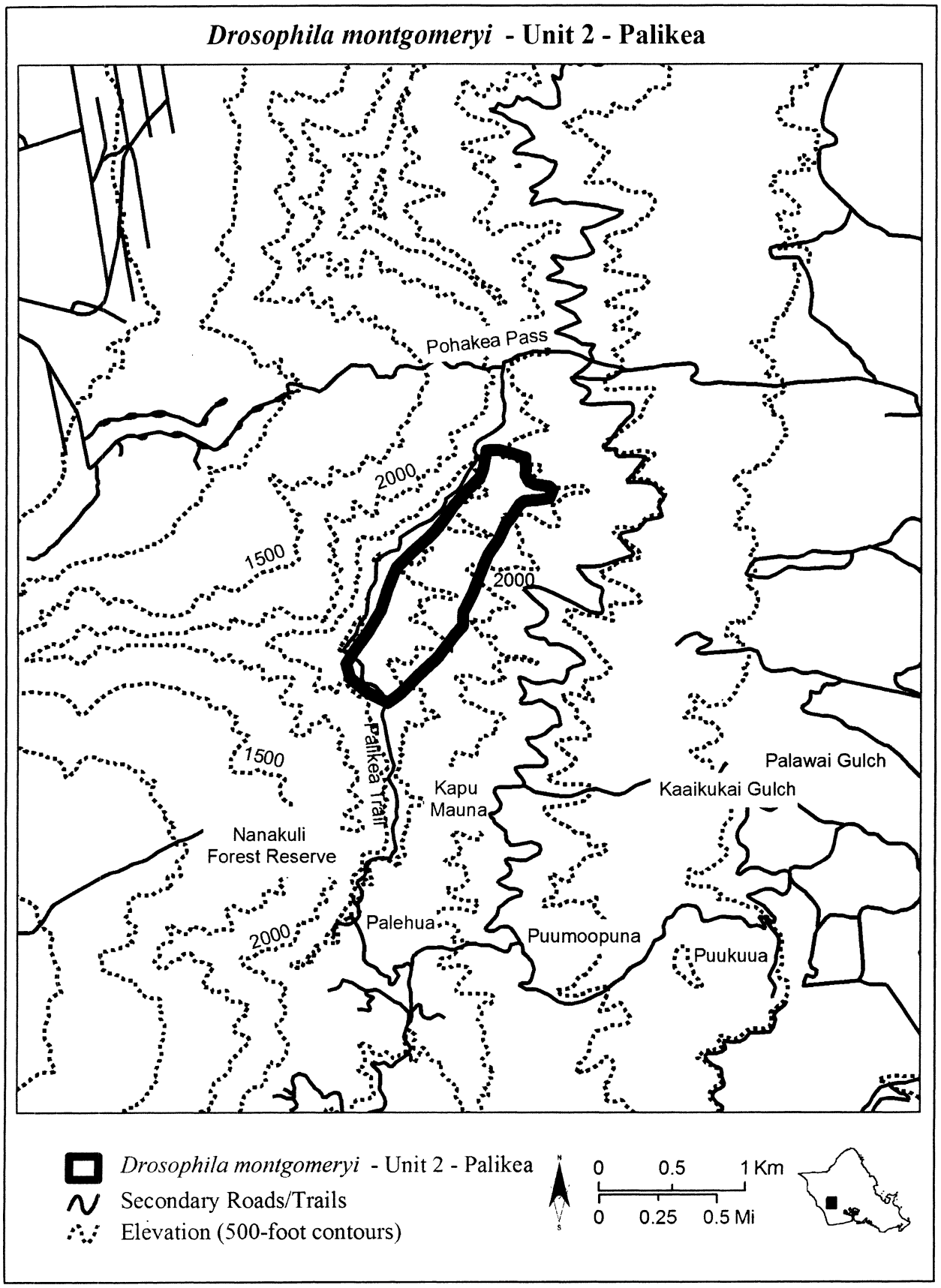
(ii) Note: Map of *Drosophila montgomery*—Unit 1—Kaluaa Gulch follows:


Drosophila montgomeryi - Unit 1 - Kaluaa Gulch
Kolekole pass
Puukailio
Puuhapapa
2000
1500
Maunauna
Honouliuli Contour Trail
2000
1500
1000
Pohakea Pass
1500
2000
Drosophila montgomeryi - Unit 1 - Kaluaa Gulch
Major Roads
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(7) *Drosophila montgomeryi*—Unit 2—Palikea, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 593529, 2367854; 593448, 2367801; 593302, 2367874; 593242, 2367927; 593193, 2367967; 593165, 2368065; 593217, 2368150; 593314, 2368283; 593399, 2368425; 593448, 2368578; 593505, 2368716; 593622, 2368833; 593703, 2368906; 593764, 2368963; 593832, 2369044; 593901, 2369145; 594002, 2369262; 594079, 2369331; 594104, 2369396; 594120, 2369485; 594124, 2369521; 594148, 2369525; 594213, 2369525; 594310, 2369497; 594395, 2369473; 594399, 2369392; 594396, 2369356; 594417, 2369313; 594461, 2369290; 594551, 2369278; 594579, 2369250; 594559, 2369197; 594472, 2369183; 594391, 2369179; 594354, 2369153; 594302, 2369072; 594257, 2369015; 594213, 2368914; 594136, 2368809; 594083, 2368672; 594035, 2368550; 593966, 2368417; 593966, 2368324; 593909, 2368259; 593792, 2368105; 593675, 2368000.

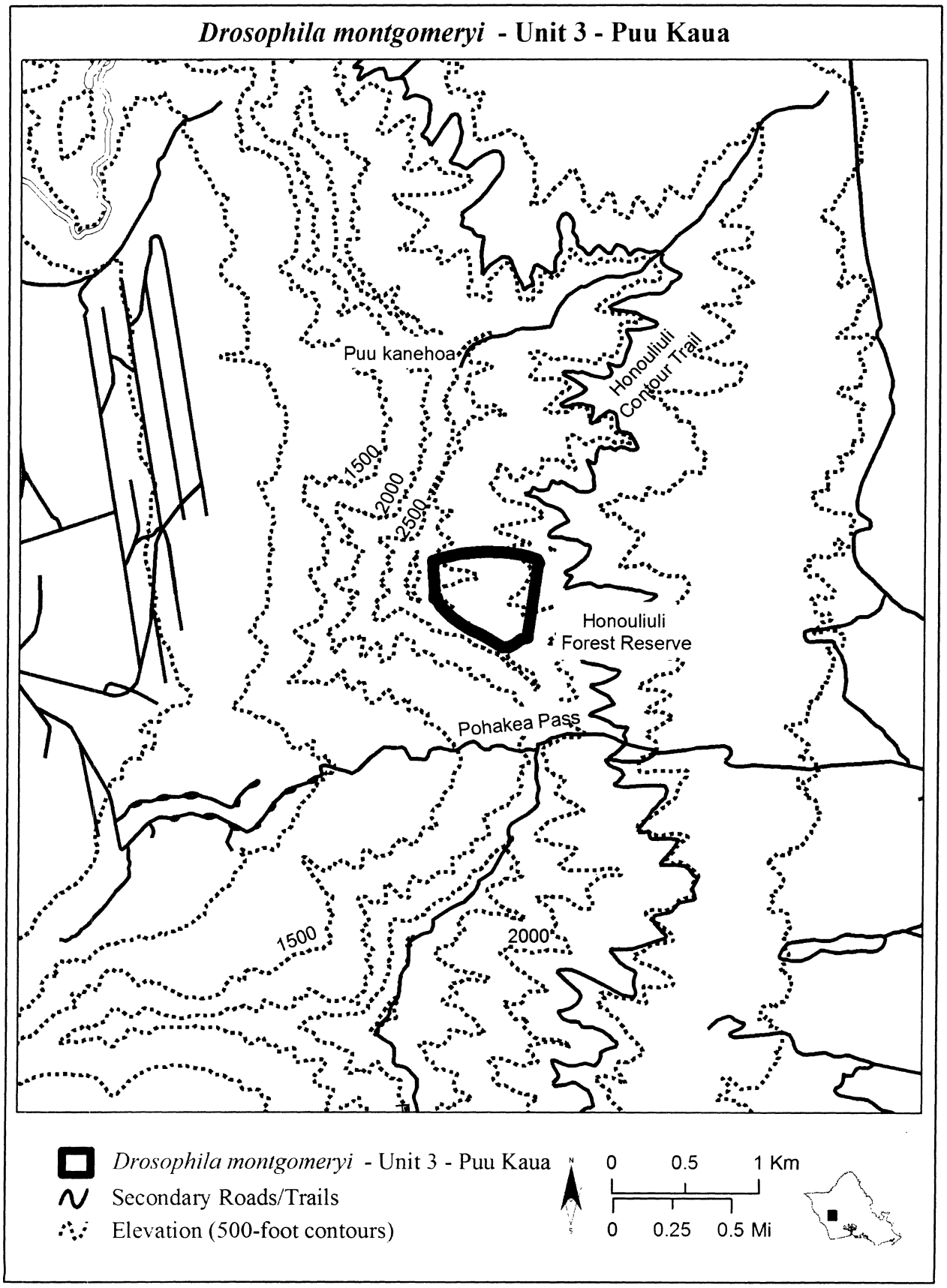
(ii) Note: Map of *Drosophila montgomeryi*—Unit 2—Palikea follows:


Drosophila montgomeryi - Unit 2 - Palikea
Pohakea Pass
2000
1500
2000
1500
Palikea Trail
Kapu Mauna
Palawai Gulch
Kaaikukai Gulch
Nanakuli Forest Reserve
Palehua
2000
Puumoopuna
Puukuua
Drosophila montgomeryi - Unit 2 - Palikea
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(8) *Drosophila montgomeryi*—Unit 3—Puu Kaua, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 594166, 2370854; 594166, 2370853; 594164, 2370854; 594122, 2370843; 594090, 2370815; 594040, 2370789; 593996, 2370789; 593930, 2370827; 593852, 2370875; 593778, 2370907; 593716, 2370947; 593642, 2370999; 593602, 2371041; 593574, 2371067; 593558, 2371095; 593539, 2371118; 593531, 2371121; 593534, 2371173; 593519, 2371375; 593533, 2371375; 593552, 2371390; 593628, 2371404; 593716, 2371426; 593794, 2371431; 593876, 2371437; 593974, 2371435; 594036, 2371431; 594138, 2371415; 594190, 2371399; 594232, 2371385; 594246, 2371359; 594239, 2371354; 594170, 2370879; 594172, 2370877; 594170, 2370855.

(ii) Note: Map of *Drosophila montgomeryi*—Unit 3—Puu Kaua follows:


Drosophila montgomeryi - Unit 3 - Puu Kaua
Puu kanehoa
Honouliuli Contour Trail
1500
2000
2500
Honouliuli Forest Reserve
Pohakea Pass
1500
2000
Drosophila montgomeryi - Unit 3 - Puu Kaua
Secondary Roads/Trails
Elevation (500-foot contours)
N
0 0.5 1 Km
0 0.25 0.5 Mi

Hawaiian picture-wing fly (*Drosophila mulli*)

(1) Critical habitat units are depicted for County of Hawaii, island of Hawaii, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for *Drosophila mulli* are:

(i) Wet, montane, ohia forest between the elevations of 1,955–3,250 ft (596–1,093 m); and

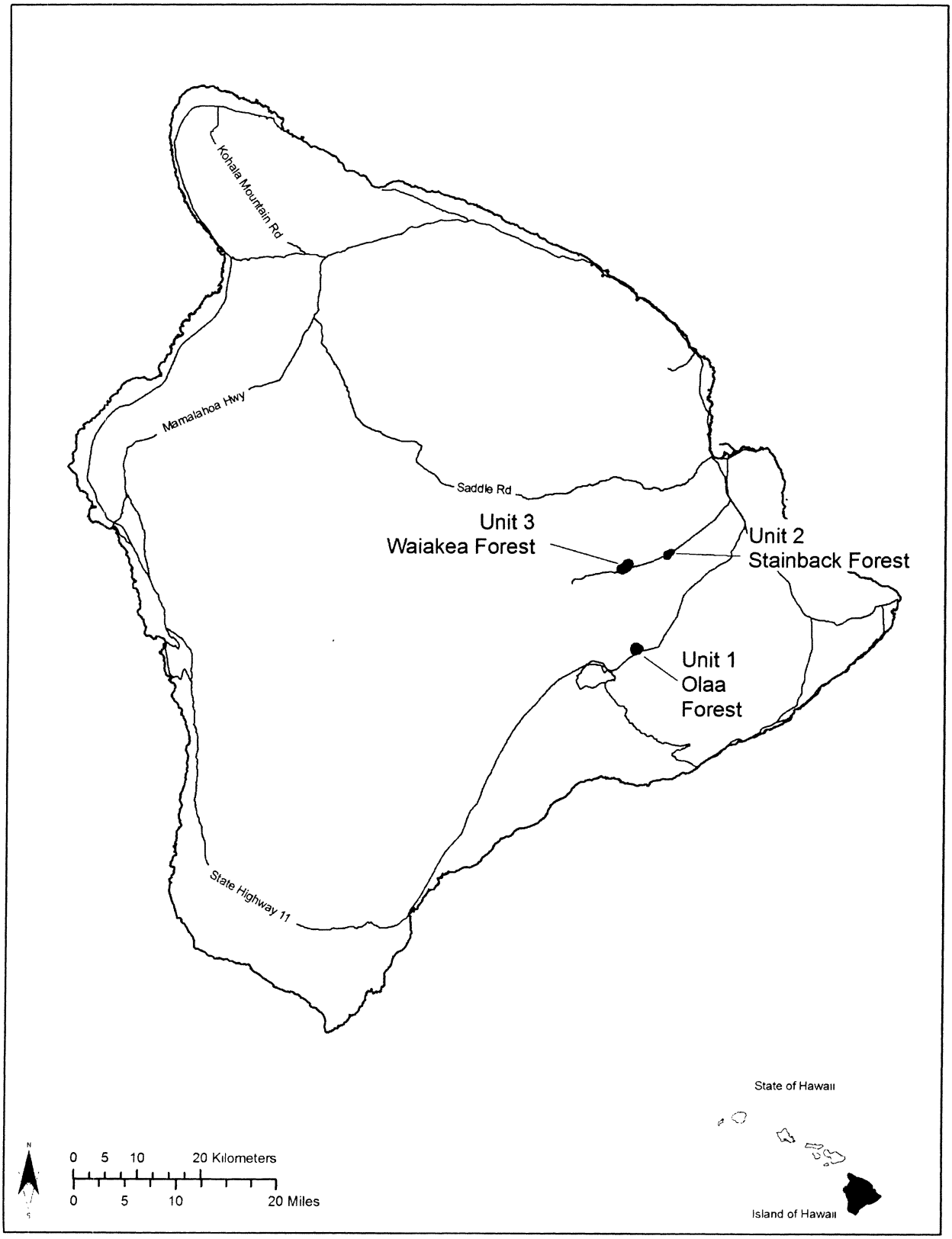
(ii) The larval host plant *Pritchardia beccariana*, which exhibits one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of critical habitat units for *Drosophila mulli* follows:

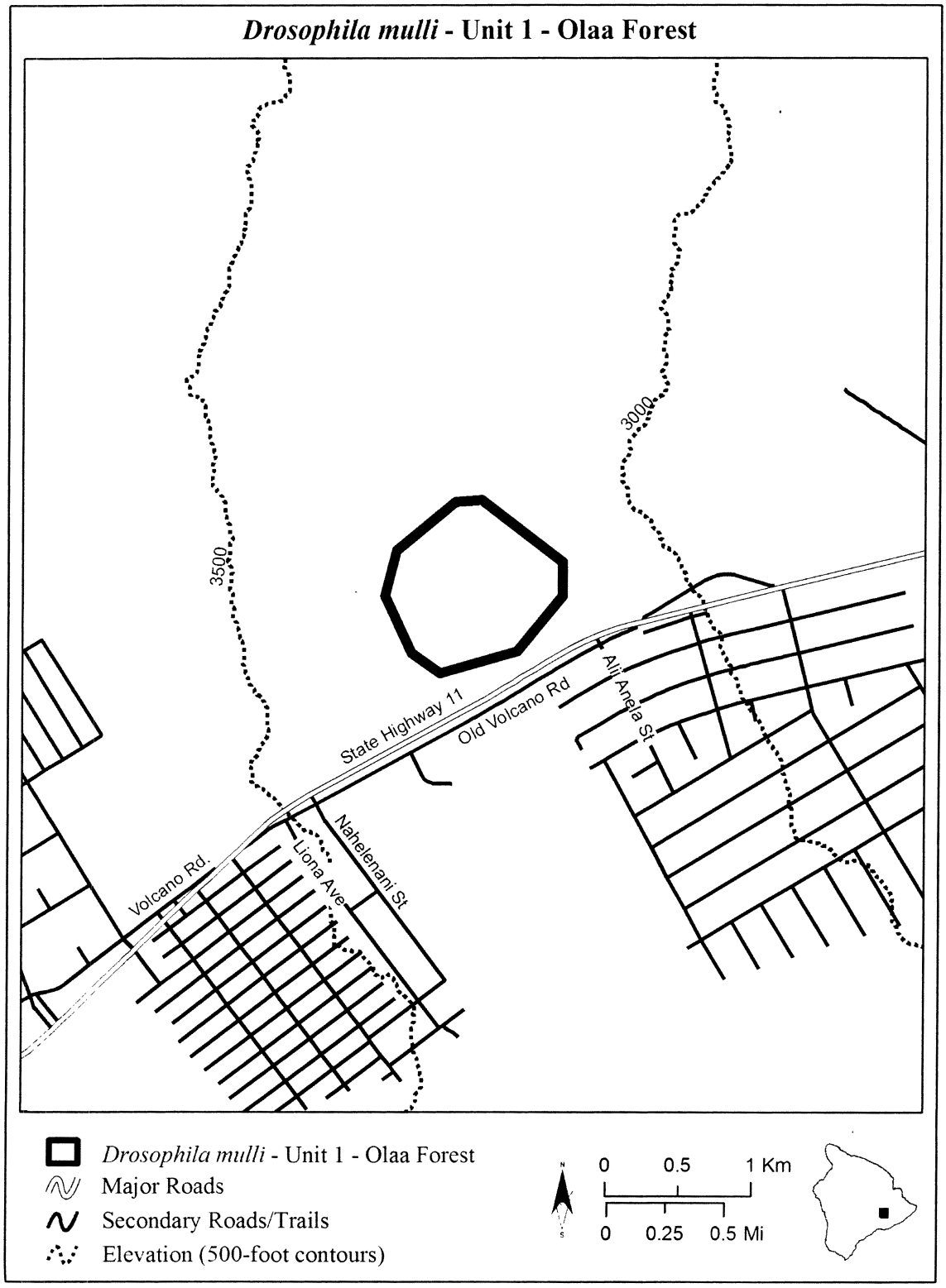
Index Map of Critical Habitat Units for *Drosophila mulli*



(6) *Drosophila mulli*—Unit 1—Olaa Forest, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 898754, 2154890; 898225, 2154740; 898030, 2154878; 897846, 2155268; 897927, 2155578; 898328, 2155910; 898508, 2155922; 899064, 2155498; 899064, 2155268.

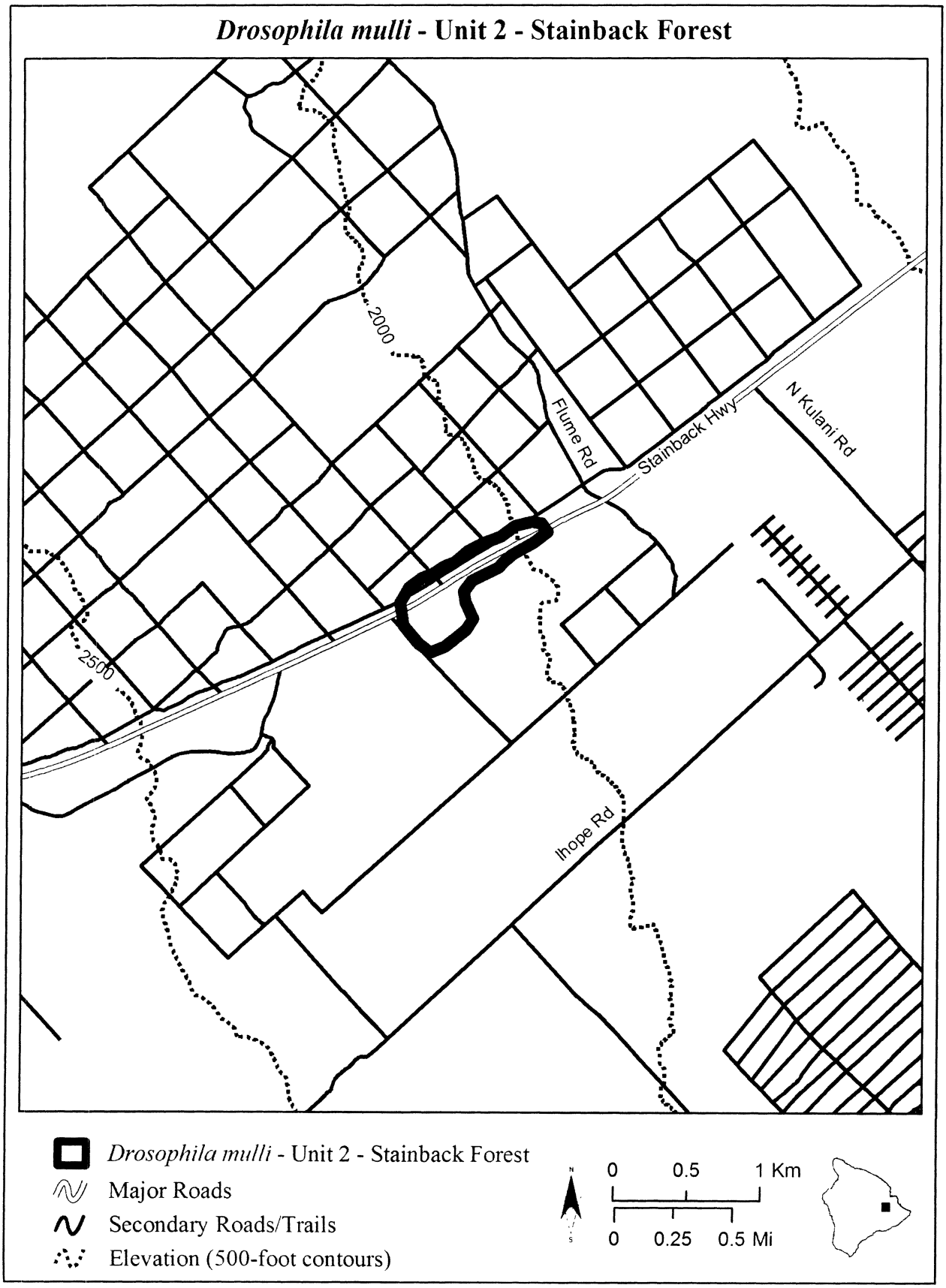
(ii) Note: Map of *Drosophila mulli*—Unit 1—Olaa Forest follows:



(7) *Drosophila mulli*—Unit 2—Stainback Forest, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 903259, 2169945; 903159, 2169907; 903080, 2169965; 902974, 2170089; 902953, 2170247; 903012, 2170346; 903101, 2170415; 903166, 2170439; 903245, 2170490; 903324, 2170521; 903420, 2170603; 903509, 2170651; 903636, 2170699; 903732, 2170771; 903849, 2170799; 903914, 2170789; 903955, 2170730; 903869, 2170662; 903866, 2170658; 903718, 2170579; 903653, 2170521; 903622, 2170487; 903441, 2170394; 903386, 2170322; 903399, 2170250; 903451, 2170133; 903403, 2170058.

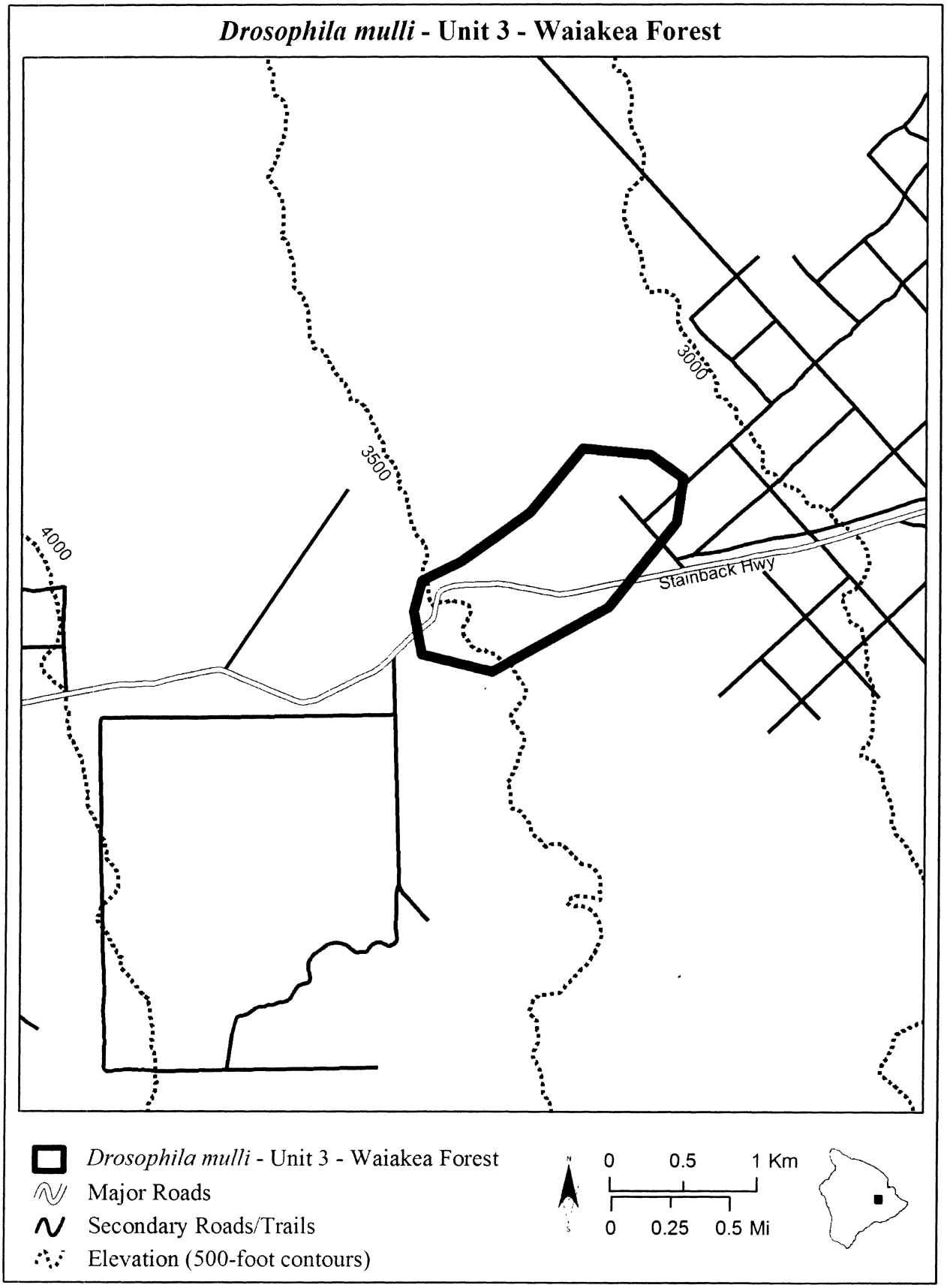
(ii) Note: Map of *Drosophila mulli*—Unit 2—Stainback Forest follows:


Drosophila mulli - Unit 2 - Stainback Forest
2000
2500
Flume Rd
Stainback Hwy
N Kulani Rd
Ihope Rd
Drosophila mulli - Unit 2 - Stainback Forest
Major Roads
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(8) *Drosophila mulli*—Unit 3—Waiakea Forest, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 897021, 2168026; 896225, 2167587; 895745, 2167704; 895687, 2167996; 895745, 2168207; 896014, 2168335; 896480, 2168668; 896841, 2169108; 897302, 2169068; 897522, 2168908; 897482, 2168607.

(ii) Note: Map of *Drosophila mulli*—Unit 3—Waiakea Forest follows:



BILLING CODE 4310–55–C

Hawaiian picture-wing fly (*Drosophila musaphilia*)

(1) Critical habitat is depicted for County of Kauai, island of Kauai, Hawaii, on the map below.

(2) The primary constituent elements of critical habitat for *Drosophila musaphilia* are:

(i) Mesic, montane, ohia and koa forest between the elevations of 3,310–3,740 ft (1,009–1,128 m); and

(ii) The larval host plant *Acacia koa*, which exhibits one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

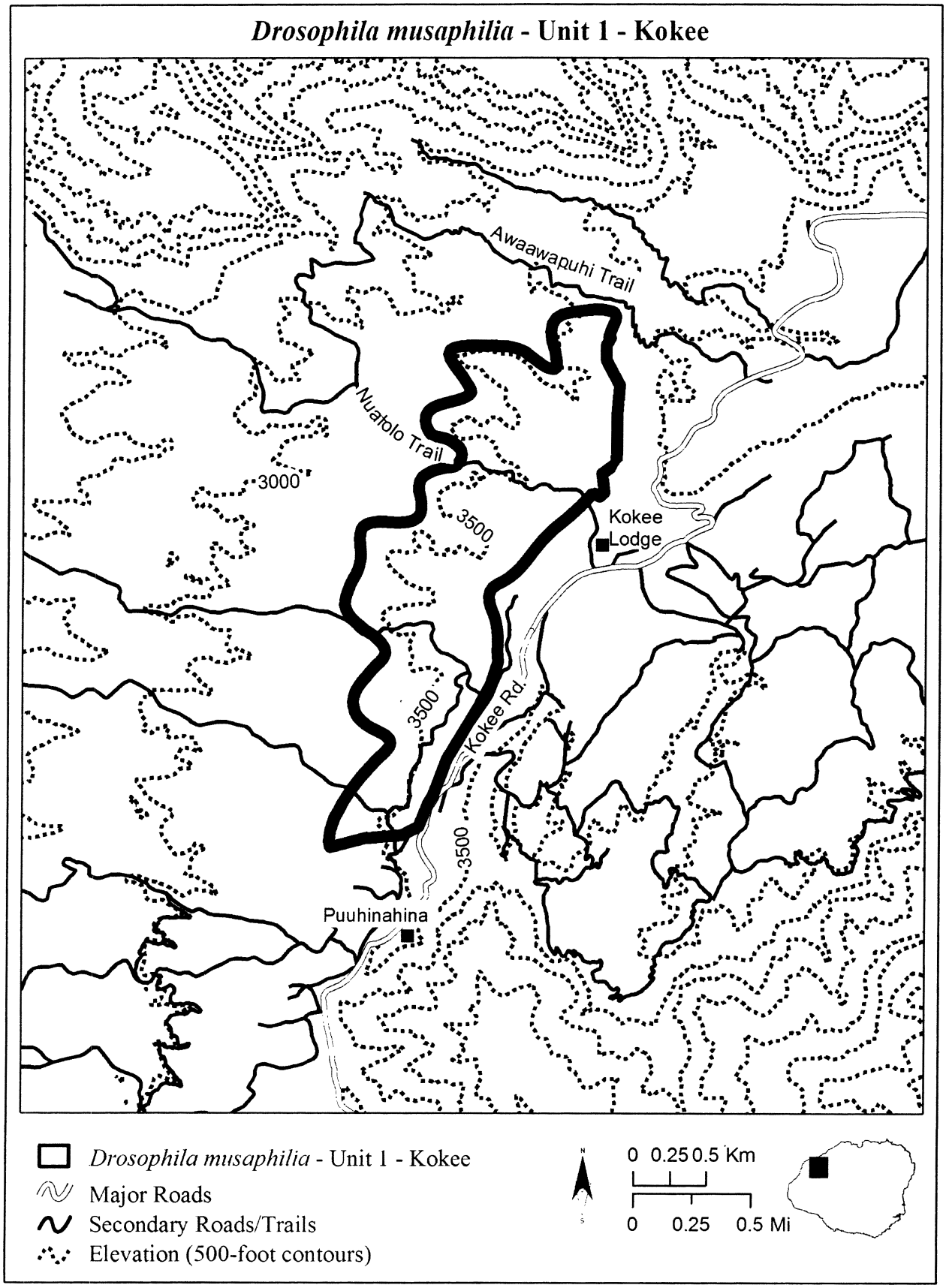
(4) Critical habitat map unit. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) *Drosophila musaphilia*—Unit 1—Kokee, Kauai County, island of Kauai, Hawaii.

(i) Land bounded by the following coordinates: 432035, 2448683; 432126, 2448510; 432111, 2448312; 432111, 2448119; 432106, 2447977; 432010, 2447906; 432025, 2447779; 431992, 2447749; 431962, 2447768; 431938, 2447766; 431926, 2447752; 431895, 2447719; 431861, 2447686; 431825, 2447651; 431786, 2447616; 431745, 2447581; 431701, 2447544; 431658, 2447505; 431616, 2447462; 431575, 2447417; 431535, 2447368; 431496, 2447318; 431457, 2447271; 431418, 2447231; 431379, 2447198; 431339, 2447172; 431299, 2447153; 431267, 2447131; 431247, 2447103; 431239, 2447068; 431244, 2447027; 431260, 2446979; 431278, 2446930; 431292, 2446881; 431300, 2446834; 431303, 2446788; 431302, 2446743; 431300, 2446700; 431301, 2446659; 431306, 2446621; 431252, 2446466; 431186, 2446345; 431181, 2446332; 430955, 2445963; 430860, 2445709; 430831, 2445664; 430760, 2445497; 430648, 2445441; 430416, 2445421; 430405, 2445422; 430396, 2445420; 430159, 2445358; 430153, 2445371; 430148, 2445402; 430150, 2445437; 430157, 2445475; 430170, 2445517; 430188, 2445562; 430212, 2445610; 430240, 2445660; 430270, 2445707; 430302, 2445754; 430335, 2445799; 430371, 2445842; 430407, 2445883; 430441, 2445921; 430474, 2445956; 430506, 2445988; 430535, 2446017; 430559, 2446044; 430567, 2446070; 430558, 2446095; 430533, 2446120; 430492, 2446144; 430441, 2446167; 430398, 2446193; 430363, 2446221; 430337, 2446252; 430320, 2446284; 430311, 2446319; 430309, 2446353; 430315, 2446388; 430327, 2446423; 430347, 2446457; 430373, 2446492; 430401, 2446525; 430430, 2446558; 430459, 2446589; 430489, 2446619; 430518, 2446649; 430531, 2446681; 430524, 2446716; 430497, 2446755; 430451, 2446797; 430387, 2446842; 430330, 2446887; 430288, 2446930; 430262, 2446971; 430250, 2447010; 430253, 2447047; 430263, 2447083; 430274, 2447118; 430288, 2447153; 430304, 2447187; 430323, 2447220; 430339, 2447254; 430350, 2447291; 430356, 2447331; 430358, 2447373; 430354, 2447418; 430351, 2447461; 430354, 2447496; 430361, 2447524; 430374, 2447545; 430392, 2447558; 430416, 2447567; 430445, 2447573; 430479, 2447576; 430518, 2447577; 430563, 2447574; 430609, 2447572; 430649, 2447573; 430684, 2447578; 430714, 2447587; 430737, 2447599; 430755, 2447616; 430767, 2447639; 430772, 2447667; 430772, 2447701; 430766, 2447740; 430756, 2447783; 430755, 2447821; 430762, 2447853; 430778, 2447879; 430802, 2447900; 430834, 2447916; 430864, 2447928; 430893, 2447937; 430920, 2447943; 430945, 2447947; 430968, 2447947; 430989, 2447952; 431007, 2447961; 431022, 2447974; 431035, 2447992; 431045, 2448014; 431049, 2448036; 431046, 2448057; 431036, 2448077; 431019, 2448096; 430996, 2448113; 430971, 2448128; 430946, 2448140; 430921, 2448149; 430896, 2448155; 430871, 2448158; 430849, 2448165; 430830, 2448179; 430815, 2448200; 430804, 2448228; 430796, 2448263; 430799, 2448299; 430816, 2448330; 430848, 2448356; 430894, 2448377; 430956, 2448393; 431018, 2448407; 431064, 2448423; 431094, 2448440; 431109, 2448459; 431107, 2448479; 431094, 2448502; 431076, 2448530; 431054, 2448563; 431027, 2448601; 430996, 2448643; 430967, 2448687; 430957, 2448722; 430966, 2448749; 430994, 2448766; 431042, 2448775; 431103, 2448778; 431162, 2448779; 431218, 2448779; 431269, 2448779; 431317, 2448777; 431361, 2448775; 431403, 2448767; 431443, 2448754; 431480, 2448736; 431515, 2448712; 431548, 2448685; 431579, 2448661; 431607, 2448643; 431633, 2448630; 431657, 2448622; 431678, 2448620; 431692, 2448631; 431697, 2448656; 431694, 2448695; 431683, 2448749; 431665, 2448816; 431657, 2448878; 431666, 2448928; 431692, 2448967; 431735, 2448994; 431795, 2449009; 431857, 2449019; 431913, 2449024; 431963, 2449027; 432008, 2449026; 432046, 2449022; 432076, 2449012; 432094, 2448996; 432100, 2448974; 432095, 2448945; 432078, 2448910; 432060, 2448872; 432053, 2448837; 432063, 2448834; 432035, 2448784.

(ii) Note: Map of *Drosophila musaphilia*—Unit 1—Kokee follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

Hawaiian picture-wing fly *(Drosophila neoclavisetae)*

(1) Critical habitat is depicted for County of Maui, island of Maui, Hawaii, on the map below.

(2) The primary constituent elements of critical habitat for *Drosophila neoclavisetae* are:

(i) Wet, montane, ohia forest between the elevations of 3,405–4,590 ft (1,036–1,399 m); and

(ii) The larval host plants *Cyanea kunthiana* and *C. macrostegia* ssp. *macrostegia,* which exhibit one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map unit. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

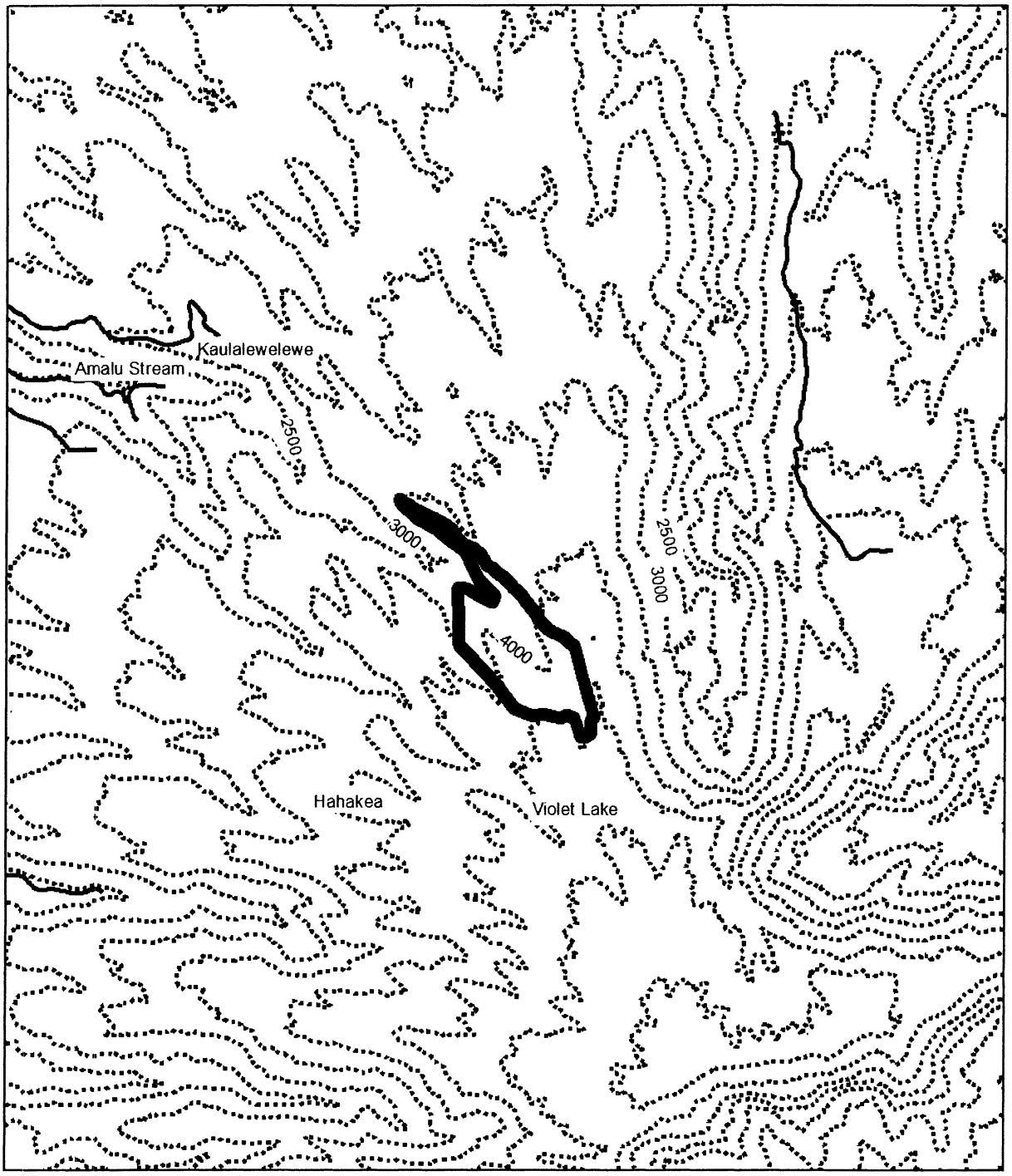
(5) *Drosophila neoclavisetae*—Unit 1—Puu Kukui, Maui County, island of Maui, Hawaii.

(i) Land bounded by the following coordinates: 749957, 2315007; 750017, 2314927; 750054, 2314874; 750054, 2314874; 750070, 2314854; 750070, 2314854; 750070, 2314853; 750070, 2314853; 750095, 2314828; 750095, 2314828; 750095, 2314828; 750118, 2314807; 750118, 2314807; 750118, 2314806; 750119, 2314806; 750119, 2314806; 750137, 2314795; 750137, 2314795; 750137, 2314795; 750137, 2314795; 750138, 2314795; 750138, 2314795; 750172, 2314783; 750197, 2314770; 750214, 2314760; 750222, 2314756; 750222, 2314756; 750222, 2314756; 750231, 2314751; 750244, 2314735; 750244, 2314735; 750244, 2314735; 750245, 2314735; 750263, 2314718; 750263, 2314718; 750263, 2314718; 750283, 2314702; 750381, 2314361; 750381, 2314360; 750421, 2314232; 750421, 2314232; 750421, 2314232; 750421, 2314231; 750421, 2314231; 750421, 2314231; 750422, 2314231; 750422, 2314230; 750422, 2314230; 750402, 2314210; 750397, 2314126; 750357, 2314098; 750329, 2314098; 750312, 2314143; 750290, 2314227; 750239, 2314244; 750194, 2314227; 750133, 2314238; 750076, 2314255; 750009, 2314238; 749958, 2314259; 749885, 2314289; 749773, 2314435; 749721, 2314492; 749520, 2314710; 749515, 2314969; 749509, 2315036; 749509, 2315093; 749565, 2315087; 749649, 2315036; 749739, 2314991; 749756, 2315031; 749655, 2315132; 749599, 2315244; 749554, 2315340; 749458, 2315407; 749368, 2315480; 749254, 2315543; 749183, 2315602; 749145, 2315636; 749117, 2315676; 749125, 2315679; 749125, 2315679; 749125, 2315679; 749125, 2315679; 749125, 2315678; 749125, 2315678; 749126, 2315678; 749126, 2315678; 749126, 2315677; 749138, 2315668; 749138, 2315668; 749172, 2315644; 749172, 2315644; 749172, 2315644; 749172, 2315644; 749172, 2315644; 749186, 2315637; 749203, 2315624; 749221, 2315611; 749221, 2315611; 749221, 2315611; 749222, 2315611; 749222, 2315611; 749222, 2315611; 749243, 2315602; 749331, 2315566; 749351, 2315553; 749351, 2315553; 749383, 2315533; 749383, 2315533; 749383, 2315533; 749403, 2315522; 749419, 2315511; 749468, 2315475; 749476, 2315462; 749483, 2315449; 749483, 2315449; 749484, 2315449; 749484, 2315449; 749498, 2315429; 749498, 2315429; 749498, 2315428; 749522, 2315400; 749522, 2315400; 749522, 2315400; 749522, 2315400; 749523, 2315399; 749523, 2315399; 749523, 2315399; 749548, 2315382; 749548, 2315382; 749548, 2315382; 749570, 2315370; 749570, 2315370; 749570, 2315370; 749616, 2315349; 749626, 2315340; 749626, 2315340; 749627, 2315340; 749650, 2315324; 749664, 2315305; 749675, 2315287; 749679, 2315278; 749679, 2315278; 749679, 2315278; 749679, 2315278; 749680, 2315278; 749698, 2315255; 749698, 2315254; 749698, 2315254; 749718, 2315234; 749718, 2315234; 749718, 2315234; 749718, 2315233; 749718, 2315233; 749734, 2315222; 749779, 2315184; 749779, 2315184; 749780, 2315183; 749780, 2315183; 749780, 2315183; 749802, 2315170; 749831, 2315145; 749872, 2315096; 749872, 2315096; 749872, 2315096; 749873, 2315095; 749873, 2315095; 749886, 2315085; 749931, 2315044; 749957, 2315008.

(ii) Note: Map of *Drosophila neoclavisetae*—Unit 1—Puu Kukui follows:

BILLING CODE 4310–55–P

Drosophila neoclavisetae **- Unit 1 - Puu Kukui**



Drosophila neoclavisetae - Unit 1 - Puu Kukui

Secondary Roads/Trails

Elevation (500-foot contours)

0 0.5 1 Km

0 0.25 0.5 Mi

Hawaiian picture-wing fly *(Drosophila obatai)*

(1) Critical habitat is depicted for County of Honolulu, island of Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for Drosophila obatai are:

(i) Dry to mesic, lowland, ohia and koa forest between the elevations of 1,475–2,535 ft (450–773 m); and

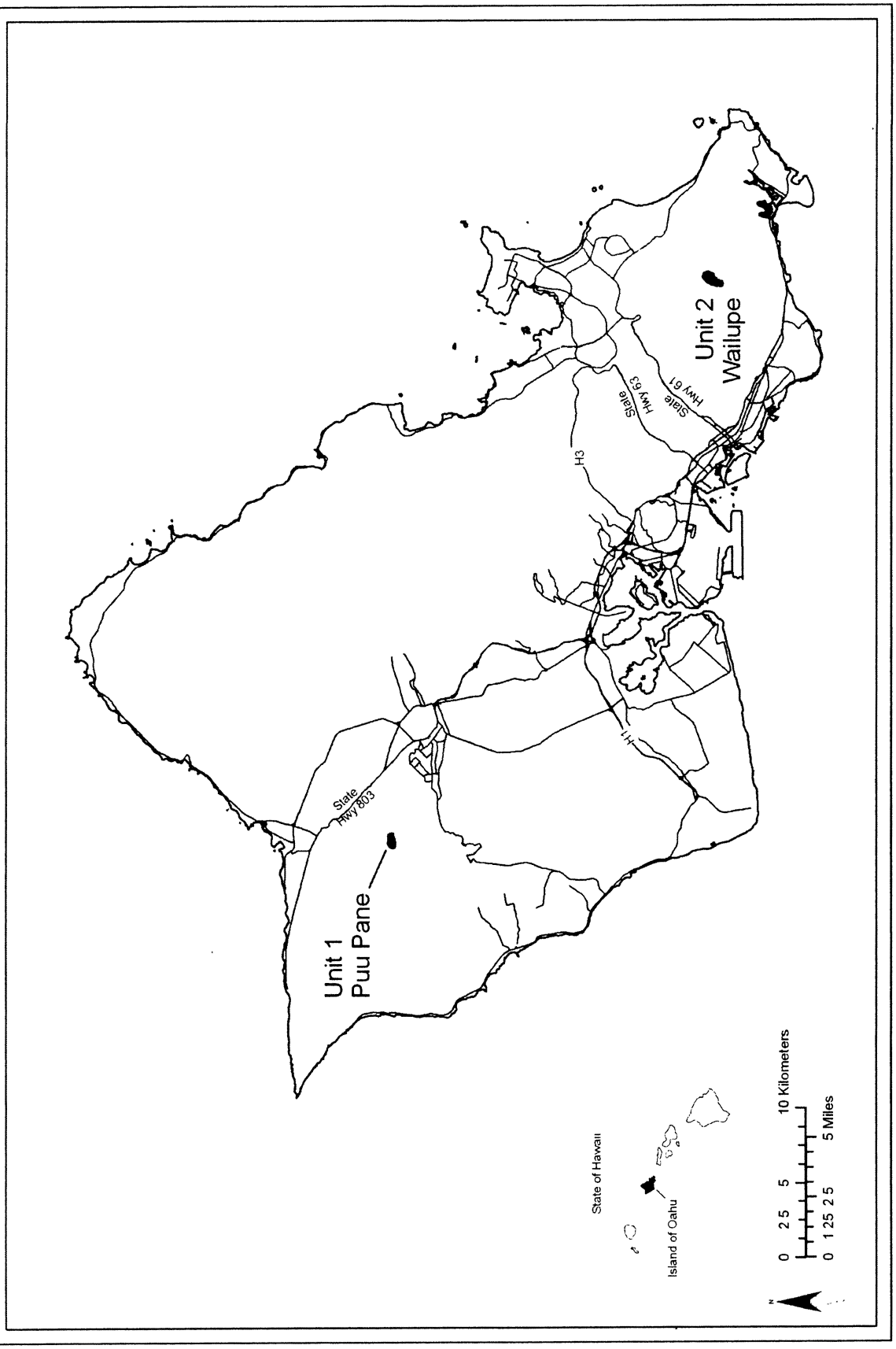
(ii) The larval host plant *Pleomele forbesii,* which exhibits one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of the critical habitat units for *Drosophila obatai* follows:

Index Map of Critical Habitat Units for *Drosophila obatai*

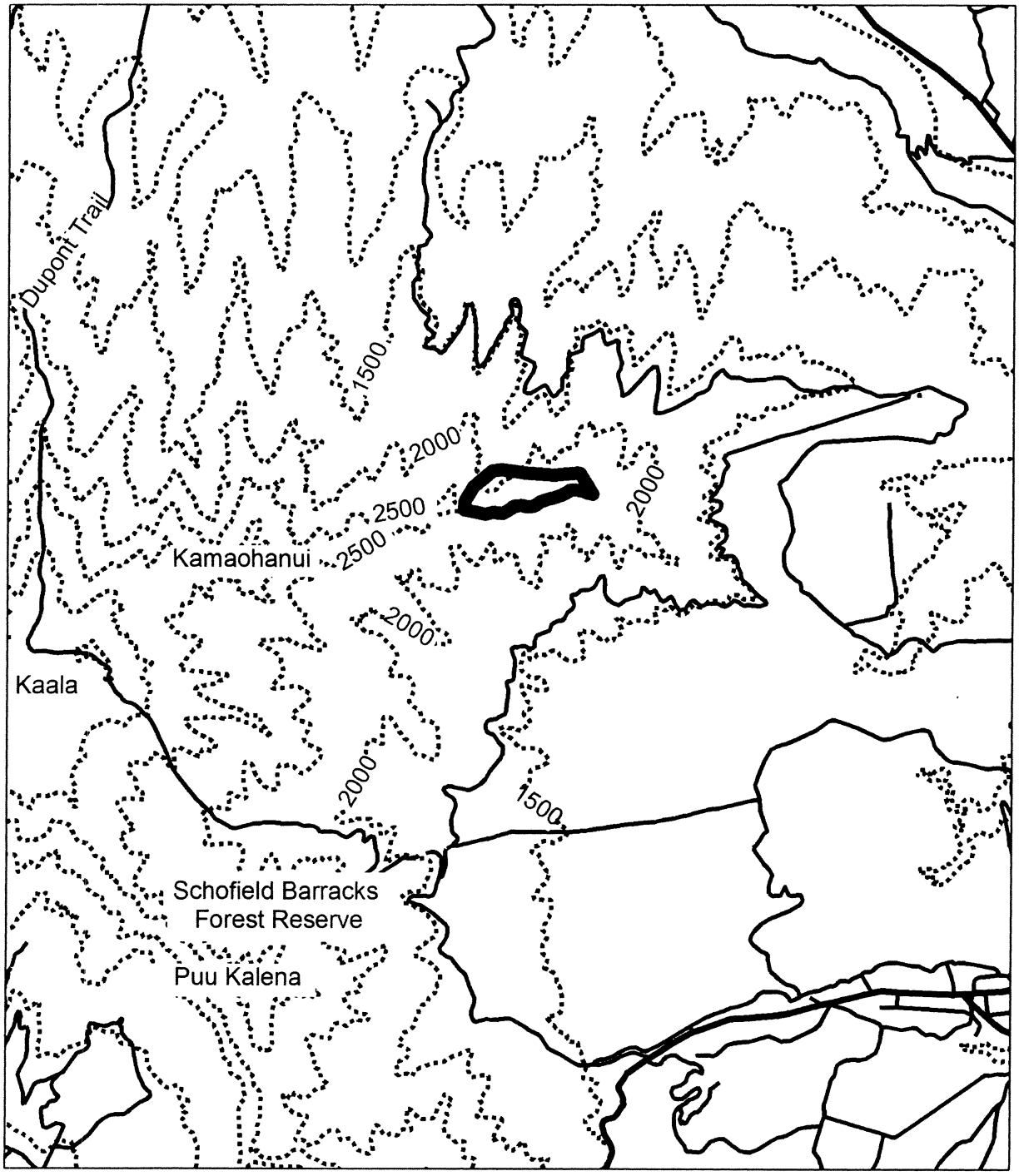


(6) *Drosophila obatai*—Unit 1—Puu Pane, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 591489, 2379704; 591662, 2379690; 591807, 2379704; 591822, 2379699; 591901, 2379571; 591871, 2379579; 591830, 2379596; 591830, 2379596; 591830, 2379596; 591830, 2379596; 591830, 2379596; 591830, 2379596; 591791, 2379600; 591791, 2379600; 591791, 2379601; 591791, 2379600; 591791, 2379600; 591791, 2379600; 591766, 2379597; 591766, 2379597; 591766, 2379597; 591766, 2379597; 591766, 2379597; 591766, 2379597; 591741, 2379583; 591741, 2379583; 591710, 2379565; 591672, 2379554; 591672, 2379554; 591635, 2379542; 591614, 2379537; 591614, 2379537; 591614, 2379537; 591582, 2379526; 591582, 2379526; 591582, 2379526; 591582, 2379526; 591545, 2379500; 591523, 2379495; 591496, 2379495; 591461, 2379505; 591461, 2379505; 591461, 2379505; 591461, 2379505; 591461, 2379505; 591461, 2379505; 591461, 2379505; 591444, 2379502; 591444, 2379502; 591444, 2379502; 591444, 2379502; 591444, 2379502; 591432, 2379498; 591421, 2379497; 591421, 2379497; 591421, 2379497; 591421, 2379497; 591421, 2379497; 591420, 2379497; 591420, 2379497; 591420, 2379497; 591420, 2379497; 591420, 2379497; 591405, 2379487; 591405, 2379487; 591405, 2379487; 591405, 2379486; 591405, 2379486; 591405, 2379486; 591403, 2379483; 591354, 2379454; 591283, 2379460; 591240, 2379449; 591113, 2379474; 591116, 2379531; 591169, 2379618; 591284, 2379716; 591345, 2379723.

(ii) Note: Map of *Drosophila obatai*—Unit 1—Puu Pane follows:

***Drosophila obatai* - Unit 1 - Puu Pane**



Drosophila obatai - Unit 1 - Puu Pane

Secondary Roads/Trails

Elevation (500-foot contours)

0 0.5 1 Km

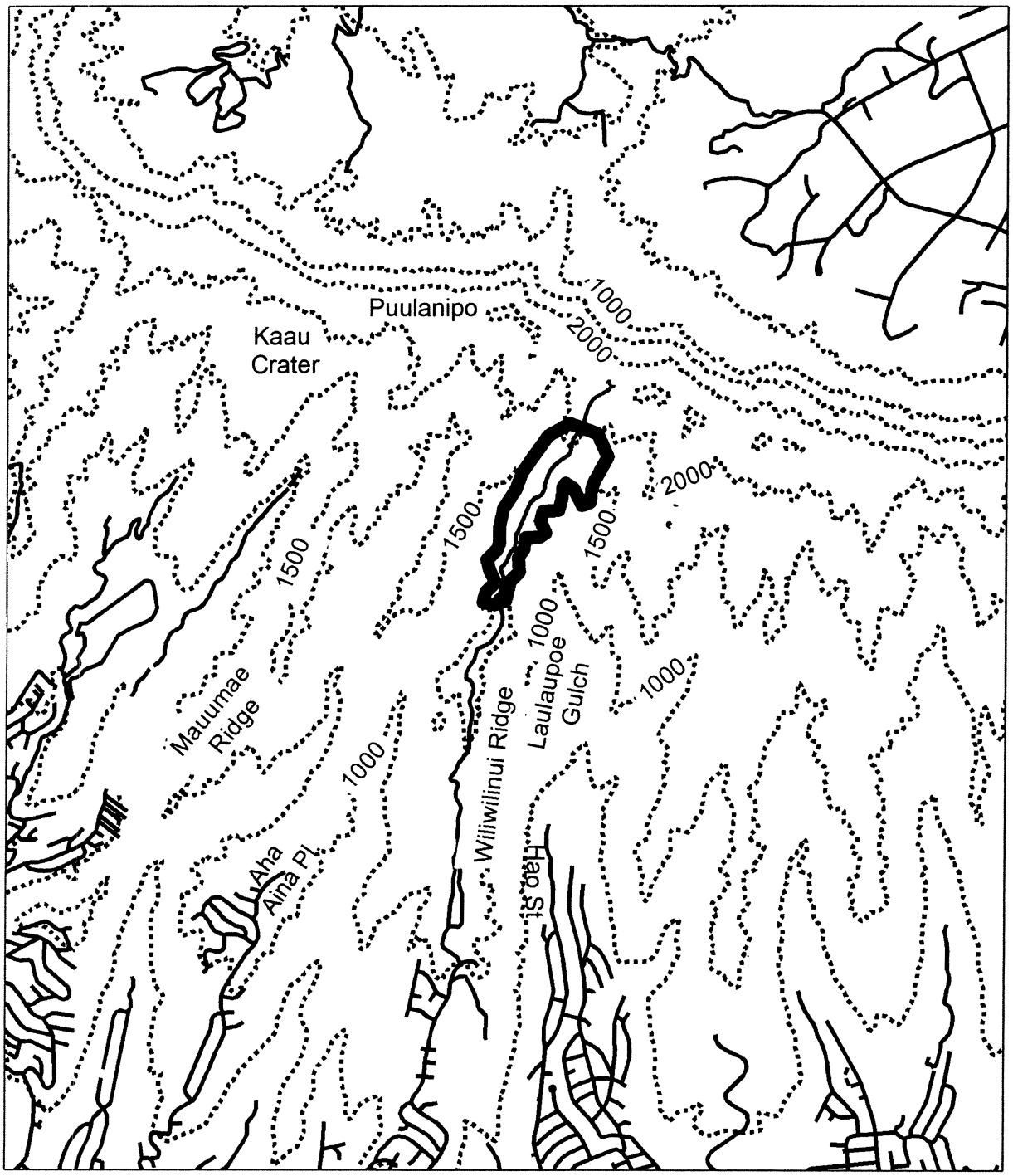
0 0.25 0.5 Mi

(7) *Drosophila obatai*—Unit 2—Wailupe, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 629222, 2358352; 629208, 2358307; 629199, 2358225; 629147, 2358205; 629100, 2358307; 629048, 2358343; 629028, 2358316; 629023, 2358250; 629005, 2358174; 628908, 2358169; 628890, 2358110; 628922, 2358034; 628883, 2358011; 628795, 2358007; 628791, 2357939; 628753, 2357885; 628759, 2357799; 628705, 2357743; 628676, 2357619; 628606, 2357592; 628536, 2357607; 628552, 2357673; 628610, 2357731; 628574, 2357806; 628559, 2357874; 628619, 2357932; 628637, 2357973; 628635, 2358074; 628660, 2358185; 628735, 2358298; 628775, 2358411; 628936, 2358634; 629070, 2358711; 629243, 2358647; 629307, 2358506.

(ii) Note: Map of *Drosophila obatai*—Unit 2—Wailupe follows:

***Drosophila obatai* - Unit 2 - Wailupe**



Drosophila obatai - Unit 2 - Wailupe
Secondary Roads/Trails
Elevation (500-foot contours)

N
0 0.5 1 Km
0 0.25 0.5 Mi

Hawaiian picture-wing fly *(Drosophila ochrobasis)*

(1) Critical habitat units are depicted for County of Hawaii, island of Hawaii, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for *Drosophila ochrobasis* are:

(i) Mesic to wet, montane, ohia, koa, and *Cheirodendron* sp. forest between the elevations of 3,850–5,390 ft (1,173–1,643 m); and

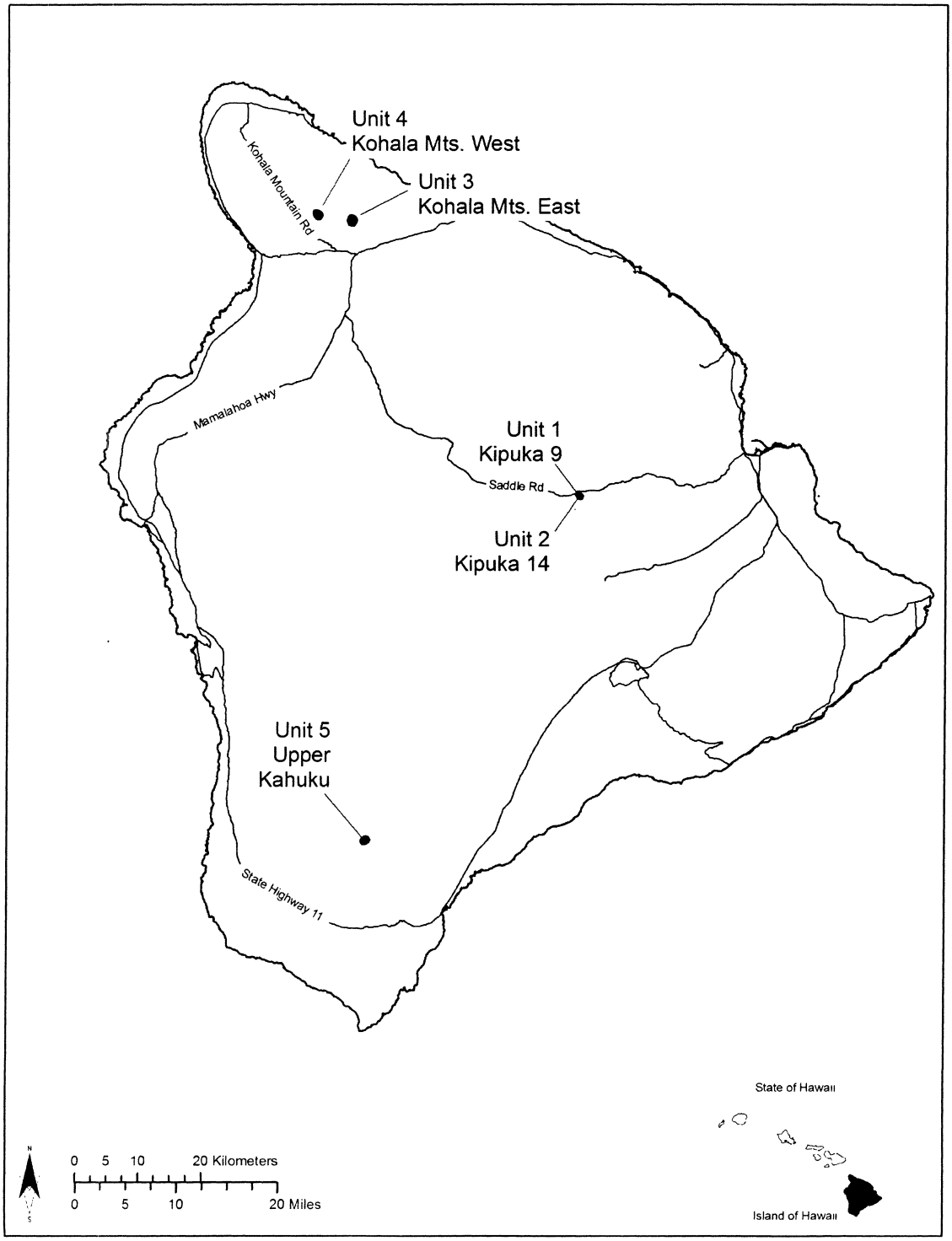
(ii) The larval host plants *Clermontia calophylla, C. clermontioides, C. clermontioides ssp. rockiana, C. drepanomorpha, C. hawaiiensis, C. kohalae, C. lindseyana, C. montis-loa, C. parviflora, C. peleana, C. pyrularia, C. waimeae, Marattia douglasii, Myrsine lanaiensis, M. lessertiana,* and *M. sandwicensis,* which exhibit one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of critical habitat units for *Drosophila ochrobasis* follows:

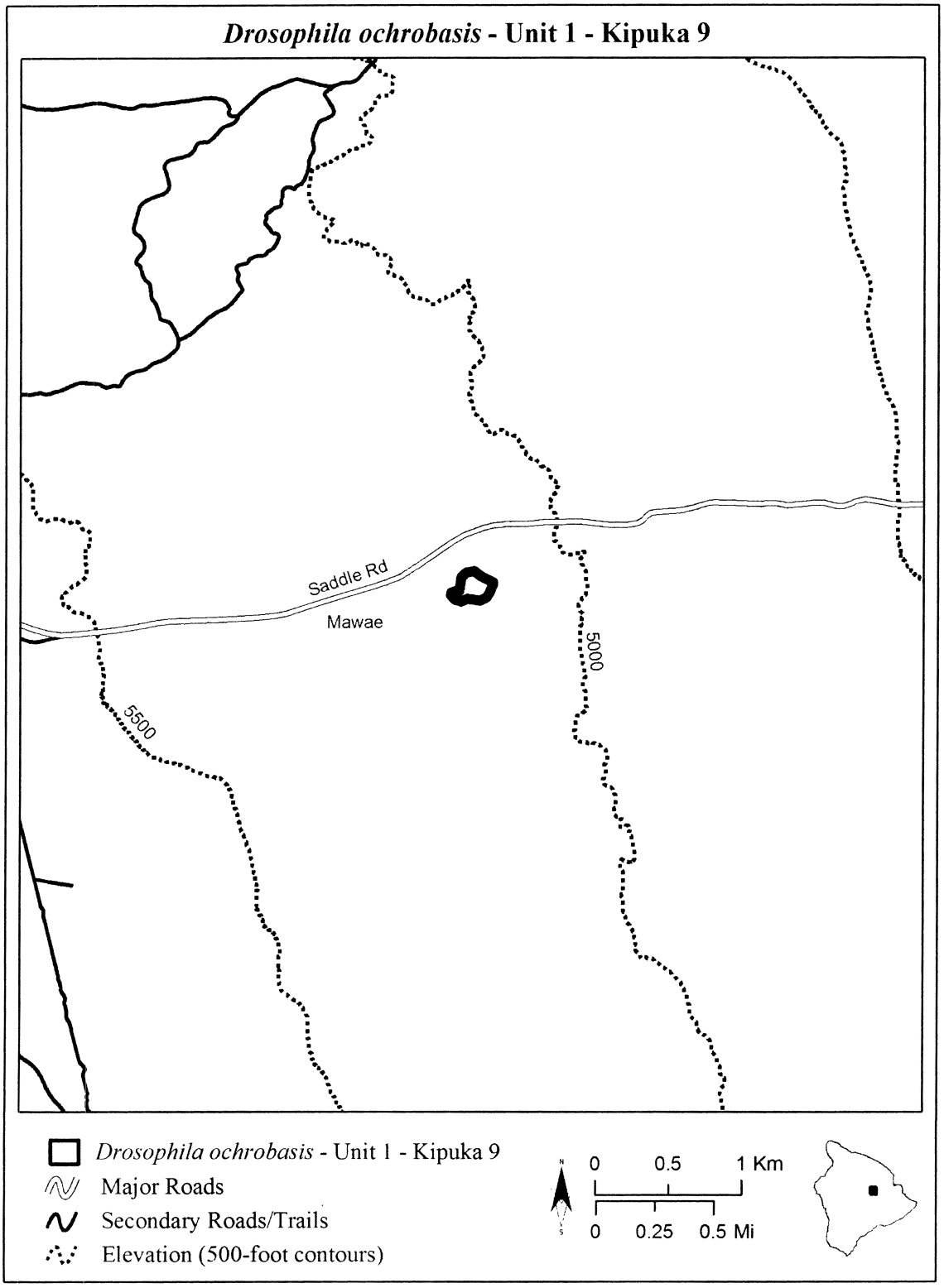
Index Map of Critical Habitat Units for *Drosophila ochrobasis*



(6) *Drosophila ochrobasis*—Unit 1—Kipuka 9, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 884112, 2179392; 884090, 2179333; 884069, 2179303; 884023, 2179281; 883971, 2179292; 883936, 2179295; 883896, 2179273; 883855, 2179287; 883825, 2179319; 883828, 2179335; 883861, 2179349; 883869, 2179346; 883885, 2179346; 883888, 2179373; 883893, 2179409; 883896, 2179441; 883934, 2179473; 883985, 2179484; 884036, 2179444; 884112, 2179409.

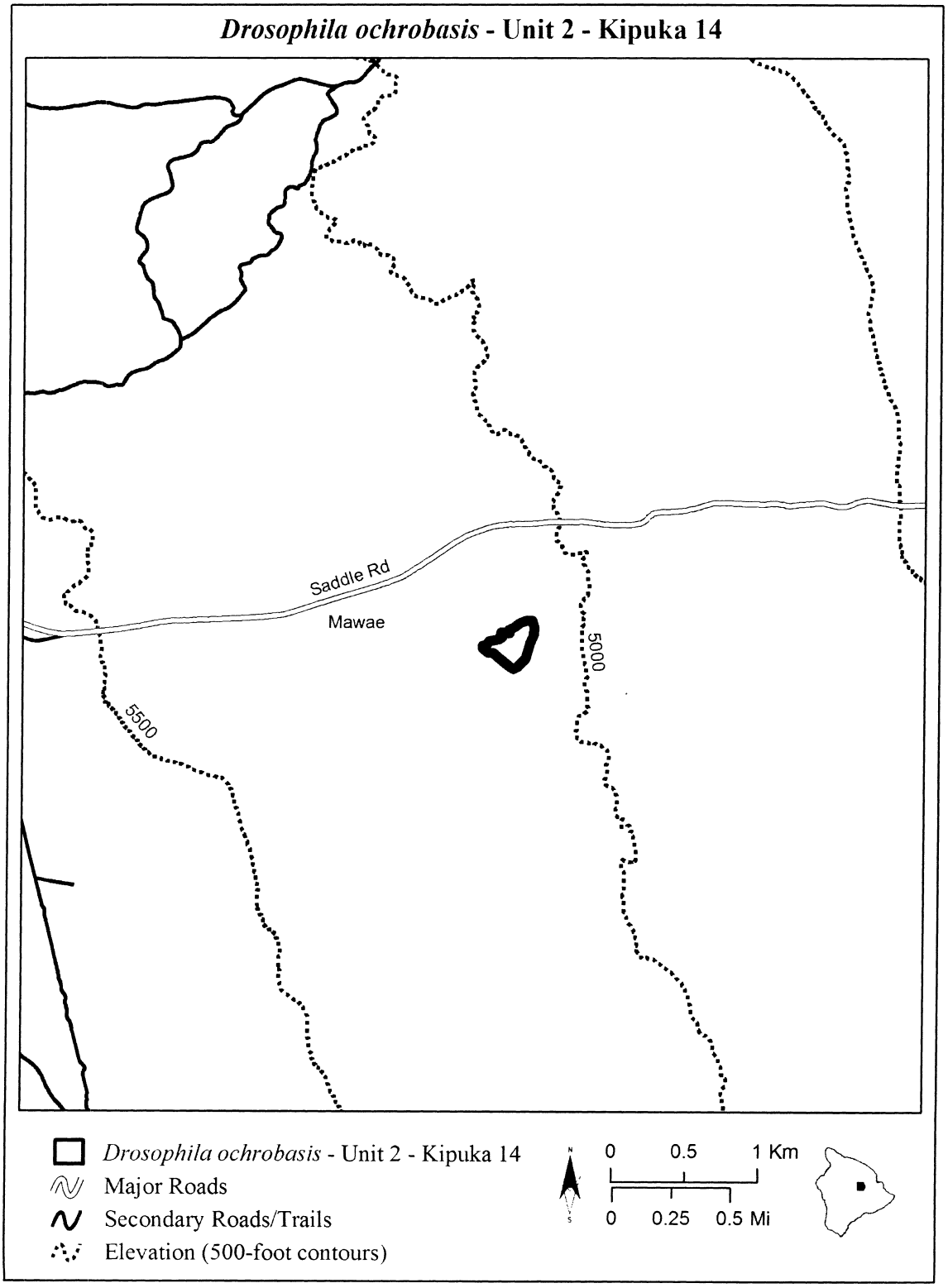
(ii) Note: Map of *Drosophila ochrobasis*—Unit 1—Kipuka 9 follows:



(7) *Drosophila ochrobasis*—Unit 2—Kipuka 14, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 884379, 2179103; 884375, 2179051; 884351, 2178992; 884320, 2178889; 884264, 2178832; 884236, 2178818; 884211, 2178834; 884141, 2178891; 884099, 2178924; 884064, 2178929; 884026, 2178959; 884026, 2178976; 884052, 2178983; 884071, 2179008; 884101, 2179013; 884137, 2179021; 884160, 2179035; 884148, 2179051; 884151, 2179065; 884210, 2179063; 884208, 2179084; 884242, 2179101; 884280, 2179131; 884323, 2179146; 884365, 2179146.

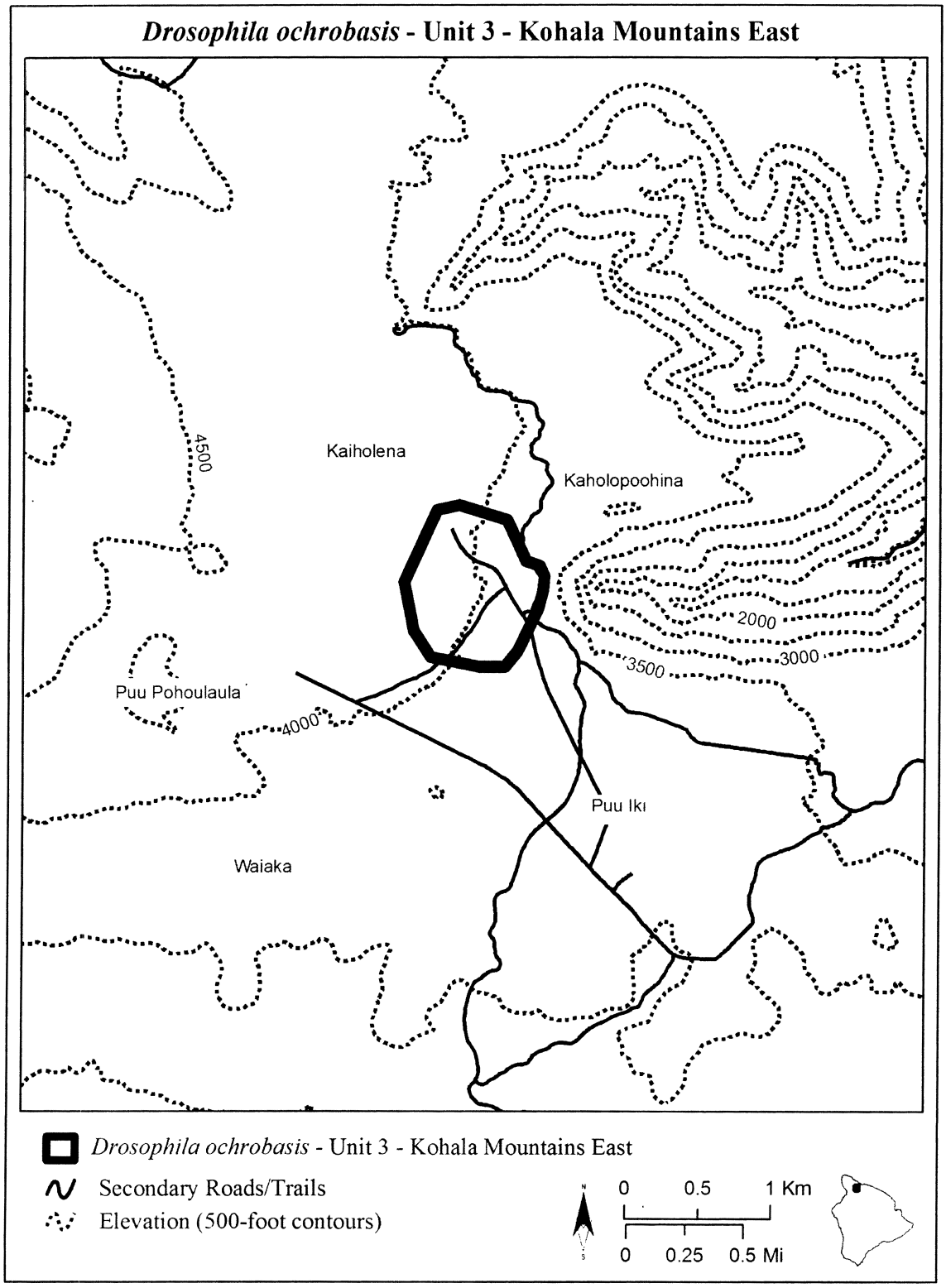
(ii) Note: Map of *Drosophila ochrobasis*—Unit 2—Kipuka 14 follows:



(8) *Drosophila ochrobasis*—Unit 3—Kohala Mountains East, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 848091, 2222077; 847912, 2222077; 847578, 2222142; 847461, 2222323; 847396, 2222654; 847508, 2222900; 847620, 2223146; 847773, 2223179; 848104, 2223079; 848172, 2222934; 848235, 2222798; 848327, 2222764; 848361, 2222693; 848350, 2222595; 848317, 2222476; 848177, 2222184.

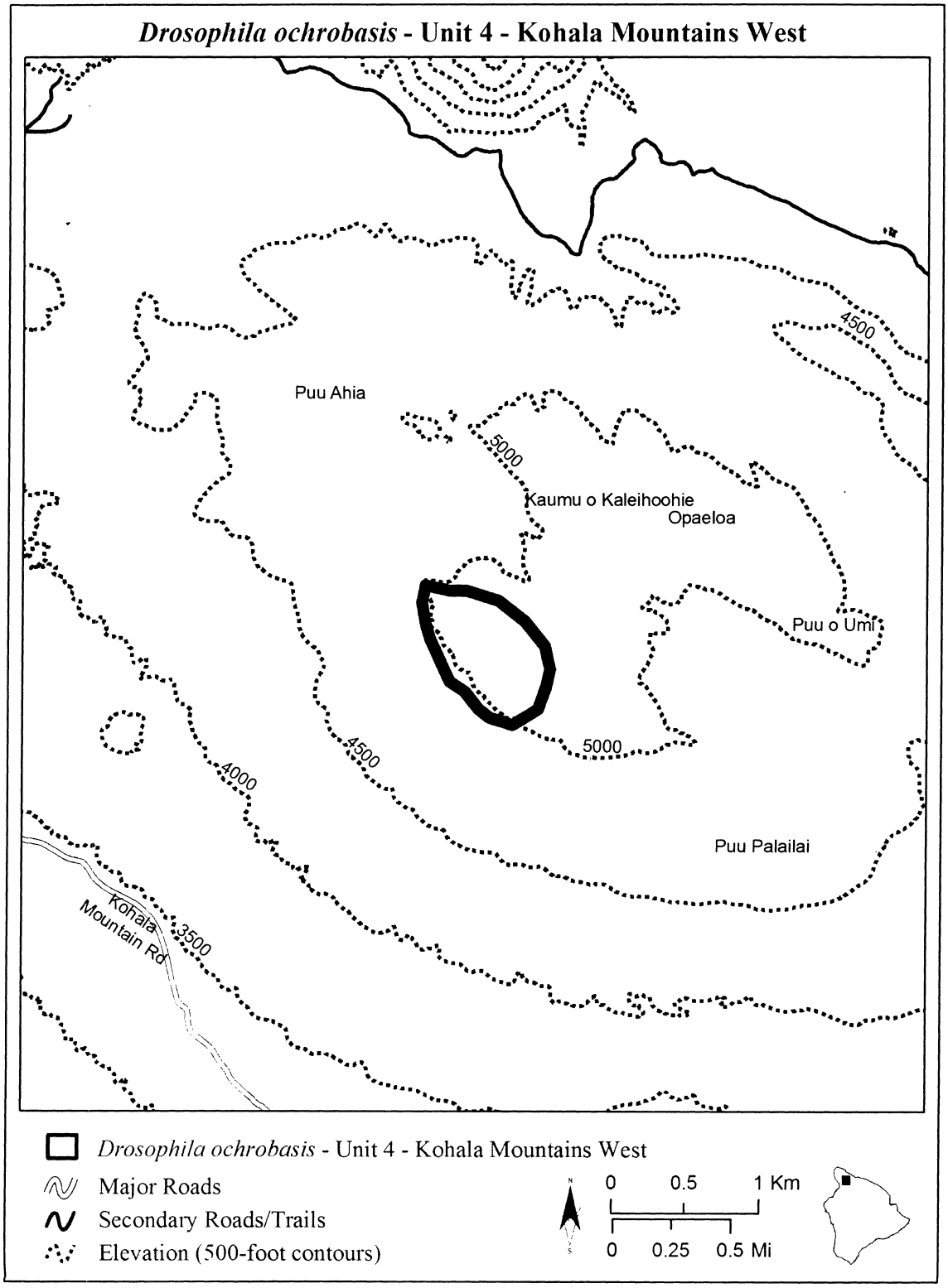
(ii) Note: Map of *Drosophila ochrobasis*—Unit 3—Kohala Mountains East follows:



(9) *Drosophila ochrobasis*—Unit 4—Kohala Mountains West, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 841990, 2224000; 842156, 2223966; 842268, 2223966; 842486, 2223897; 842666, 2223757; 842803, 2223586; 842840, 2223426; 842812, 2223314; 842758, 2223157; 842584, 2223047; 842430, 2223096; 842355, 2223157; 842260, 2223278; 842154, 2223345; 842020, 2223634; 841988, 2223746; 841967, 2223882.

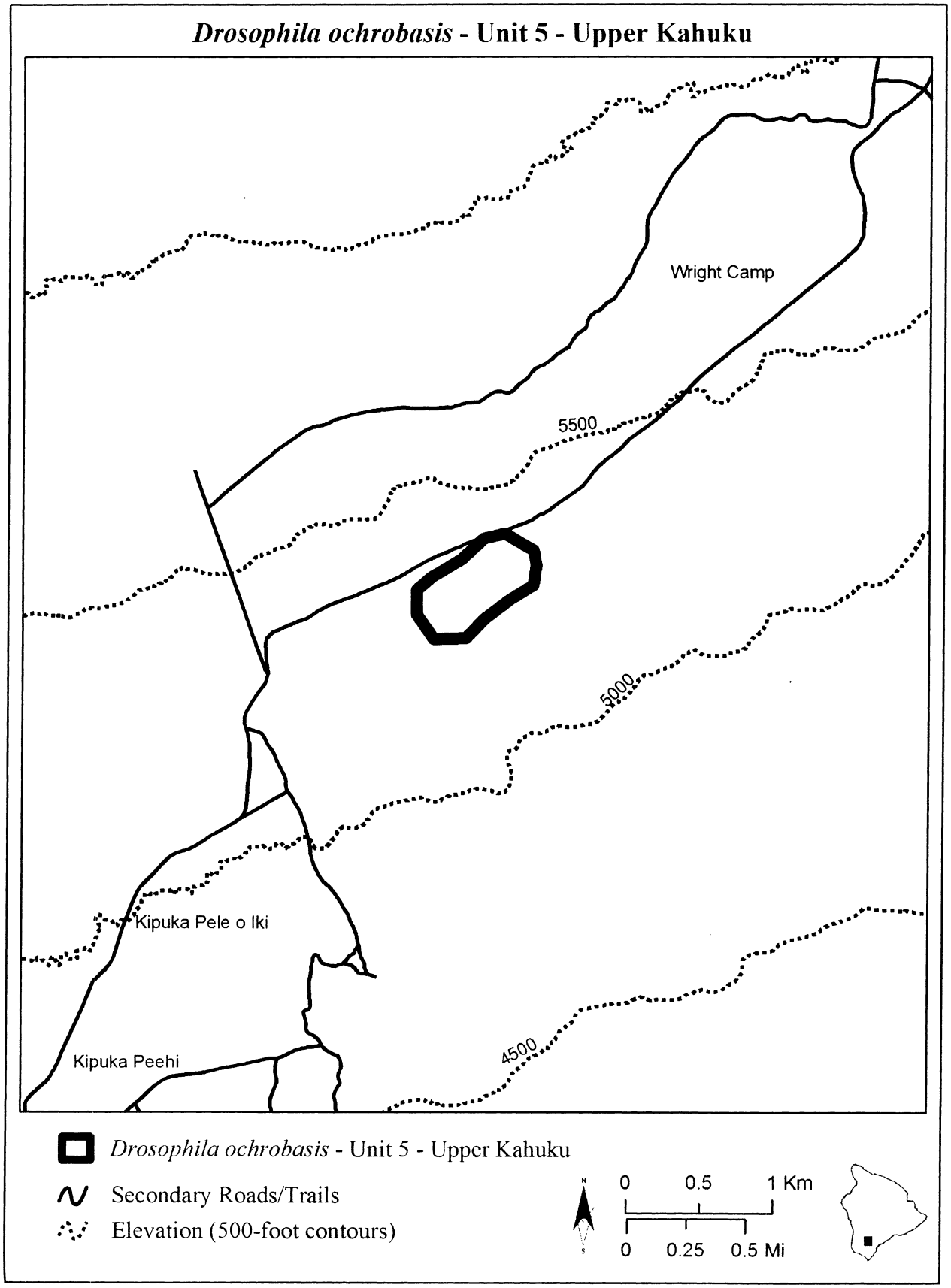
(ii) Note: Map of *Drosophila ochrobasis*—Unit 4—Kohala Mountains West follows:



(10) *Drosophila ochrobasis*—Unit 5—Upper Kahuku, Hawaii County, island of Hawaii, Hawaii.

(i) Land bounded by the following coordinates: 850211, 2124185; 849989, 2124179; 849874, 2124347; 849874, 2124516; 849975, 2124603; 850177, 2124724; 850332, 2124866; 850474, 2124900; 850589, 2124832; 850669, 2124785; 850690, 2124684; 850669, 2124549; 850508, 2124448; 850339, 2124320.

(ii) Note: Map of *Drosophila ochrobasis*—Unit 5—Upper Kahuku follows:


Drosophila ochrobasis - Unit 5 - Upper Kahuku
Wright Camp
5500
5000
4500
Kipuka Pele o Iki
Kipuka Peehi
Drosophila ochrobasis - Unit 5 - Upper Kahuku
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

Hawaiian picture-wing fly (*Drosophila substenoptera*)

(1) Critical habitat is depicted for County of Honolulu, island of Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for *Drosophila substenoptera* are:

(i) Mesic to wet, lowland to montane, ohia and koa forest between the elevations of 1,920–4,030 ft (585–1,228 m); and

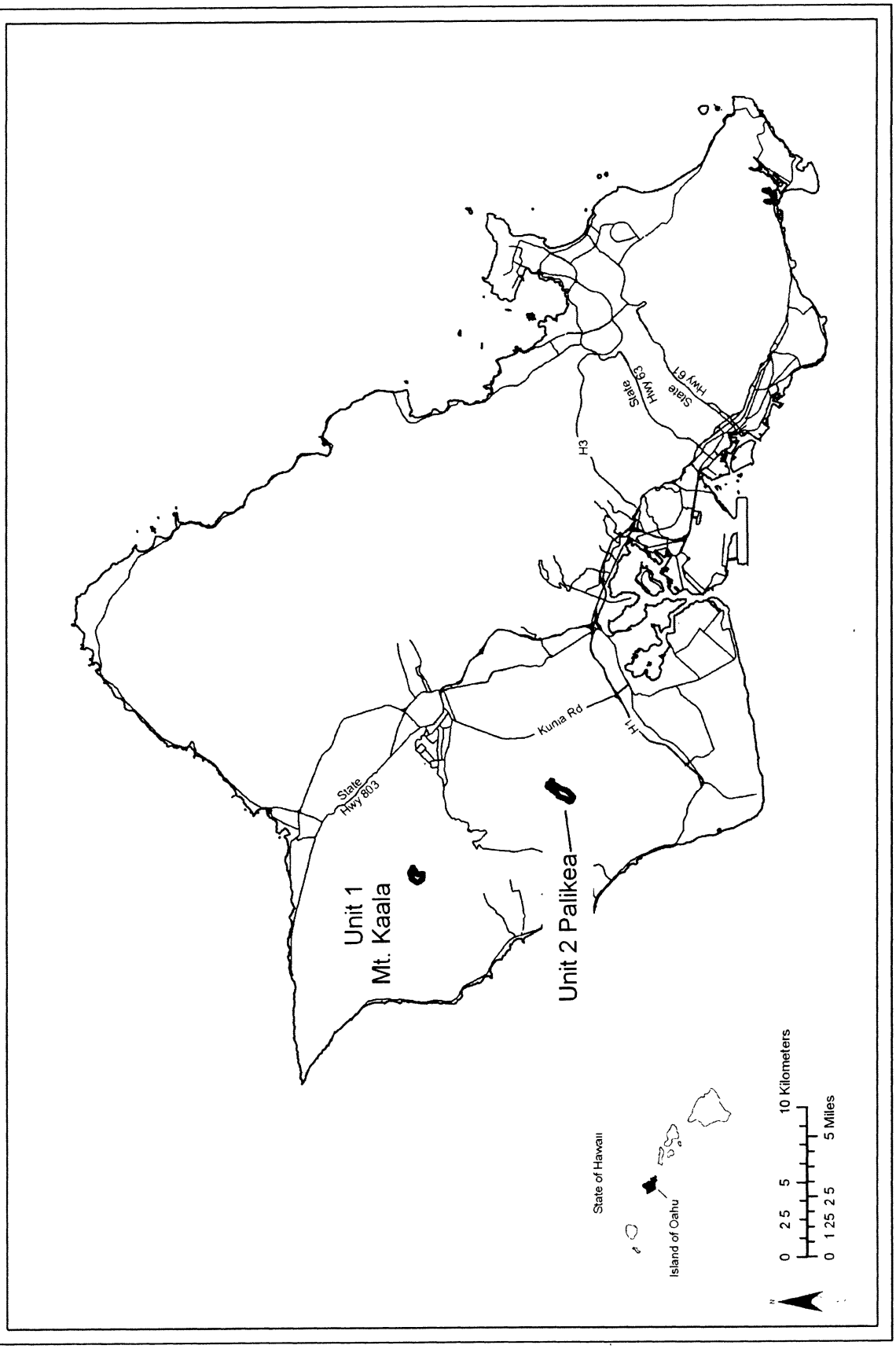
(ii) The larval host plants *Cheirodendron platyphyllum* ssp. *platyphyllum*, C. *trigynum* ssp. *trigynum, Tetraplasandra kavaiensis*, and *T. oahuensis*, which exhibit one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of critical habitat units for *Drosophila substenoptera* follows:

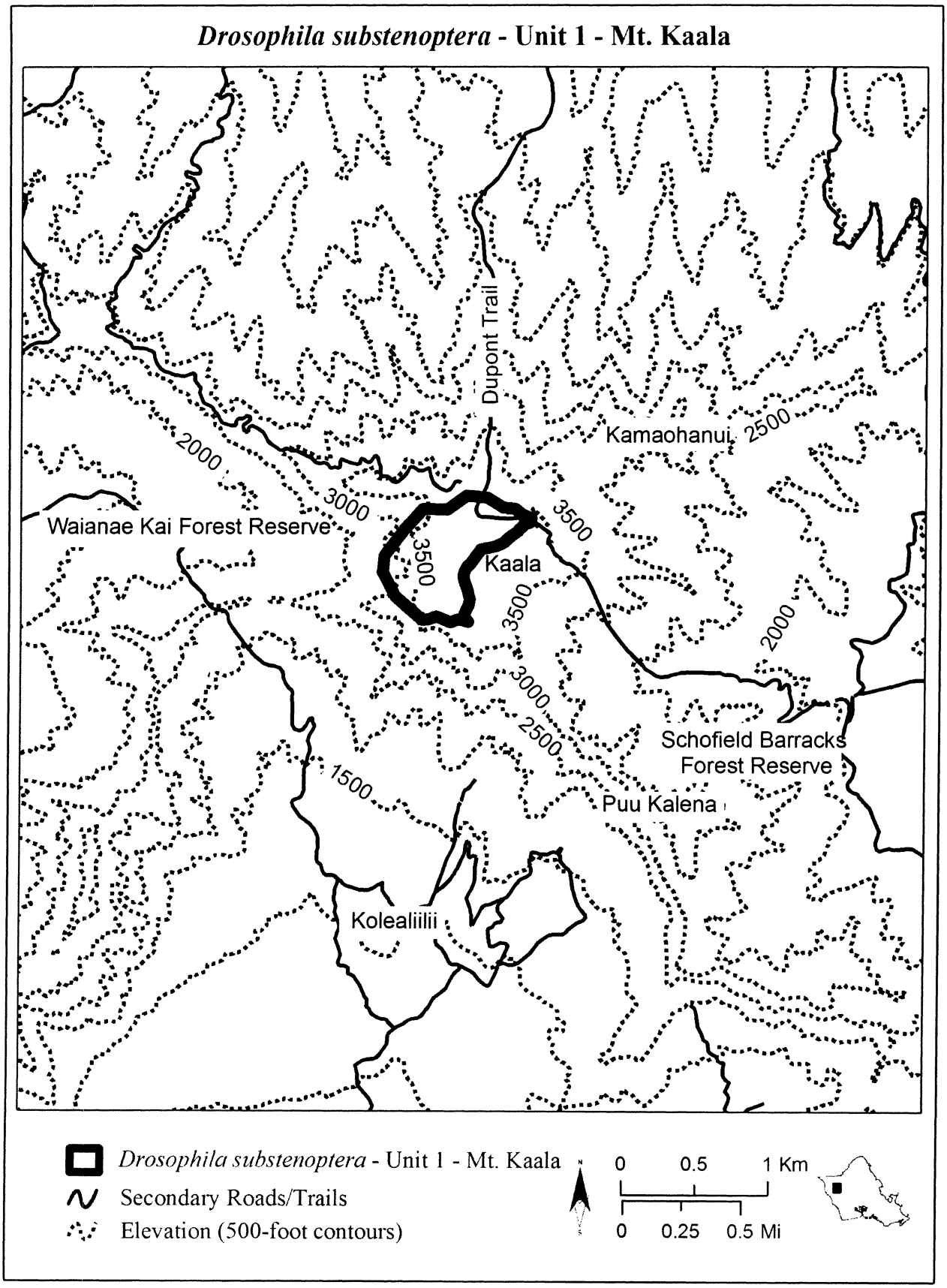
Index Map of Critical Habitat Units for *Drosophila substenoptera*



(6) *Drosophila substenoptera*—Unit 1—Mt. Kaala, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 588692, 2378661; 588740, 2378622; 588806, 2378595; 588799, 2378573; 588790, 2378564; 588785, 2378562; 588776, 2378565; 588776, 2378565; 588776, 2378565; 588776, 2378565; 588776, 2378565; 588776, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588766, 2378566; 588765, 2378566; 588765, 2378566; 588765, 2378566; 588753, 2378551; 588731, 2378529; 588722, 2378520; 588722, 2378520; 588722, 2378520; 588714, 2378509; 588660, 2378470; 588660, 2378470; 588660, 2378470; 588660, 2378470; 588617, 2378429; 588584, 2378412; 588563, 2378405; 588530, 2378398; 588530, 2378398; 588484, 2378387; 588466, 2378384; 588466, 2378384; 588466, 2378384; 588466, 2378384; 588466, 2378384; 588466, 2378384; 588466, 2378384; 588466, 2378384; 588459, 2378380; 588459, 2378380; 588459, 2378380; 588459, 2378380; 588459, 2378379; 588459, 2378379; 588459, 2378379; 588459, 2378379; 588395, 2378293; 588361, 2378254; 588361, 2378254; 588361, 2378254; 588361, 2378254; 588361, 2378254; 588349, 2378234; 588349, 2378234; 588349, 2378234; 588349, 2378234; 588349, 2378234; 588349, 2378234; 588344, 2378210; 588344, 2378210; 588344, 2378210; 588344, 2378210; 588344, 2378210; 588344, 2378186; 588344, 2378186; 588344, 2378186; 588344, 2378186; 588349, 2378161; 588349, 2378161; 588349, 2378161; 588349, 2378161; 588373, 2378097; 588385, 2378041; 588384, 2378026; 588380, 2378003; 588364, 2377972; 588364, 2377972; 588364, 2377972; 588351, 2377941; 588351, 2377941; 588351, 2377941; 588351, 2377941; 588351, 2377941; 588351, 2377941; 588351, 2377941; 588351, 2377941; 588351, 2377941; 588354, 2377924; 588354, 2377924; 588354, 2377923; 588354, 2377923; 588354, 2377923; 588362, 2377904; 588362, 2377904; 588362, 2377904; 588362, 2377904; 588369, 2377893; 588369, 2377893; 588369, 2377893; 588369, 2377893; 588369, 2377893; 588376, 2377888; 588308, 2377906; 588255, 2377885; 588156, 2377924; 588103, 2377905; 588064, 2377903; 587879, 2378062; 587792, 2378228; 587806, 2378342; 587939, 2378515; 588067, 2378659; 588232, 2378655; 588363, 2378748; 588503, 2378737; 588614, 2378668.

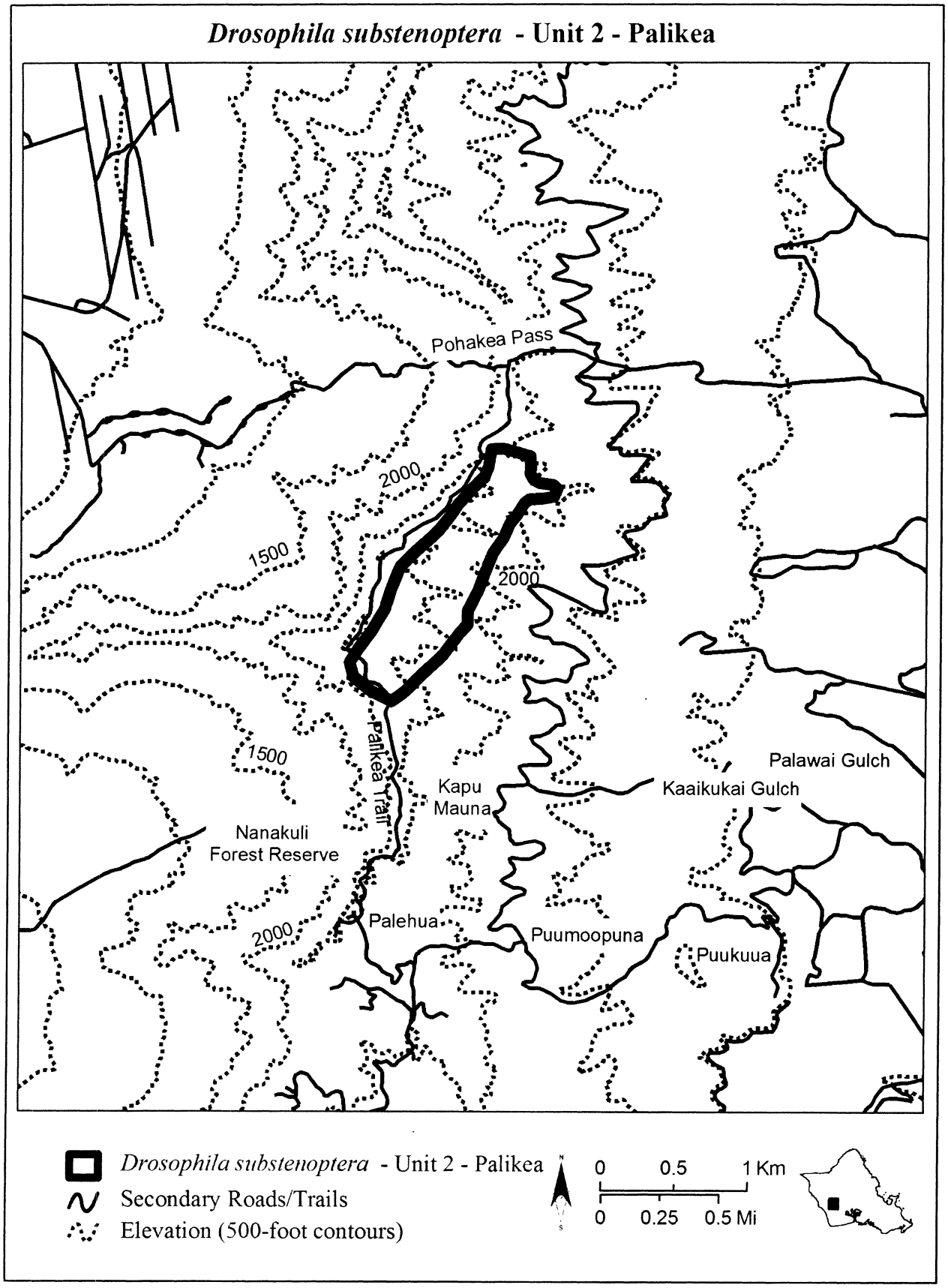
(ii) Note: Map of *Drosophila substenoptera*—Unit 1—Mt. Kaala follows:


Drosophila substenoptera - Unit 1 - Mt. Kaala
Dupont Trail
Kamaohanui
2500
2000
3000
3500
Waianae Kai Forest Reserve
Kaala
3500
3500
2000
3000
2500
Schofield Barracks
Forest Reserve
1500
Puu Kalena
Kolealiilii
Drosophila substenoptera - Unit 1 - Mt. Kaala
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(7) *Drosophila substenoptera*—Unit 2—Palikea, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 593529, 2367854; 593448, 2367801; 593302, 2367874; 593242, 2367927; 593193, 2367967; 593165, 2368065; 593217, 2368150; 593314, 2368283; 593399, 2368425; 593448, 2368578; 593505, 2368716; 593622, 2368833; 593703, 2368906; 593764, 2368963; 593832, 2369044; 593901, 2369145; 594002, 2369262; 594079, 2369331; 594104, 2369396; 594120, 2369485; 594124, 2369521; 594148, 2369525; 594213, 2369525; 594310, 2369497; 594395, 2369473; 594399, 2369392; 594396, 2369356; 594417, 2369313; 594461, 2369290; 594551, 2369278; 594579, 2369250; 594559, 2369197; 594472, 2369183; 594391, 2369179; 594354, 2369153; 594302, 2369072; 594257, 2369015; 594213, 2368914; 594136, 2368809; 594083, 2368672; 594035, 2368550; 593966, 2368417; 593966, 2368324; 593909, 2368259; 593792, 2368105; 593675, 2368000.

(ii) Note: Map of *Drosophila substenoptera*—Unit 2—Palikea follows:


Drosophila substenoptera - Unit 2 - Palikea
Pohakea Pass
2000
1500
2000
1500
Palikea Trail
Kapu Mauna
Palawai Gulch
Kaaikukai Gulch
Nanakuli Forest Reserve
Palehua
2000
Puumoopuna
Puukuua
Drosophila substenoptera - Unit 2 - Palikea
Secondary Roads/Trails
Elevation (500-foot contours)
N
0 0.5 1 Km
0 0.25 0.5 Mi

Hawaiian picture-wing fly (*Drosophila tarphytrichia*)

(1) Critical habitat units are depicted for County of Honolulu, island of Oahu, Hawaii, on the maps below.

(2) The primary constituent elements of critical habitat for *Drosophila tarphytrichia* are:

(i) Dry to mesic, lowland, ohia and koa forest between the elevations of 1,720–2,985 ft (524–910 m); and

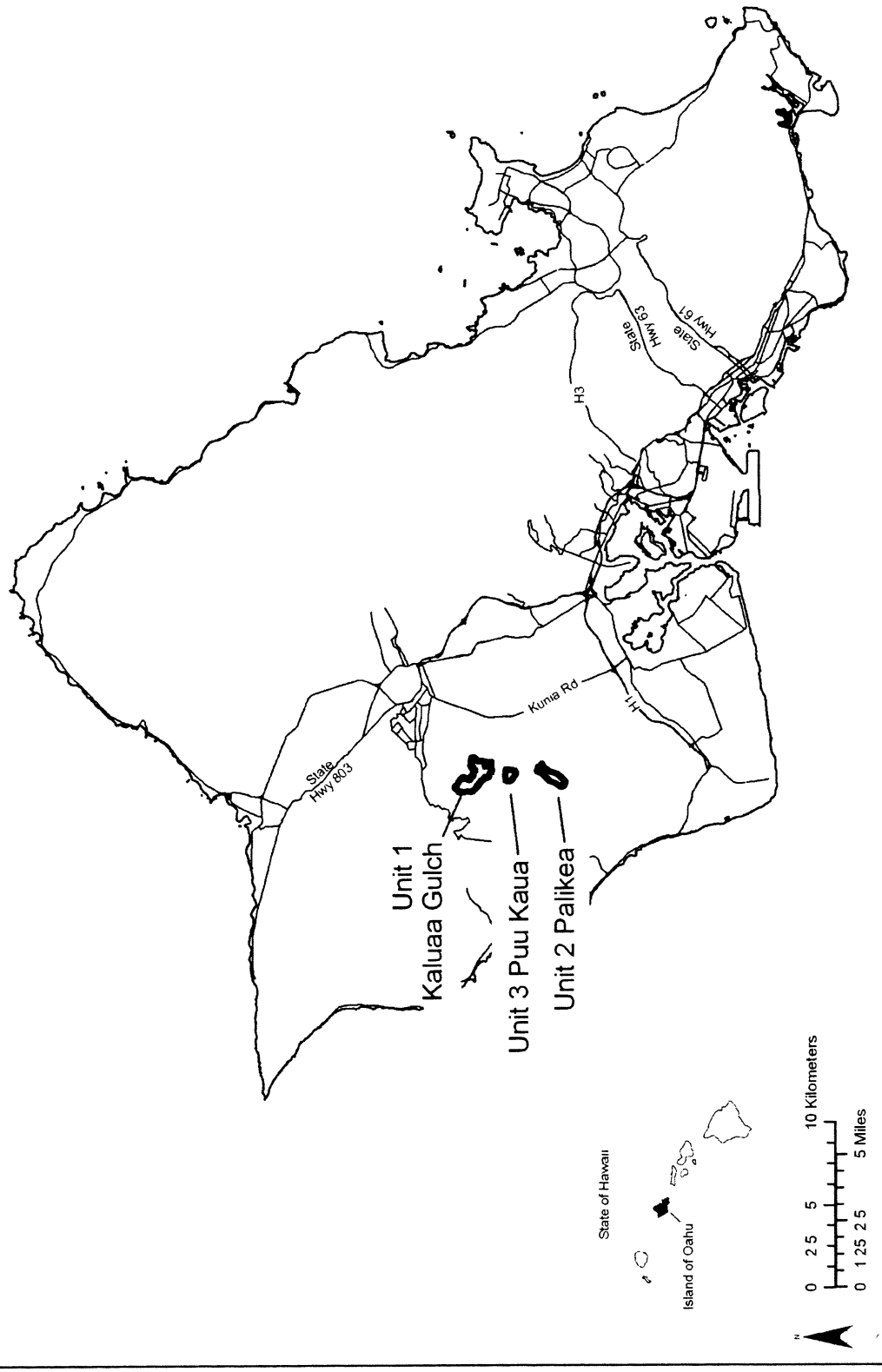
(ii) The larval host plant *Charpentiera obovata*, which exhibits one or more life stages (from seedlings to senescent individuals).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Coordinates are in Universal Transverse Mercator (UTM) Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(5) Note: Index map of critical habitat units for *Drosophila tarphytrichia* follows:

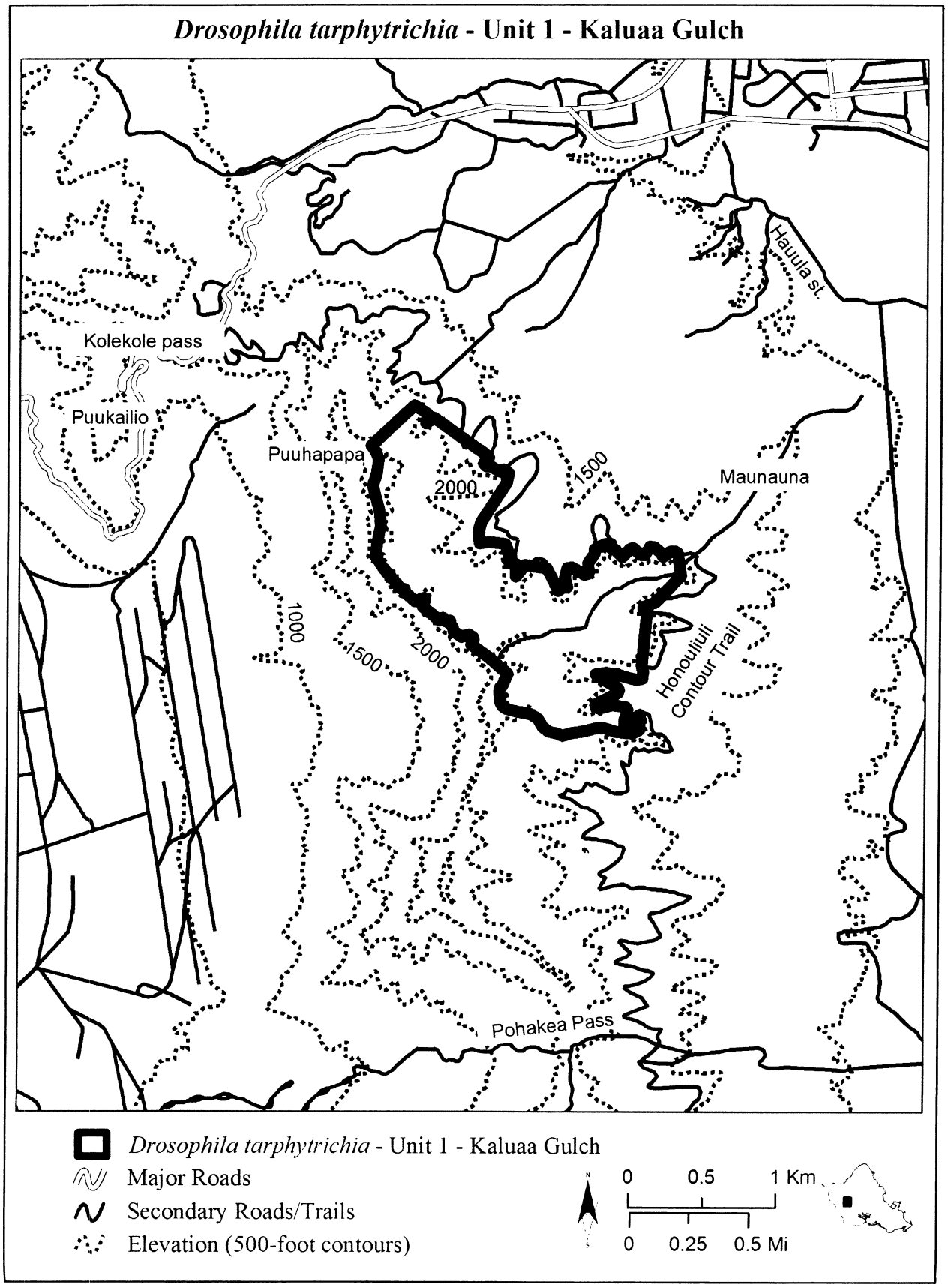
Index Map of Critical Habitat Units for *Drosophila tarphytrichia*



(6) *Drosophila tarphytrichia*—Unit 1—Kaluaa Gulch, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 593240, 2374436; 593231, 2374371; 593281, 2374410; 593315, 2374385; 593612, 2374173; 593656, 2374138; 593621, 2374096; 593641, 2374077; 593676, 2374072; 593703, 2374057; 593734, 2374039; 593758, 2374058; 593793, 2374029; 593779, 2373964; 593731, 2373894; 593660, 2373784; 593609, 2373702; 593592, 2373648; 593592, 2373594; 593598, 2373553; 593657, 2373561; 593770, 2373549; 593792, 2373496; 593797, 2373417; 593842, 2373411; 593842, 2373326; 593905, 2373404; 594053, 2373383; 594103, 2373292; 594134, 2373228; 594156, 2373250; 594194, 2373256; 594178, 2373323; 594196, 2373386; 594229, 2373390; 594312, 2373340; 594341, 2373350; 594339, 2373421; 594383, 2373487; 594381, 2373513; 594460, 2373552; 594496, 2373553; 594497, 2373518; 594526, 2373509; 594572, 2373460; 594632, 2373519; 594649, 2373523; 594699, 2373475; 594728, 2373476; 594762, 2373532; 594791, 2373529; 594828, 2373501; 594852, 2373465; 594903, 2373501; 594933, 2373500; 594952, 2373489; 594974, 2373334; 594800, 2373150; 594718, 2373120; 594718, 2373102; 594744, 2373091; 594710, 2372721; 594720, 2372686; 594716, 2372633; 594678, 2372623; 594566, 2372651; 594536, 2372666; 594506, 2372663; 594467, 2372672; 594395, 2372663; 594406, 2372650; 594546, 2372567; 594558, 2372553; 594551, 2372535; 594389, 2372452; 594395, 2372434; 594415, 2372428; 594511, 2372449; 594603, 2372437; 594614, 2372421; 594607, 2372385; 594593, 2372353; 594591, 2372317; 594618, 2372322; 594661, 2372357; 594700, 2372384; 594696, 2372334; 594697, 2372333; 594697, 2372283; 594652, 2372257; 594541, 2372266; 594454, 2372294; 594400, 2372294; 594293, 2372267; 594231, 2372261; 594168, 2372241; 594126, 2372258; 594075, 2372267; 594030, 2372303; 593999, 2372354; 593948, 2372388; 593889, 2372397; 593812, 2372413; 593781, 2372425; 593756, 2372442; 593742, 2372467; 593742, 2372490; 593736, 2372521; 593736, 2372560; 593757, 2372587; 593790, 2372662; 593663, 2372772; 593543, 2372859; 593558, 2372894; 593555, 2372910; 593526, 2372928; 593476, 2372912; 593422, 2372953; 593420, 2372976; 593403, 2372997; 593400, 2373025; 593373, 2373016; 593352, 2373044; 593328, 2373025; 593215, 2373118; 593230, 2373171; 593214, 2373176; 593163, 2373154; 593095, 2373213; 593091, 2373238; 593064, 2373243; 593019, 2373295; 592937, 2373388; 592889, 2373462; 592897, 2373535; 592908, 2373597; 592923, 2373668; 592914, 2373772; 592889, 2373866; 592868, 2373941; 592867, 2373950; 592894, 2374029; 592908, 2374120; 592894, 2374162; 592860, 2374213; 592854, 2374216; 593151, 2374494.

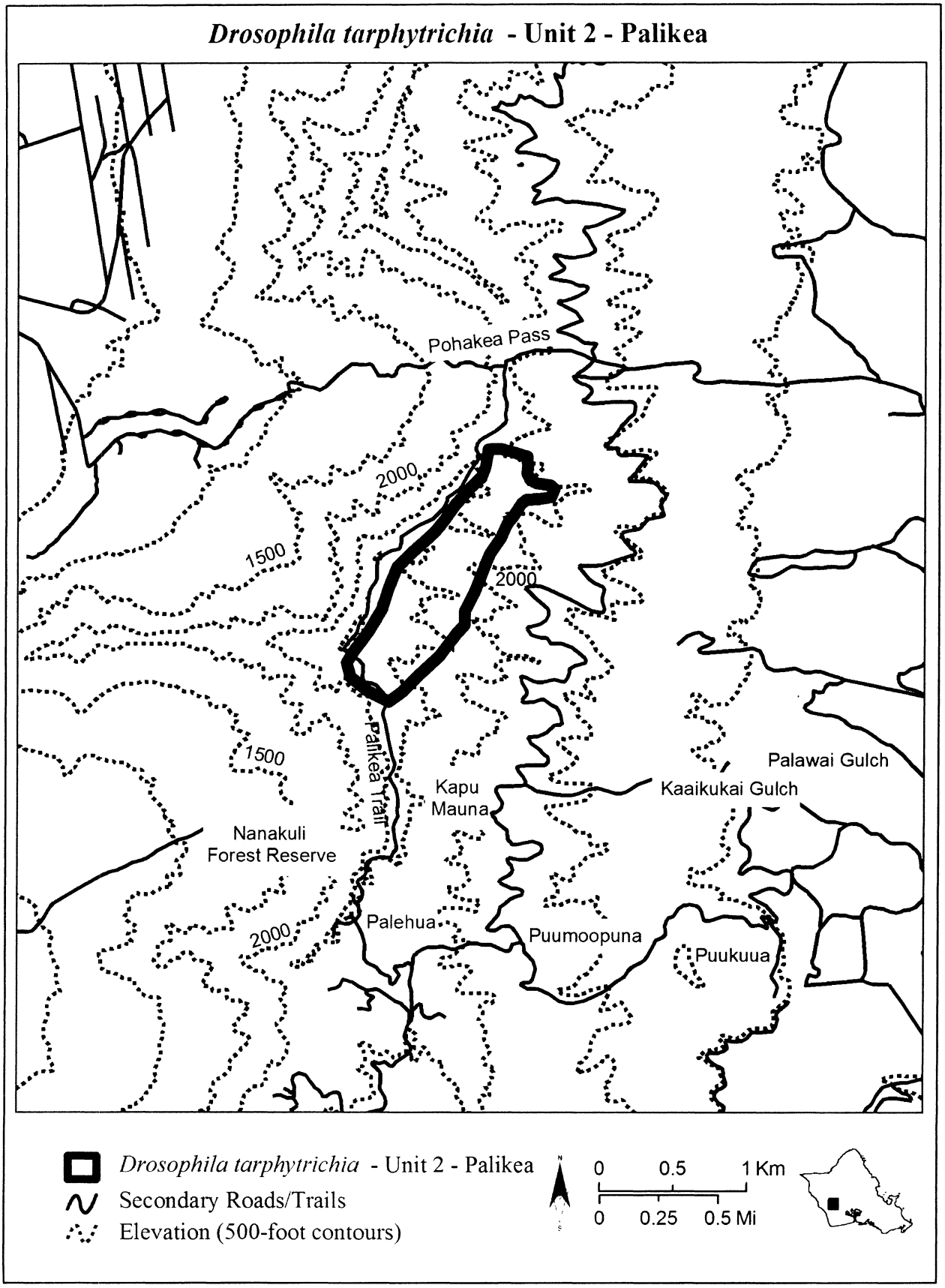
(ii) Note: Map of *Drosophila tarphytrichia*—Unit 1—Kaluaa Gulch follows:


Drosophila tarphytrichia - Unit 1 - Kaluaa Gulch
Kolekole pass
Puukailio
Puuhapapa
2000
1500
Maunauna
Hauula st.
1000
1500
2000
Honouliuli Contour Trail
Pohakea Pass
Drosophila tarphytrichia - Unit 1 - Kaluaa Gulch
Major Roads
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(7) *Drosophila tarphytrichia*—Unit 2—Palikea, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 593529, 2367854; 593448, 2367801; 593302, 2367874; 593242, 2367927; 593193, 2367967; 593165, 2368065; 593217, 2368150; 593314, 2368283; 593399, 2368425; 593448, 2368578; 593505, 2368716; 593622, 2368833; 593703, 2368906; 593764, 2368963; 593832, 2369044; 593901, 2369145; 594002, 2369262; 594079, 2369331; 594104, 2369396; 594120, 2369485; 594124, 2369521; 594148, 2369525; 594213, 2369525; 594310, 2369497; 594395, 2369473; 594399, 2369392; 594396, 2369356; 594417, 2369313; 594461, 2369290; 594551, 2369278; 594579, 2369250; 594559, 2369197; 594472, 2369183; 594391, 2369179; 594354, 2369153; 594302, 2369072; 594257, 2369015; 594213, 2368914; 594136, 2368809; 594083, 2368672; 594035, 2368550; 593966, 2368417; 593966, 2368324; 593909, 2368259; 593792, 2368105; 593675, 2368000.

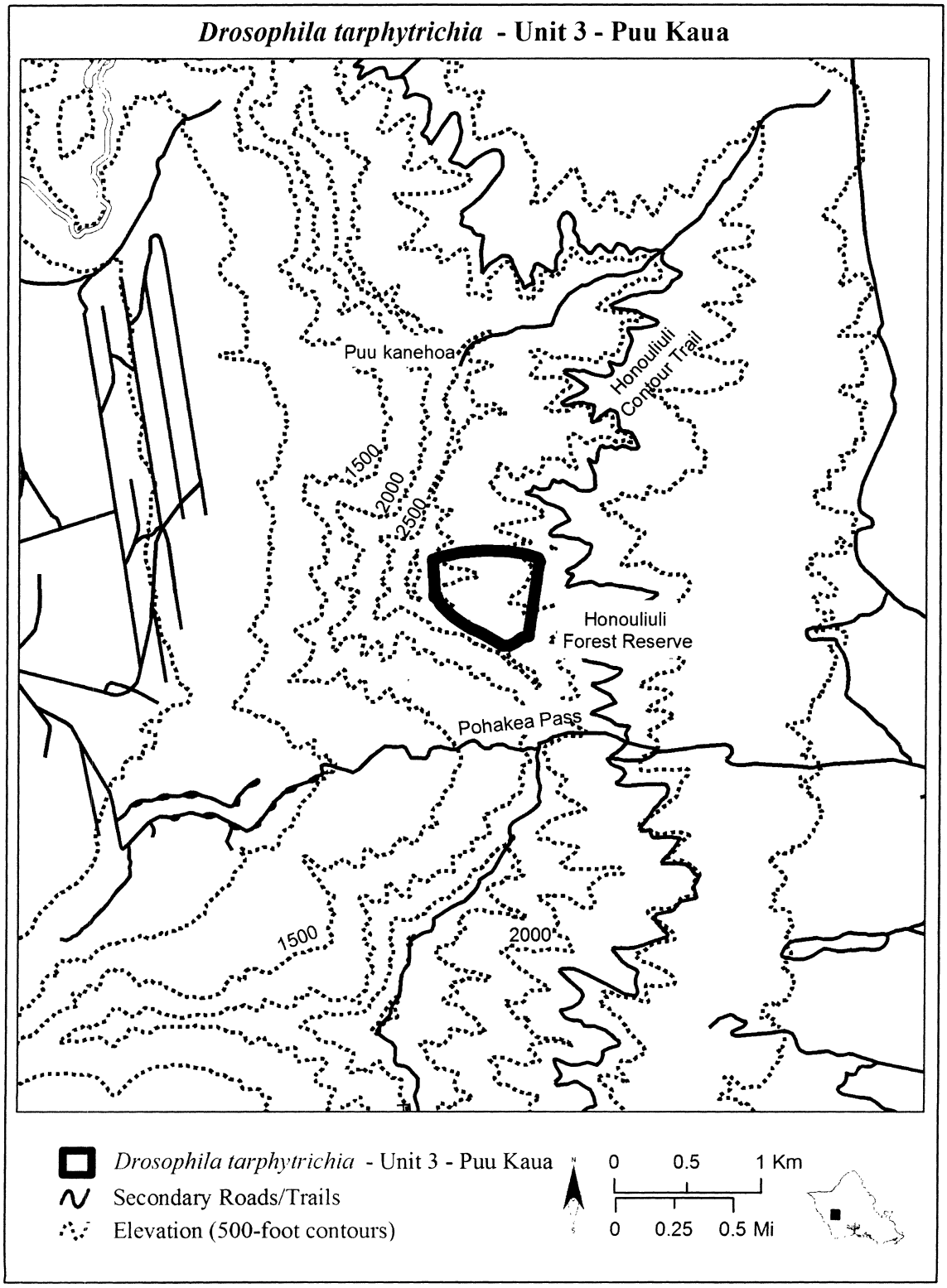
(ii) Note: Map of *Drosophila tarphytrichia*—Unit 2—Palikea follows:


Drosophila tarphytrichia - Unit 2 - Palikea
Pohakea Pass
2000
1500
2000
1500
Palikea Trail
Kapu Mauna
Palawai Gulch
Kaaikukai Gulch
Nanakuli Forest Reserve
Palehua
2000
Puumoopuna
Puukuua
Drosophila tarphytrichia - Unit 2 - Palikea
Secondary Roads/Trails
Elevation (500-foot contours)
0 0.5 1 Km
0 0.25 0.5 Mi

(8) *Drosophila tarphytrichia*—Unit 3—Puu Kaua, City and County of Honolulu, island of Oahu, Hawaii.

(i) Land bounded by the following coordinates: 594166, 2370854; 594166, 2370853; 594164, 2370854; 594122, 2370843; 594090, 2370815; 594040, 2370789; 593996, 2370789; 593930, 2370827; 593852, 2370875; 593778, 2370907; 593716, 2370947; 593642, 2370999; 593602, 2371041; 593574, 2371067; 593558, 2371095; 593539, 2371118; 593531, 2371121; 593534, 2371173; 593519, 2371375; 593533, 2371375; 593552, 2371390; 593628, 2371404; 593716, 2371426; 593794, 2371431; 593876, 2371437; 593974, 2371435; 594036, 2371431; 594138, 2371415; 594190, 2371399; 594232, 2371385; 594246, 2371359; 594239, 2371354; 594170, 2370879; 594172, 2370877; 594170, 2370855.

(ii) Note: Map of *Drosophila tarphytrichia*—Unit 3—Puu Kaua follows:



* * * * *

Dated: November 14, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–27664 Filed 12–3–08; 8:45 am]

BILLING CODE 4310–55–C

Proposed Rules

Federal Register

Vol. 73, No. 234

Thursday, December 4, 2008

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 DEFENSE

Office of the Secretary

[DoD–2008–OS–0085; RIN 0790–AI34]

32 CFR Part 185

Defense Support of Civil Authorities (DSCA)

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes policy and assigns responsibilities for DSCA, supplements regulations regarding military support for civilian law enforcement, and sets forth policy guidance for the execution and oversight of DSCA when requested by civil authorities and approved by the appropriate DoD authority, or as directed by the President, within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States or any political subdivision thereof. Legislative changes over the years have made the existing guidance outdated and inconsistent with current law and the current organizational structure of the Department of Defense. This proposed rule will allow civil authorities access to the correct procedures when they are seeking assistance from the Department by establishing updated policy guidance and assigning the correct responsibilities within the Department for the Defense for support of civil authorities in response to requests for assistance for domestic emergencies, designated law enforcement support, special events, and other domestic activities. Interested persons are invited to submit comments on this proposed rule that will be considered prior to promulgation of the final rule.

DATES: Comments must be received by February 2, 2009.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Chávez, 703–697–5415.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been certified that 32 CFR part 185 does not:

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

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

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

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

Sec. 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 185 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 185 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes policy and assigns responsibilities within DoD for DSCA, supplements regulations regarding military support for civilian law enforcement, and sets forth policy guidance for the execution and oversight of DSCA when requested by civil authorities and approved by the appropriate DoD authority, or as directed by the President. Therefore, it is not expected that small entities will be affected because there will be no economically significant regulatory requirements placed upon them.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 185 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 185 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 185

Armed forces, Civil defense.

Accordingly, the Department of Defense proposes to revise 32 CFR part 185 to read as follows:

PART 185—DEFENSE SUPPORT OF CIVIL AUTHORITIES (DSCA)

Sec.
185.1 Purpose.
185.2 Applicability and scope.
185.3 Definitions.
185.4 Policy.
185.5 Responsibilities.

Authority: 50 U.S.C. 2251, as amended; E.O. 12148, 3 CFR 1979 Comp. p. 412.

§ 185.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities for Defense Support of Civil Authorities (DSCA) which is also referred to as civil support.

(b) Supplements the regulations required by section 375 of title 10, United States Code (U.S.C.), regarding military support for civilian law enforcement.

(c) Sets forth policy guidance for the execution and oversight of DSCA when requested by civil authorities and approved by the appropriate DoD authority, or as directed by the President, within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States or any political subdivision thereof.

§ 185.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff, the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) Applies to the Army National Guard (ARNG) and the Air National Guard (ANG) in title 32 status.

(c) Applies to all DSCA (except the specific forms of DSCA listed in paragraph (d) of this section), including:

(1) Military community affairs programs or innovative readiness training (formerly called ''civil-military cooperative action programs'') (see DoD Directive 1100.20).[1]

(2) Mutual or automatic aid (see chapter 15A of title 42 U.S.C.).

(3) DoD fire and emergency services programs (see DoD Instruction 6055.06).[2]

(4) United States Army Corps of Engineers (USACE) activities as the Department of Defense Coordinating and Primary Agency for the National Response Framework, Emergency Support Function #3, Public Works and Engineering.

(5) Activities performed by the Civil Air Patrol in support of civil authorities when approved by the Air Force as auxiliary missions.

(6) Support provided by the National Guard, in a federally funded title 32 status to local, State, tribal, and/or Federal civil agencies when employed by a Governor, or provided under Emergency Management Assistance Compacts when that support involves use of personnel operating under the provisions of title 32 U.S.C.

(7) Special Events in accordance with DoD Directive 2000.15[3] and/or applicable law.

(d) Does not apply to the following activities conducted in support of civil authorities:

(1) Support in response to foreign disasters provided in accordance with DoD Directive 5100.46.[4]

(2) Joint investigations conducted by the Inspector General of the Department of Defense, the Defense Criminal Investigative Service, and the military criminal investigative organizations with civil law enforcement agencies on matters within their respective jurisdictions using their own forces and equipment.

(3) Detail of DoD personnel to duty outside the Department of Defense in accordance with DoD Instruction 1000.17.[5]

(4) Support provided by State Defense Forces and National Guard activities not covered by paragraph (c)(6) of this section.

(5) Counternarcotics operations.

(6) Support provided by the United States Army Corps of Engineers when accomplishing missions and responsibilities under Pub. L. 84–99, as amended.

(7) Intelligence assistance provided by DoD intelligence and counterintelligence components (see DoD Directive 5240.01,[6] Executive Orders 12333 and 13388, DoD 5240.1–R,[7] and other applicable laws and regulations).

(8) Military community relations programs and activities administered by the Assistant Secretary of Defense for Public Affairs (see DoD Directive 5410.18[8] and DoD Instruction 5410.19[9]).

(9) Sensitive support in accordance with DoD Directive S–5210.36.[10]

§ 185.3 Definitions.

Civil Authorities. See Joint Publication 1–02.[11]

Civil Disturbances. See Joint Publication 1–02.

Civil Support. See Joint Publication 1–02. Also known as Defense Support of Civil Authorities (DSCA).

Defense Domestic Crisis Manager. The DoD official responsible for overseeing, advising, and making recommendations to the Secretary of Defense on the use of resources and DoD personnel needed to prevent or respond to a potential or actual domestic crisis. The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)) serves as the Defense Domestic Crisis Manager.

Defense Support of Civil Authorities (DSCA). Support provided by U.S. Federal military forces, National Guard forces performing duty under title 32, U.S.C., DoD civilians, DoD contract personnel, and DoD component assets, in response to requests for assistance from civil authorities for special events, domestic emergencies, designated law enforcement support, and other domestic activities. Support provided by National Guard forces performing duty under title 32, U.S.C., is considered DSCA but is conducted as a State-directed action. Also known as Civil Support (CS).

Imminently Serious Conditions. Emergency conditions in which, in the judgment of a military commander or responsible DoD civilian official, immediate and possibly serious danger threatens the public and prompt action is needed to save lives, to safeguard public health or safety, or to prevent or mitigate great property or environmental damage. Under these conditions, timely prior authority from higher headquarters to provide DSCA may not be possible before action is necessary for effective response.

Responsible DoD Civilian. For purposes of DSCA, the head of a DoD Component (or designee) or other DoD civilian official or National Guard Federal technician who have authority

[1] Available by downloading at *http://www.dtic.mil/whs/directives/corres/html/110020.htm*.

[2] Available by downloading at *http://www.dtic.mil/whs/directives/corres/html/605506.htm*.

[3] Available by downloading at *http://www.dtic.mil/whs/directives/corres/html/200015.htm*.

[4] Available by downloading at *http://www.dtic.mil/whs/directives/corres/html/510046.htm*.

[5] Available by downloading at *http://www.dtic.mil/whs/directives/corres/pdf/100017p.pdf*.

[6] Available by downloading at *http://www.dtic.mil/whs/directives/corres/pdf/524001p.pdf*.

[7] Available by downloading at *http://www.dtic.mil/whs/directives/corres/pdf/524001r.pdf*.

[8] Available by downloading at *http://www.dtic.mil/whs/directives/corres/pdf/541018p.pdf*.

[9] Available by downloading at *http://www.dtic.mil/whs/directives/corres/pdf/541019p.pdf*.

[10] Document is classified and copies maybe requested by contacting USD(I), *USDI.pubs@osd.mil*.

[11] Available by downloading at *http://www.dtic.mil/doctrine/jel/new_pubs/jp1_02.pdf*.

over DoD assets that may be used for a DSCA response.

Special Event. An international or domestic event, contest, activity, or meeting, which by its very nature, or by specific statutory or regulatory authority, may require security, safety, and/or other logistical support or assistance fro the Department of Defense.

§ 185.4 Policy.

It is DoD policy that:

(a) This part shall be implemented consistent with national security objectives and military readiness.

(b) Unless expressly stated otherwise, the provisions of this part should not be construed to rescind any existing authorities of the Heads of DoD Components, commanders, and/or responsible DoD civilians to provide DSCA in accordance with existing laws, Department of Defense issuances, and Secretary of Defense approved orders.

(c) DSCA is initiated by a request for DoD assistance from a civilian agency or is ordered by the President or Secretary of Defense.

(d) All requests for DSCA shall be written and include a commitment to reimburse the Department of Defense. Waivers or exceptions to reimbursement must be consistent with the law and/or DoD policies. For assistance provided under paragraph (g) of this section, civil authorities shall be informed that oral requests for assistance in an emergency must be followed by a written request at the earliest available opportunity.

(e) All requests for assistance from civil authorities shall be evaluated for legality, lethality, risk, cost (including the source of funding and the effect on the DoD budget), appropriateness, and effect on readiness.

(f) DSCA plans shall be compatible with the National Response Framework; the National Incident Management System; all contingency plans for operations in the locations listed in § 185.1(c) of this part; and any other national plans (approved by the President or Secretary of Defense) or DoD issuances governing DSCA operations.

(g) Commanders, (including National Guard Commanders), heads of DoD Components and/or responsible DoD civilian officials may provide Immediate Response to a request for assistance from a civilian authority, under imminently serious conditions. This Immediate Response Authority is exercised when time does not permit approval from higher headquarters. Responsible DoD civilian officials may employ the resources under their control, subject to any supplemental direction provided by higher headquarters, and provide those resources to save lives, to safeguard public health or safety, or to prevent or mitigate great property or environmental damage.

(1) The DoD official directing a response under Immediate Response Authority shall immediately notify the National Military Command Center (NMCC), through the chain of command, of the details of the response. National Guard officials shall inform the NMCC through the National Guard Bureau. The NMCC will inform appropriate DoD components.

(2) Immediate Response Authority ends when the necessity giving rise to the response is no longer present (e.g., when there are sufficient resources available from State, local, and other Federal agencies to respond adequately), when the initiating DoD or National Guard official or a higher authority directs an end to the response, or when an appropriate authority approves a request from another Federal department or agency based on other authorities. The DoD or National Guard official directing a response under Immediate Response Authority shall reassess whether there remains a necessity for DoD to respond under this authority as soon as practicable but, if immediate response activities have not yet ended, not later than 72 hours after resources have been employed.

(3) Support provided under Immediate Response Authority should be provided on a cost-reimbursable basis where appropriate or legally required but will not be delayed or denied based on the inability or unwillingness of the requester to make a commitment to reimburse the Department of Defense.

(h) Federal military forces shall not be used to quell civil disturbances or perform civilian law enforcement functions (e.g., search, seizure, arrest, and surveillance) unless specifically authorized by the President or the Secretary of Defense in accordance with applicable law (e.g., chapter 15 of title 10, U.S.C.).

(i) Only the Secretary of Defense, or a designated representative, may approve requests from civil authorities for defense assistance during civil disturbances; defense response to chemical, biological, radiological, nuclear, and/or high yield explosive events; defense assets when there is a potential for lethality (unless otherwise authorized in law or DoD policy); and potentially lethal support of civilian law enforcement agencies. Lethal support includes: loans of arms; vessels, or aircraft; or ammunition. It also includes: all requests for assistance under section 382 of title 10 and section 831 of title 18, U.S.C.; all support to counterterrorism operations; and all support to law enforcement when there is a potential for confrontation between law enforcement and specifically identified civilian individuals or groups.

(j) Only the Secretary of Defense, or a designated representative, may authorize DoD Components to procure and maintain supplies, materiel, and/or equipment exclusively for providing DSCA.

(k) Programming and budgeting for DSCA shall be in accordance with existing laws, Department of Defense issuances, and Secretary of Defense authorization.

(l) Federal military forces employed for DSCA activities shall remain under Federal military command and control at all times.

(m) Special event support to non-governmental organizations is a DSCA activity.

§ 185.5 Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall facilitate the coordination of DoD policy governing DSCA with Federal Departments and Agencies, State agencies, and the DoD Components, as required.

(b) The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)), under the authority, direction, and control of the USD(P) exercising policy oversight of homeland defense activities of the Department of Defense and performing other duties as directed by the Secretary of Defense shall:

(1) Serve as the principal civilian advisor to the Secretary of Defense and the USD(P) on DSCA.

(2) Serve as the Defense Domestic Crisis Manager in accordance with DoD Directive 3020.44.[12]

(3) Serve as approval authority for requests for assistance from civil authorities sent to the Secretary of Defense, except for those items retained in section 185.4(h) and (i) of this part, or delegated to other officials. Such matters shall be coordinated with the Chairman of the Joint Chiefs of Staff. In the absence of the ASD(HD&ASA), the Principal Deputy Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs may exercise the authority of the ASD(HD&ASA) to approve such requests. This authority may not be further delegated. The

[12] Available by downloading at *http://www.dtic.mil/whs/directives/corres/pdf/302044p.pdf.*

Secretary of Defense shall be notified immediately of the use of this authority.

(4) Develop, coordinate, and oversee the implementation of DoD policy for DSCA and shall:

(i) Through the Chairman of the Joint Chiefs of Staff as it pertains to DSCA matters, monitor the activation, deployment, and employment of Federal military forces (including Reserve Component forces), the National Guard, DoD civilian personnel, and all facilities, equipment, fiscal accounts, supplies, and services owned by, controlled by, or under the jurisdiction of a DoD Component in response to requests for DSCA and for Department of Defense support to special events; and provide oversight of DSCA training, exercises, and resources.

(ii) In coordination with the General Counsel of the Department of Defense, develop policies and procedures for DSCA support to civil law enforcement authorities; coordinate long-range policies and procedures that govern the provision of non-emergency support to civilian law enforcement agencies; promote Department of Defense cooperation with public safety agencies; and ensure that assistance is in compliance with applicable law, Presidential Directives, Executive orders, and Department of Defense policy.

(iii) Ensure that information relating to all aspects of DSCA receives the broadest possible dissemination utilizing all approved media as appropriate and in accordance with Department of Defense Directive 8320.02.[13]

(c) The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict and Interdependent Capabilities, under the authority, direction, and control of the USD(P), shall support planning by the Defense Domestic Crisis Manager during DSCA operations, as required.

(d) The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall establish policies and procedures to ensure timely reimbursement to the Department of Defense for reimbursable DSCA activities.

(e) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall:

(1) Assist the ASD(HD&ASA) by providing recommendations, guidance, and support for all domestic crisis situations or emergencies that may require health or medical-related DSCA, including situations involving coordination with the components of the National Disaster Medical System.

(2) Assist the ASD(HD&ASA) by providing recommendations, guidance, and support on the use of the Reserve Components to perform DSCA missions.

(3) Identify, monitor, and oversee the development of integrated DSCA training capabilities and the integration of these training capabilities into exercises and training to build and sustain DSCA readiness.

(f) The Assistant Secretary of Defense for Reserve Affairs, under the authority, direction, and control of USD(P&R), shall assist the ASD(HD&ASA) by providing recommendations, guidance, and support on the use of the Reserve Components to perform DSCA missions.

(g) The Secretaries of the Military Departments shall:

(1) Support DSCA operations as directed and in accordance with this Directive, and shall ensure the readiness of the Military Departments to execute plans for DSCA.

(2) Ensure compliance with financial management guidance related to support provided for DSCA operations, including guidance related to tracking costs and seeking reimbursement.

(h) The Chairman of the Joint Chiefs of Staff shall:

(1) Advise the Secretary of Defense on the effects of requests for DSCA on national security and military readiness.

(2) Identify and coordinate available resources for DSCA requests and release related execute and deployment orders when approved by the Secretary of Defense.

(3) Incorporate DSCA into joint training and exercise programs in consultation with the Department of Homeland Security, other appropriate Federal Departments and Agencies, and the National Guard Bureau.

(i) The Commanders of Combatant Commands with DSCA responsibilities in accordance with the Unified Command Plan shall:

(1) Through the Chairman of the Joint Chiefs of Staff, plan and execute DSCA operations in their areas of responsibility in accordance with this Directive, and in accordance with their authorities assigned by the Unified Command Plan and the Forces for Unified Commands Memorandum.

(2) Incorporate DSCA into joint training and exercise programs in consultation with the Department of Homeland Security, other appropriate Federal Departments and Agencies, and the National Guard Bureau.

(3) Advocate for validated DSCA requests for domestic operations through the Joint Requirements Oversight Council, subject to section 185.4(j) and (k) of this part, and the Planning, Programming, Budgeting, and Execution (PPBE) process.

(4) Provide the Secretary of Defense an implementation plan for ensuring DSCA support is emphasized in command assessments.

(j) The Chief, National Guard Bureau, under the authority, direction, and control of the Secretary of Defense through the Secretaries of the Army and the Air, shall:

(1) Serve as the channel of communication on all matters pertaining to National Guard DSCA activities between the Secretary of Defense and the Heads of the DoD Components (including the Secretary of the Army and the Secretary of the Air Force) and the States. Direct liaison between both entities should occur only in an emergency when time does not permit compliance with this Directive. In each such instance, the Chief, NGB, should be informed of the communication.

(2) Annually assess the readiness of the National Guard of the States to conduct DSCA activities and report on this assessment to the Secretary of Defense, the Secretaries of the Army and the Air Force, the USD(P&R), the ASD(HD&ASA), the ASD(RA), the Chairman of the Joint Chiefs of Staff, and appropriate Combatant Commanders.

(3) Participate in the Joint Staff capability-based planning and assessments, the Joint Capabilities Integration and Development System, and the DoD PPBE assessment for all actions pertaining to National Guard capabilities required for DSCA.

(4) Facilitate and deconflict the planning and use of National Guard forces among the States to ensure that adequate and balanced forces are available and responsive for DSCA missions, consistent with national security objectives and priorities.

(k) The Heads of the DoD Components, in addition to the responsibilities in paragraphs (g), (h), (i), and (j) of this section, as applicable, shall:

(1) Ensure that any DSCA-related Department of Defense issuances, concept plans, interagency agreements, and memorandums of understanding or agreement with external agencies are in full compliance with this Directive.

(2) Ensure compliance with financial management guidance related to support provided for DSCA operations, including guidance related to tracking costs and seeking reimbursement.

[13] Available by downloading at *http://www.dtic.mil/whs/directives/corres/pdf/832002p.pdf.*

Dated: November 26, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–28706 Filed 12–3–08; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register

Vol. 73, No. 234

Thursday, December 4, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Cherokee Fabrication of Salem, Alabama, an exclusive license to U.S. Patent No. 7,078,913, ''Multipath Resistant Microwave Moisture Sensor'', issued on July 18, 2006.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Cherokee Fabrication of Salem, Alabama, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8–28759 Filed 12–3–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0116]

Notice of Request for Extension of Approval of an Information Collection; Standards for Privately Owned Quarantine Facilities for Ruminants; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: We are correcting errors in our notice to request an extension of approval of an information collection associated with regulations for privately owned quarantine facilities for ruminants. The notice was published in the **Federal Register** on November 5, 2008 (73 FR 65821–65822, Docket No. APHIS–2008–0116).

FOR FURTHER INFORMATION CONTACT: Dr. James Davis, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 734–8364.

SUPPLEMENTARY INFORMATION: On November 5, 2008, we published in the **Federal Register** (73 FR 65821–65822, Docket No. APHIS–2008–0116) a notice announcing the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for privately owned quarantine facilities for ruminants. In the notice on page 65821, under **ADDRESSES**, the information for submission of comments through the *Regulations.gov* Web site and postal mail/commercial delivery was incorrect. This document corrects those errors.

Correction

In FR Doc. E8–26384, published on November 5, 2008, on page 65821, first column, under **ADDRESSES**, make the following corrections:

1. Correct the Federal eRulemaking Portal section to read as follows:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0116* to submit or view comments and to view supporting and related materials available electronically.

2. Under Postal Mail/Commercial Delivery, correct ''four copies of your comment (an original and three copies)'' to read ''two copies of your comment''.

Done in Washington, DC, this 28th day of November 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–28761 Filed 12–3–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Recreation Resource Advisory Committee

AGENCY: Pacific Southwest Region, Forest Service, U.S. Department of Agriculture.

ACTION: Request for applications.

SUMMARY: Applications are being sought for certain positions on the California Recreation Resource Advisory Committee. New members will be appointed by the Secretary of Agriculture and serve three-year terms. Appointments will begin July 2009 when current member appointments expire. One member is being sought to represent each of the following interests: (1) Winter Motorized Recreation, (2) Hunting and Fishing; and (3) Motorized Outfitting and Guiding or Local Environmental Groups.

The public is invited to submit applications for these positions. Current members who have only served one term may reapply. Application packages can be obtained at *http://www.fs.fed.us/passespermits/rrac-application.shtml* or by e-mailing *R5rrac@fs.fed.us.* Interested parties may also contact Frances Enkoji, U.S. Forest Service, at 707–562–8846.

DATES: All applications must be received by January 5, 2009. This timeframe can be extended if officials do not receive applications for the needed positions.

ADDRESSES: Interested parties may submit applications by mail to Frances

Enkoji, U.S. Forest Service, 1323 Club Drive, Vallejo, CA 94592.

FOR FURTHER INFORMATION CONTACT: Anyone wanting further information regarding the California Recreation Resource Advisory Committee may contact Marlene Finley, Designated Federal Official, Pacific Southwest Region Recreation RAC, 1323 Club Drive, Vallejo, CA 94592; 707–562–8856.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (REA), signed December 2004, requires that the Forest Service and Bureau of Land Management provide Recreation RACs with an opportunity to make recommendations to the two agencies on implementing or eliminating standard amenity fees; expanded amenity fees; and noncommercial special recreation permit fees; expanding or limiting the recreation fee program; and fee level changes. Each Recreation RAC consists of 11 members appointed by the Secretary.

Nomination Information: Applicants must complete an AD–755 form (Advisory Committee or Search and Promotion Background Information) and provide a narrative that addresses the following:

(1) What group or perspective they represent and how they are qualified to represent that group;

(2) Why they want to serve on the committee and what they can contribute;

(3) Their past experience in working successfully as part of a collaborative group.

Letters of recommendation are welcome but not required. Applicants do not need to live in a state within a particular Recreation RAC's area of jurisdiction nor live in a state in which Forest Service managed lands are located. Application packages, including evaluation criteria and AD–755 are available at *http://www.fs.fed.us/passespermits/rrac application.shtml* or by contacting the Pacific Southwest Region as identified in this notice. Completed application packages must be received by January 5, 2009. Additional information about the California Recreation RAC can be found at *http://www.fs.fed.us/r5/passes/rrac* or about recreation fees at *http://www.fs.fed.us/passespermits/about-rec-fees.shtml*. The Forest Service will also work the Governor and local officials to identify potential applicants. The Forest Service and Bureau of Land Management will review applications and prepare a list of qualified applicants from which the Secretary shall appoint both members and alternates. The alternate will become a participating member of the Recreation RAC only if the member for whom the alternate is appointed to replace leaves the committee permanently. Recreation RAC members serve without pay but are reimbursed for travel and per diem expenses for regularly scheduled meetings. All Recreation RAC meetings are open the public and an open public forum is part of each meeting. Meeting dates and time will be determined by agency officials in consultation with the Recreation RAC members.

Dated: November 26, 2008.

Lynn Boone,

Acting Designated Federal Official, Recreation RAC, Pacific Southwest Region.

[FR Doc. E8–28686 Filed 12–3–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Clearwater National Forest; Idaho; Upper Lochsa Land Exchange EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: In April 2006 the Forest Service received a proposal from Western Pacific Timber LLC (WPT) in which a major exchange of land was proposed. The WPT proposal included approximately 40,000 acres of checkerboard land intermingled with the Clearwater National Forest near Powell, Idaho. These checkerboard lands are of interest to the Forest Service because they encompass the headwaters of the Lochsa River and hold outstanding values for many fish and wildlife species. The checkerboard lands also hold significant cultural resources including the Lewis and Clark National Historic Trail and Nez Perce Tribe treaty area.

In September 2008 the Clearwater National Forest completed a feasibility analysis of the proposed exchange as a first level screen to review forest management plans, identify public benefit, identify availability of resources to complete the proposed exchange, identify title and property descriptions and identify potential support and opposition. The outcome of the feasibility analysis was a recommendation to enter into an Agreement to Initiate a land exchange with WPT. The agreement, signed by both parties in September, specifies the roles and responsibilities of each party involved in the exchange.

In the proposed land exchange the Forest Service would acquire approximately 39,371 acres of land in the upper Lochsa River drainage in exchange for up to approximately 28,212 acres of National Forest System (NFS) land. It is anticipated that this is more than adequate federal acreage to complete an equal value land exchange. The NFS lands are located on the Clearwater, Nez Perce and Idaho Panhandle National Forests.

DATES: Comments concerning the scope of the analysis should be received by January 5, 2009. The draft environmental impact statement is expected Summer 2009, and the final environmental impact statement is expected Spring 2010.

ADDRESSES: Send written comments to: Tom Reilly, Forest Supervisor, Clearwater National Forest, c/o Teresa Trulock, Project Manager, 903 3rd Street, Kamiah, Idaho 83536. Electronic comments may be sent to *comments-northem-clearwater@fs.fed.us* with the subject line ''Upper Lochsa Land Exchange''. Acceptable formats are MS Word or RTF.

FOR FURTHER INFORMATION CONTACT: Teresa Trulock, Project Manager at the Clearwater National Forest (208) 935–4256.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposed land exchange is to consolidate land ownership in the upper Lochsa River drainage to provide more efficient and effective resource management. This purpose can be achieved by exchanging parcels of federal lands for WPT lands. The current ownership pattern has a considerable effect on how the Forest Service manages NFS lands in the upper Lochsa River drainage. Over the years, differing management practices on the private lands have influenced resource management decision on the NFS lands. The mixed ownership pattern also reduces the ability to apply ecosystem management principles across the landscape. More effective conservation and management of natural resources can be achieved by consolidating these lands and managing the ecosystem as a whole. For example, current ownership results in an inability to use fuel and topography to engage fires on a cost effective basis. Also more efficiency can be gained by reducing administrative costs associated with boundary maintenance and cost share roads.

In general the land exchange provides the opportunity for the Forest Service to acquire checkerboard lands which encompass the headwaters of the Lochsa

River, and hold outstanding values for aquatic and terrestrial species along with significant cultural resources.

Proposed Action

The Forest Service proposes to exchange up to 28,212 acres, more or less, of NFS land for approximately 39,371 acres of WPT land. The lands included in this proposed exchange are located within Benewah, Clearwater, Latah, Shoshone, Bormer, Kootenai and Idaho Counties.

The proposed federal lands are 46 scattered tracts of land ranging in size from the 6.35 acre FS district compound in Elk City, Idaho to a contiguous tract approximately 7,680 acres northeast of Elk City. Forty-three of the NFS tracts are relatively small (from 6.35 to about 1,300 acres) and for the most part are timbered. The three remaining NFS tracts are relatively large. One large block of land near Elk River on the Clearwater NF is about 6,000 acres. This is timbered land intermingled with private timber lands and has one common border with other NFS lands. Two large blocks on the Nez Perce NF near Elk City are approximately 3,200 and 7,680 acres, are timbered and are contiguous to other NFS lands except on one side which borders private timberlands or BLM. Federal lands proposed for trade are characterized by intermingled ownerships, irregular boundaries, and inholdings.

The WPT lands proposed for exchange are checkerboard lands intermingled with Clearwater National Forest lands in the upper Lochsa River drainage. For the past 50 years, WPT lands were managed primarily for timber production. For the most part these lands currently meet State Best Management Practices for timber production lands. The proposed action would authorize the transfer of land ownership and management authority, including the mineral estate, between the two parties. The proposed action would not authorize any site-specific management activities by either party.

Possible Alternatives

At a minimum, the following alternatives must be considered and evaluated appropriately. Proposed Action—Described above. No Action—Under this alternative the proposed land exchange between the Forest Service and WPT would not occur. Purchase Alternative—Land exchange evaluations shall consider a purchase alternative in the environmental analysis and document the non-Federal party's position on the United States' direct purchase of all or portion of the proposed exchange parcels documented in the administrative record. Deed Restriction Alternative—An alternative that considers requiring specific deed restrictions on federal lands being conveyed to comply with legal, regulatory requirements, executive orders, policy, and/or to meet respective Forest Plan management requirements.

Responsible Official

Thomas K. Reilly, Forest Supervisor, Clearwater National Forest, 12730 Highway 12, Orofino, Idaho 83544.

Nature of Decision To Be Made

Authorization to permit land exchange between the Forest Service and Western Pacific Timber of up to 28,145 acres of NFS land for approximately 40,023 acres of Western Pacific Timber land. In the decision, the Forest Supervisor will answer the following questions based on the environmental analysis: (1) Whether the proposed action will proceed as proposed, as modified by an alternative, or not at all? (2) Whether the project requires any Forest Plan amendments. This decision will be documented in the Record of Decision for the Upper Lochsa Land Exchange Environmental Impact Statement (EIS). If the decision that is made would require an amendment to any of the Forest Plans, the analysis and documentation for the amendment will be included. The decision will be subject to appeal in accordance with 36 CFR part 215.

Scoping Process

The Forest Service is seeking information, comments, and assistance from individuals, organizations and federal, state, and local agencies that may be interested in or affected by the proposed action. The Clearwater National Forest has scheduled the preparation of an EIS to disclose the environmental effects of the proposed project and determine whether the proposed land exchange meets Forest Plan objectives. Public comments will be considered and disclosed in the environmental analysis documented in the Upper Lochsa Land Exchange EIS. The EIS will evaluate the proposed action, no action, purchase and deed restriction alternatives along with other alternatives that may be developed during this process.

Public involvement was initiated November 7, 2008 by sending a scoping notice to parties on a mailing list prepared by the Clearwater National Forest. Public participation is being solicited by notifying in person and/or by mail known interested and affected parties. Announcements in area newspapers were used to give local notice of three public meetings held in Elk River, Moscow and Elk City, Idaho in late November 2008. A legal notice in the Lewiston Tribune and Spokesman Review, the newspapers of record for the Clearwater, Nez Perce and Idaho Panhandle National Forests, are being used to give the public general notice of the scoping period. The first formal opportunity to comment is to respond to the scoping notice or this Notice of Intent, which initiate the scoping process (40 CFR 1501.7). Scoping includes: (1) Identifying potential issues, (2) narrowing the potential issues and identifying significant issues from those that have been covered by prior environmental review, (3) exploring alternatives in addition to no action, and (4) identifying potential environmental effects of the proposed action and alternatives. Comments are invited on the proposed action, possible alternatives, and issues that should be considered. The Forest Service is asking for public comment by January 5, 2009. If you decide to comment on the Upper Lochsa Land Exchange proposal, please include the following: (1) Your name, address, and organization represented, if any; (2) title of the project for which comments are being submitted; and (3) specific facts and supporting reasons for the Responsible Official to consider. Those who comment will be put on the project mailing list.

Preliminary Issues

The Forest Service has identified the following potential issues. No determination has been made as to which issues will be examined in detail in the environmental analysis. Your input will help identify additional issues related to the proposed action that may not be listed here. Impacts to Idaho County tax base from increased federal lands Treaty Rights.

- The loss of the Elk City Forest Service compound and associated impacts to the Nez Perce NF and the community of Elk City.
- Cultural Resources.
- Threatened and Endangered Species.
- Public Access.
- Timber Management.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give

reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: November 26, 2008.

Thomas K. Reilly,

Forest Supervisor, Clearwater National Forest.

[FR Doc. E8–28670 Filed 12–3–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest; CA; Moonlight and Wheeler Fires Recovery and Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare a revised draft Environmental Impact Statement (EIS).

Introduction: A notice of intent to prepare an EIS for the Moonlight Fire Recovery and Restoration Project was published in the **Federal Register** on Monday, January 7, 2008 (Vol. 73, No.4, pp. 1201–1202). After scoping the Moonlight Fire and Wheeler Fire Recovery and Restoration Projects separately in December 2007, the Forest Service, Plumas National Forest, has merged the two projects together. In December 2007, the Mt. Hough Ranger District of the Plumas National Forest began the process to determine the scope (the depth and breadth) of the environmental analysis. At that time, it was anticipated that the Moonlight Fire Recovery and Restoration Project analysis would be documented in an EIS and the Wheeler Fire Recovery and Restoration Project analysis would be documented in an Environmental Assessment. From comments received, it was determined to document the analysis for both projects in one EIS. The new project name is Moonlight and Wheeler Fires Recovery and Restoration Project. A second notice of intent to prepare an ElS for the Moonlight and Wheeler Fires Recovery and Restoration Project was published in the **Federal Register** on Thursday, May 22, 2008 (Vol. 73, No. 100, pp. 29735–29736).

The Moonlight Safety and Roadside Hazard Tree Removal Project was a separate project identified to remove hazardous trees with structural defects likely to cause failure in all or part of the tree, which may fall and hit the road prism within the next three years. Moonlight Safety and Roadside Hazard Tree Removal Project was being analyzed utilizing a categorical exclusion (category 4) and overlapped with a portion of the Moonlight and Wheeler Fires Recovery and Restoration Project. From comments received, it was determined to document the analysis for both projects in one EIS. A revised draft EIS will be prepared as the purpose and need of this project will change, and the project name will remain Moonlight and Wheeler Fires Recovery and Restoration Project.

SUMMARY: The USDA, Forest Service, Plumas National Forest will prepare a revised EIS on a proposal to harvest dead trees on approximately 10,366 acres within the Moonlight Fire and Antelope Complex (includes Wheeler Fire) perimeters. The proposal also includes harvesting dead and dying hazard trees on 4,389 acres along National Forest System (NFS) roads in the Moonlight Fire perimeter. The Moonlight Fire and Antelope Complex burned about 88,000 acres between July and September 2007 on the Plumas National Forest.

DATES: The revised draft EIS is expected in February 2009. The revised final EIS is expected in April 2009. A decision is expected in May 2009.

ADDRESSES: Send written comments to Rich Bednarski, Interdisciplinary Team Leader, Mt. Hough Ranger District, 39696 Highway 70, Quincy, CA 95971. Comments may be: (1) Mailed; (2) hand delivered between the hours of 8 a.m. and 4:30 p.m. weekdays Pacific Time; (3) faxed to (530) 283–1821; or (4) electronically mailed to: *comments-pacificsouthwestplumas-mthough@fs.fed.us*.

Please indicate the name ''Moonlight and Wheeler Fires Recovery and Restoration Project'' on the subject line of your e-mail. Comments submitted electronically must be in Rich Text Format (.rtf), plain text format (.txt), or Word format (.doc).

FOR FURTHER INFORMATION CONTACT: Rich Bednarski, Interdisciplinary Team Leader, Mt. Hough Ranger District, 39696 Highway 70, Quincy, CA 95971. Telephone: (530) 283–7641 or electronic address: *rbednarski@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The proposed action is designed to meet the standards and guidelines for land management activities in the Plumas National Forest Land and Resource Management Plan (1988), as amended by the Herger-Feinstein Quincy Library Group (HFQLG) Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision (ROD) (1999, 2003), and as amended by the Sierra Nevada Forest Plan Amendment FSEIS and ROD (2004). The proposed project is located in Plumas County, California, within the Mt. Hough Ranger District of the Plumas National Forest. The project is located in all or portions of: Sections 13, 23–27, 34–35, T28N, R1OE; sections 13–14, 17–19, 23–24, 29–34, T28N, R11E; sections 19–20, 29–32, T28N, R12E; sections 1–2, 13–14, 23–25, T27N, R1OE; sections 2–11, 13–15, 17, 19–22, 25, 35–36, T27N, Ri 1E; sections 5, 8, 17–20, 29–32, T27N, RI2E; sections 1–5, 9–12, 14–16, 21–23, and 26–27, T26N, R12E; sections 23–29 and 31–36, T27N, R12E; and sections 19, 20,

and 30, T27N, R13E; Mount Diablo Meridian.

Purpose and Need for Action

The purposes of the project are: (1) To remove hazardous trees with structural defects likely to cause failure in all or part of the tree, which may fall and hit the road prism within the next three years; (2) to recover the value of the dead trees before natural deterioration occurs in the treatment areas; and (3) to re-establish forested conditions. The project would harvest dead and dying hazard trees that pose a safety hazard to the public along 120 miles of NFS roads within the Moonlight Fire perimeter; harvest dead merchantable trees before the economic value is lost to natural deterioration; and reforest specific areas within the Moonlight Fire and Antelope Complex perimeters.

Hazard trees need to be removed in a timely, efficient, and cost-effective manner so that access to affected areas can be restored and normal National Forest operations can resume. The wood quality, volume, and value of dead trees deteriorate rapidly. Given the rate of deterioration of the dead trees within the project area, there is an immediate need to recover the economic value. The National Forest Management Act (NFMA) sets policy to maintain appropriate forest cover in accordance with Forest plans and requires best effort to reforest within 5 years after harvest. As it relates to wildfires, it is Agency policy to consider post-fire salvage harvest the functional equivalent of a regeneration harvest and to make a best effort to recover forested conditions within 5 years after harvest.

Proposed Action

The proposed action would harvest dead and/or dying conifer trees on approximately 14,755 acres (10,366 acres of dead trees and 4,389 acres of dead and dying roadside hazard trees) using the following methods: Ground based, skyline, and helicopter. Dead trees greater than 14 inches diameter at breast height (dbh) would be whole tree harvested on the ground-based areas. Approximately 8,536 acres would have trees less than 14 inches dbh removed as biomass material. Ground-based equipment would be restricted to slopes less than 35 percent, except on decomposed granitic soils where equipment would be restricted to slopes less than 25 percent. On the skyline and helicopter areas, trees greater than 16 inches dbh would be harvested. Limbs and tops in skyline, helicopter, and ground-based units (not removed as biomass) would be lopped and scattered to a depth less than 18 inches in height. Skyline yarding would require one end suspension, with full suspension over intermittent or perennial streams. Dead conifers would be harvested from Riparian Habitat Conservation Areas (RHCAs). Equipment restriction zone widths within RHCAs would be established, based on the stream type and steepness of the slope adjacent to the streams. Snags would be retained in snag retention areas, which are approximately ten acres in size, within salvage unitson approximately ten percent of the project area. Harvest activities would not occur within the snag retention areas except for operability (safety) reasons. Approximately 19 miles of temporary roads would be constructed. Approximately 30 acres of helicopter landings (fourteen) would be constructed. Excess fuels on landings would be piled, a fireline constructed around the piles, and the piles burned. Following completion of the project, temporary roads and landings would be subsoiled, reforested, and closed. Approximately 16,006 acres would be reforested with conifer seedlings in widely spaced clusters to emulate a naturally established forest. The areas would be reforested with a mixture of native species.

Possible Alternatives

In addition to the proposed action, four other alternatives would be analyzed, a no action alternative (alternative B), a ground-based only action alternative (alternative C), an action alternative consistent with the 2001 SNFPA ROD (alternative D), and a roadside hazard only action alternative (alternative E).

Lead and Cooperating Agencies

The USDA, Forest Service is the lead agency for this proposal.

Responsible Official

Alice B. Canton, Plumas National Forest Supervisor, PO Box 11500, Quincy, CA 95971.

Nature of Decision To Be Made

The decision to be made is whether to: (1) Implement the proposed action; (2) meet the purpose and need for action through some other combination of activities; or, (3) take no action at this time.

Scoping Process

Scoping is conducted to determine the significant issues that will be addressed during the environmental analysis. Comments that were received for the first draft EJS for Moonlight and Wheeler Fires Recovery and Restoration Project and for the categorical exclusion Moonlight Safety and Roadside Hazard Tree Removal Project will be considered in the combined analysis. Additional comments on the Moonlight and Wheeler Fires Recovery and Restoration Project will also be considered. Scoping comments will be most helpful if received by December 12, 2008.

Permits or Licenses Required

An Air Pollution Permit and a Smoke Management Plan are required by local agencies.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A revised draft EIS will be prepared for comment. The comment period on the revised draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978).

Also, environmental objections that could be raised at the draft EJS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the revised draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the revised draft EIS. Comments may also address the adequacy of the revised draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR

1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: November 24, 2008.

Alice B. Carlton,

Forest Supervisor.

[FR Doc. E8–28558 Filed 12–3–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Agricultural Labor Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by February 2, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0109, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333 or Kevin Barnes, Chief, Environmental, Economics, and Demographics Branch, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–6146.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Expiration Date of Approval: April 30, 2009.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides statistics on the number of agricultural workers, hours worked, and wage rates. Number of workers and hours worked are used to estimate agricultural productivity; wage rates are used in the administration of the ''H–2A'' Program and for setting Adverse Effect Wage Rates. Survey data are also used to carry out provisions of the Agricultural Adjustment Act. The current expiration date for this docket is April 30, 2009. NASS intends to request that the Agricultural Labor Survey be approved for another 3 years.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Estimate of Burden: This information collection comprises four individual surveys, two of which are conducted annually and two which are conducted quarterly, for an estimated total of 72,000 responses. The public reporting burden for this information collection is estimated to average 15 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 12,300.

Estimated Total Annual Burden on Respondents: 12,500 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

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 the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection techniques.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 19, 2008.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E8–28758 Filed 12–3–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Mink Survey. Revision to burden hours may be needed due to changes in the size of the target population, and/or questionnaire length. The target population will be pulled from positive data reported on the 2007 Census of Agriculture, once it is finalized. The questionnaire that NASS is planning to use is the same as what was used in previous years. Any changes to the questionnaire would result from requests by industry data users.

DATES: Comments on this notice must be received by February 2, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0212, by any of the following methods:

• *E-mail: ombofficer@nass.usda.gov*. Include docket number above in the subject line of the message.
• *Fax:* (202) 720–6396.
• *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
• *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Mink Survey.

OMB Control Number: 0535–0212.

Expiration Date of Approval: April 30, 2009.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Mink Survey collects data on the number of mink pelts produced, the number of females bred, and the number of mink farms. Mink estimates are used by the federal government to calculate total value of sales and total cash receipts, by State governments to administer fur farm programs and health regulations, and by universities in research projects. The current expiration date for this docket is April 30, 2009. NASS intends to request that the Mink Survey be approved for another 3 years.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Farmers and ranchers.

Estimated Number of Respondents: 350.

Estimated Number of Responses per Respondent: 0.80

Estimated Total Annual Burden on Respondents: 75 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

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 the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection techniques.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 19, 2008.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E8–28760 Filed 12–3–08; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of briefing and meeting.

DATE AND TIME: Friday, December 12, 2008; 9:30 a.m.

PLACE: 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Briefing Agenda

Topic: Specifying English as the Common Language in the Workplace: Every Employer's Right or a Violation of Federal Law?

I. Introductory Remarks by Chairman.
II. Speakers' Presentations.
III. Questions by Commissioners and Staff Director.
IV. Adjourn Briefing.

Meeting Agenda

I. Approval of Agenda.
II. Approval of Minutes of November 7, 2008 Meeting.
III. Announcements.
IV. Staff Director's Report.
V. Program Planning.
• Update on Status of 2009 Statutory Report.
• Briefing Report on Minorities in Special Education.
VI. Future Agenda Items.
VII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit, (202) 376–8582.

Dated: December 2, 2008.

David Blackwood,

General Counsel.

[FR Doc. E8–28900 Filed 12–2–08; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 08–00009]

Export Trade Certificate of Review

ACTION: Notice of application for an Export Trade Certificate of Review from Golden Tree Trading Company (''GTTC'').

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 08–00009.'' A summary of the application follows.

Summary of the Application

Applicant: Golden Tree Trading Company (''GTTC''), 8040 N. Augusta Street, Fresno, CA 93720.

Contact: Mr. Sypher Lee, Telephone: (626) 500–7942.

Application No.: 08–00009.

Date Deemed Submitted: November 20, 2008.

Members: None.

The applicant (GTTC) seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

I. Export Trade

1. Products

All Products.

2. Services

All Services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

II. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Export Trade Activities and Methods of Operation

1. With respect to the export of Products and Services, licensing of Technology Rights and provision of Export Trade Facilitation Services, GTTC, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services and engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

b. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

c. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

d. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

e. Allocate export orders among Suppliers;

f. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

g. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

h. Enter into contracts for shipping; and

i. Refuse to provide Export Trade Facilitation Services to customers in any Export Market or Markets.

2. GTTC may exchange information with individual Suppliers on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by GTTC with its distributors in Export Markets.

IV. Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, GTTC will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. GTTC will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

''Supplier'' means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Dated: November 26, 2008.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E8–28724 Filed 12–3–08; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL90

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Programs

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

ACTION: Notification of standard prices and fee percentage.

SUMMARY: NMFS publishes IFQ standard prices for the individual fishing quota (IFQ) cost recovery program in the halibut and sablefish fisheries of the North Pacific. This action is intended to provide holders of halibut and sablefish IFQ permits with the 2008 standard prices and fee percentage to calculate the required payment for IFQ cost recovery fees due by January 31, 2009.

DATES: Effective December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Troie Zuniga, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ programs are limited access systems authorized by the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ programs began in March 1995. Regulations implementing the IFQ program are set forth at 50 CFR part 679.

In 1996, the Magnuson–Stevens Act was amended (by Public Law 104–297) to, among other things, require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual quota program.'' This requirement was further amended in 2006 (by Public Law 109–479) to include collection of the actual costs of data collection, and to replace the reference to ''individual quota program'' with a more general reference to ''limited access privilege program'' at section 304(d)(2)(A). This section of the Magnuson–Stevens Act also specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited.

On March 20, 2000, NMFS published regulations implementing the IFQ cost recovery program (65 FR 14919), which are set forth at § 679.45. Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self–collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex–vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish during the year. This includes any retro–payments (e.g., bonuses, delayed partial payments, post–season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex–vessel value: ''actual'' and ''standard.'' ''Actual'' ex–vessel value is the amount of all compensation, monetary or non–monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. ''Standard'' ex–vessel value is the default value on which to base fee liability calculations. IFQ permit holders have the option of using actual ex–vessel value if they can satisfactorily document it, otherwise the ''standard'' ex–vessel value is used.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) is the weight (in pounds) for an IFQ landing, calculated as the round weight for sablefish and headed and gutted net weight for halibut. NMFS calculates the standard prices to closely reflect the variations in the actual ex–vessel values of IFQ halibut and IFQ sablefish landings by month and port or port–group. The standard prices for IFQ halibut and IFQ sablefish are listed in the tables that follow the next section. Data from ports are combined as necessary to protect confidentiality.

Fee Percentage

Section 304(d)(2)(B) of the Magnuson–Stevens Act specifies a maximum fee of 3 percent of the ex–vessel value of fish harvested under an IFQ Program. NMFS annually sets a fee percentage for sablefish and halibut IFQ holders that is based on the actual annual costs associated with certain management and enforcement functions, as well as the standard ex–vessel value of the catch subject to the IFQ fee for the current year. The method used by NMFS to calculate the IFQ fee percentage is described at § 679.45(d)(2)(ii).

Regulations at § 679.45(d) require NMFS to publish the IFQ fee percentage for the halibut and sablefish IFQ fisheries in the **Federal Register** during or before the last quarter of each year. For the 2008 sablefish and halibut IFQ fishing season, an IFQ permit holder is to use a fee liability percentage of 1.4 percent to calculate his or her fee for landed IFQ in pounds. The IFQ permit holder is responsible for submitting the fee liability payment to NMFS on or before January 31, 2009.

REGISTERED BUYER STANDARD EX–VESSEL PRICESBY LANDING LOCATION FOR 2008 IFQ SEASON

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX –VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
CORDOVA	March 31	—	—
	April 30	—	—
	May 31	—	—
	June 30	$4.42	—
	July 31	$4.67	—
	August 31	$4.71	—

REGISTERED BUYER STANDARD EX–VESSEL PRICESBY LANDING LOCATION FOR 2008 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX –VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
	September 30	$4.34	—
	October 31	$4.34	—
	November 30	$4.34	—
DUTCH HARBOR	March 31	—	—
	April 30	—	—
	May 31	—	—
	June 30	—	—
	July 31	—	—
	August 31	—	—
	September 30	—	—
	October 31	—	—
	November 30	—	—
HOMER	March 31	—	—
	April 30	—	—
	May 31	—	—
	June 30	$4.62	—
	July 31	$4.74	—
	August 31	$4.29	—
	September 30	—	—
	October 31	—	—
	November 30	—	—
KETCHIKAN	March 31	—	—
	April 30	$4.28	—
	May 31	$4.41	—
	June 30	—	—
	July 31	$4.04	—
	August 31	$4.35	—
	September 30	$4.43	—
	October 31	$4.43	—
	November 30	$4.43	—
KODIAK	March 31	$3.93	$2.66
	April 30	$4.13	$2.86
	May 31	$4.22	$2.91
	June 30	$4.23	$2.99
	July 31	$4.32	$3.06
	August 31	$4.36	$3.09

REGISTERED BUYER STANDARD EX–VESSEL PRICESBY LANDING LOCATION FOR 2008 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX –VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
	September 30	$4.39	$3.13
	October 31	$4.39	$3.13
	November 30	$4.39	$3.13
PETERSBURG	March 31	—	—
	April 30	$4.11	—
	May 31	$4.27	—
	June 30	$4.35	—
	July 31	$4.42	—
	August 31	$4.46	—
	September 30	$4.43	—
	October 31	$4.43	—
	November 30	$4.43	—
SEWARD	March 31	—	—
	April 30	—	—
	May 31	—	—
	June 30	—	—
	July 31	—	—
	August 31	—	—
	September 30	—	—
	October 31	—	—
	November 30	—	—
SITKA	March 31	—	—
	April 30	—	—
	May 31	—	—
	June 30	—	—
	July 31	$4.53	$4.14
	August 31	$4.28	$4.71
	September 30	—	—
	October 31	—	—
	November 30	—	—
YAKUTAT	March 31	—	—
	April 30	—	—
	May 31	—	—
	June 30	—	—
	July 31	—	—
	August 31	—	—

REGISTERED BUYER STANDARD EX–VESSEL PRICESBY LANDING LOCATION FOR 2008 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX –VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
	September 30	—	—
	October 31	—	—
	November 30	—	—

REGISTERED BUYER STANDARD EX–VESSEL PRICESBY PORT GROUP FOR 2008 IFQ SEASON

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD EX –VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
BERING SEA[1]	March 31	—	—
	April 30	$4.06	$2.65
	May 31	$4.10	$2.82
	June 30	$4.23	$2.85
	July 31	$4.22	$3.13
	August 31	$4.30	$2.88
	September 30	$4.22	$2.87
	October 31	$4.22	$2.87
	November 30	$4.22	$2.87
CENTRAL GULF OF ALASKA[2]	March 31	$4.10	$2.89
	April 30	$4.30	$2.95
	May 31	$4.28	$2.98
	June 30	$4.30	$3.03
	July 31	$4.38	$3.06
	August 31	$4.38	$3.08
	September 30	$4.38	$3.26
	October 31	$4.38	$3.26
	November 30	$4.38	$3.26
SOUTHEAST ALASKA[3]	March 31	$4.17	$3.26
	April 30	$4.17	$3.25
	May 31	$4.27	$3.22
	June 30	$4.41	$3.30
	July 31	$4.48	$3.82
	August 31	$4.45	$3.87
	September 30	$4.49	$3.33
	October 31	$4.49	$3.33
	November 30	$4.49	$3.33
ALL[4]	March 31	$4.13	$3.10
	April 30	$4.25	$3.05
	May 31	$4.26	$3.03

REGISTERED BUYER STANDARD EX–VESSEL PRICESBY PORT GROUP FOR 2008 IFQ SEASON—Continued

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD EX –VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
	June 30	$4.32	$3.06
	July 31	$4.36	$3.25
	August 31	$4.37	$3.25
	September 30	$4.36	$3.26
	October 31	$4.36	$3.26
	November 30	$4.36	$3.26

[1]*Landing locations Within Port Group – Bering Sea:* Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska

[2]*Landing Locations Within Port Group – Central Gulf of Alaska:* Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier

[3]*Landing Locations Within Port Group – Southeast Alaska:* Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat

[4]*Landing Locations Within Port Group – All:* **For Alaska:** All landing locations included in 1, 2, and 3. **For California:** Eureka, Fort Bragg, Other California. **For Oregon:** Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. **For Washington:** Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Rainier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. **For Canada:** Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada

Note In many instances prices have not been reported to comply with confidentiality guidelines that prevent price reports when there are fewer than three processors operating in a location during a month.

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

Dated: November 28, 2008.

Emily H. Menashes

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

[FR Doc. E8–28721 Filed 12–3–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK27

Incidental Takes of Marine Mammals During Specified Activities; Beach Boulevard AICWW Bridge Blasting Project, Duval County, FL

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, NMFS has issued an Incidental Harassment Authorization (IHA) to the Jacksonville Transportation Authority (JTA) for the take of small numbers of marine mammals, by Level B harassment only, incidental to the removal and replacement of support structures for the Beach Boulevard Bridge over the Atlantic Intracoastal Waterway (AICWW) in Duval County, FL.

DATES: The IHA is effective from December 1, 2008, through February 28, 2009.

ADDRESSES: A copy of the IHA is available by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East–West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (I) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential

to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].
16 U.S.C. 1362(18).

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 5, 2008, NMFS received a letter from the JTA, requesting an IHA. The requested IHA will authorize the take, by harassment, of small numbers of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to explosive demolition performed for the purpose of removing support structures for the Beach Boulevard Bridge on the AICWW in Duval County, Florida. The Beach Boulevard Bridge spans approximately 300 ft (91.5 m) over open water. The U.S. Army Corps of Engineers (ACOE) and St. Johns River Water Management District (SJRWMD) have issued Environmental Resource Permits to JTA for the replacement of the existing Beach Boulevard Bridge over the AICWW. The ACOE issued permit SAJ–2003–9340 on November 22, 2005, to expand State Road 212 (Beach Boulevard) from San Pablo Road to Penman Road in Jacksonville, Duval County, Florida. The permit included authorization to replace Beach Boulevard Bridge over the AICWW. The blasting of the bridge will reduce the amount of time that tugs and barges are active in the AICWW, thereby reducing risks to wildlife.

Additional information on the blasting project is contained in the application and Supplemental Environmental Assessment (SEA), which is available upon request (see **ADDRESSES**).

Specified Activities

The purpose of the blasting project is to remove twelve support structures from the old bridge by explosive demolition. While dismantling and discarding the existing bridge spam will be routine, the strength and mass of the bridge footers pose a dismantling problem. After careful consideration, the bridge contractor, Superior Construction, has determined that demolishing the footers with explosives is the most practical means of destroying them. The new, fully permitted bridge will consist of separate eastbound and westbound spans. The new westbound bridge, which is 100 percent constructed and in use, occurs where no bridge structure previously existed. The location of the future eastbound bridge, which has not yet been started, coincides almost exactly with the existing bridge, necessitating the full removal of the latter. The existing bridge support piers are undersized, relative to the future span's requirements, and must be removed to make room for construction equipment and the new bridge, particularly its support piles. The permitted method of removal of the old bridge allows for the footers to be removed via non–explosive means from barges. The barges would have to be relocated regularly by a large tug boat for up to three months due to the quantity of concrete involved and the limited reach of the equipment.

Under the existing permits, the most practical way of demolishing the old bridge supports is to use a hydraulic hoe ram, the equivalent of a large jack hammer, mounted on a barge, maneuvered by a tug boat, and literally chip the concrete supports into tens of thousands of pieces. For demolition of the piers adjacent to the channel, a barge with a large chipper will operate from the channel and chip at an angle away from the channel. This way, nearly all of the small amount of rubble that falls toward the channel will land in the chipper barge.

There are only two practical ways of taking down the bridge supports — one method entails the aforementioned hoe ram which would chip the concrete into tens of thousands of pieces, the other involves explosives. Under a hoe ram only (i.e., no blasting) scenario, the risks to wildlife stem from tugs and barges operating in the AICWW, for a total of 900 hours (90 days x 10 hours per day). An additional impact would be incurred by the protracted percussion pounding of the hammer. In a blasting scenario, risks to wildlife include the three blast events, and tug/barge activity in the AICWW totaling 400 hours (40 days x 10 hours per day). A Blasting Plan document has been prepared for this proposed action (see JTA's application).

Background

The JTA currently is in the process of replacing the Beach Boulevard Bridge across the AICWW. The project area is depicted in Location Map, Exhibit 1 of JTA's application. The new bridge will consist of separate eastbound and westbound spans. The new westbound bridge, which has been constructed and is in use, occurs where no bridge structure previously existed. The location of the future eastbound bridge, which has not yet been started, coincides almost exactly with the bridge that is being replaced, necessitating the full removal of the latter. The existing bridge's support piers are undersized, relative to the future span's requirements, and must be removed to make room for construction equipment and the new bridge, particularly its support piles. JTA plans to demolish the piers with controlled explosives.

Baseline Conditions

The over water portion of the western side of the old bridge is supported by four piers of bent piles. The eastern, over water portion is supported by four similar piers and four bascule pier piles. Concrete coffer dams support the footers on both sides of the navigable channel. The below–water plan view of these twelve supports is indicated on Salient Features, Plan View, Exhibit 2 of JTA's application. The supports on both sides are protected from erosional scour by much rip rap and numerous gabions. A navigation channel is between the two sets of bent pile piers. A protective fender system is in place. Over the years, much rock, gravel, and rip rap has been placed in the open water under the bridge.

Blasting Details

As preface to preparing the 12 structures (the number of supports below the mean low water elevation) for explosive demolition and consistent with the current permits, each structure will be chipped to approximately 5 ft (1.5 m) National Geodetic Vertical Datum (NGVD). Once the supports have been lowered to 5 ft NGVD, the below water and remaining above water portions will be removed by explosives.

Three separate blast events will take place during the project. The locations and sequence of the blasts are indicated on Exhibit 5 of JTA's application. In preparation for each blasting event, floating turbidity curtains will be deployed within 40 ft (12.2 m) of the structures to be blasted. The curtains will minimally be 6 ft (1.8 m) long. Curtains longer than 6 ft would be torn and carried away by the currents at the bridge and ultimately become waste. Once the curtains are in place, the target concrete will be drilled, explosives will be placed in the drill holes, and the drill holes will be stemmed. Mats to contain debris will be draped over the above water portion of the supports. Only after all the measures described in the Marine Wildlife Safety Plan and Manatee, Marine Mammal, Sea Turtle Survey

Watch Plan have been implemented (see Exhibit 7 in JTA's application for the location of wildlife spotters), will the blast events occur. The duration of each event will be approximately two seconds. The first blast is tentatively scheduled for the first week in December 2008 and will focus on demolishing the four western supports and underlying coffer dam. The second event will occur about 10 days later and destroy the supports and coffer dam on the immediate eastern side of the channel. The final blast event will take place on or about December 31, 2008 and will eliminate the four supports situated east of the channel and west of the eastern bridge abutment. The existing fenders will be removed immediately prior to the final blasting event.

The radius of dangerous effect or ''harm'' for underwater explosives is based on a Navy Diver formula derived for human divers. Importantly, the formula is based on an uncontrolled blast suspended in the water column; the formula yields an artificially high radius in instances of controlled or contained blasts, like the kind proposed at the Beach Boulevard Bridge. The Navy Diver formula used for the Safety Zone is:

$R = [520(W)^{1/3}] + 500$

where R = Safety Zone radius and W = weight of explosives in pounds per delay (0.009 second minimum separation). With 16.5 pounds (lbs) of dynamite the maximum explosives per delay, the Safety Zone is 1,824 ft (556.4 m). The max/delay of dynamite (16.5 lbs) is equivalent to 13.2 lbs of TNT. This radius is depicted in Exhibit 7 of JTA's application.

Demolition Debris

Approximately 3,604 cubic yards (cy) of blast debris is anticipated (8 bascule piers, 2,900 cy; 2 coffer dams, 440 cy; and the eastern four piers, 264 cy). All of the debris would also have been generated by chipping demolition. Most of the debris will remain close to its source. Some will fall along side slopes and the bottom of the AICWW channel. The average size of the blast debris will be 6 to 9 inches. A small percentage of the debris will be finer particles, including dust. Some may become displaced by as much as 0.5 cy. The use of mats on the above water portions of the supports will prevent fragments from traveling through the air. Due to the resistance, portions of the supports will prevent fragments from traveling through the air. Due to the resistance of the water itself, none of the underwater demolition debris will be propelled beyond a 40 ft (12.2 m) radius, see Exhibit 8 of JTA's application. Unfortunately, the high water flow velocities under the bridge preclude most turbidity control measures. This problem will be largely offset by the fact that most of the debris will quickly settle due to its mass. The very fine material will not have major impacts since the AICWW continuously transports a considerable load of suspended fine materials in the water column.

A modicum of rebar is embedded in the piers. This will likely remain in place through the blasting. Some rebar may topple into the water. All accessible rebar will be removed by heavy equipment (see the Debris Removal section below). A very small percentage of the rebar may remain in the AICWW.

The non–explosive deconstruction of the bridge will yield mostly large disassembled pieces and large jack–hammered pieces. These will be removed by trucks using the remaining bridge. The existing grates, which directly overlie the navigation channel, will be easily removed, without impeding navigation. A small amount of the span pieces inevitably will fall into the water beneath the bridge, outside the channel. These will be removed during the removal of the blast rubble (see the Debris Removal section below).

Debris Removal

Quick removal of any blasting debris from the navigation channel is imperative. Any debris which affects the cross-sectional and profile integrity of the channel will be removed via the dual barge method described below, within 6–8 hours of the blasting event.

Exhibit No. 3 (in JTA's application) indicates bottom contours as determined in 2006. The contours were generated with side scanning sonar that recorded continuously along nine east/west traverses spaced 50 ft (15.2 m) apart. A new bottom contour survey will be produced a few weeks prior to any chipping demolition. The survey will result from a side–scanning sonar recording bottom depths continuously along 40 east/west traverses spaced 10 ft (3.1 m) apart. The 2008 survey will also have 5 ft (1.5 m) contours and serve as the reference for all post–demolition debris removal. The survey will be forwarded to ACOE and SJRWMD prior to any chipping demolition. Following demolition, debris will be removed from the bottom so that only an incidental quantity remains post–development. After debris removal, a final survey of the bottom will be prepared and submitted to ACOE and SJRWMD. The survey will be generated using a side–scanning sonar which records bottom depths continuously along 40 east/west traverses spaced 10 ft apart. The contour level will be 5 ft.

Two barges will be used during debris removal. One will have either a large back hoe or a small crane that will lift debris from the waterway. The second barge will hold the debris. Whether on the east or west side of the navigation channel, the paired barges will be oriented north/south, thereby keeping the navigation channel largely unobstructed. A land based back hoe or crane will empty the barge loads into awaiting dump trucks. Creosote soaked piles will be taken to Trail Ridge Land Fill in western Duval County, Florida. Concrete and rebar will be taken to one of several approved C & D land fills in Duval County, Florida. JTA knows of no other practical means of debris removal/disposal.

Additional details regarding the proposed explosive demolition project can be found in the SEA: ''Supplemental Assessment on an Authorization for the Incidental Take of Marine Mammals Associated with Confined Underwater Blasting as a Construction Method for Removing Support Structures of the Beach Boulevard AICWW Bridge Project in Duval County, Florida by the Jacksonville Transportation Authority.'' The SEA can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*

Dates, Duration, and Location of Specified Activity

The bi–directional bridge which is being replaced has been closed and currently is undergoing partial disassembly in preparation for demolition. Nearly all of the above water part of the bridge will be demolished via chipping. The below–water portions and a small–amount of the above water portions of the bridge will be demolished by the use of explosives. The first blasting event will occur on or shortly after December 1, 2008, and the subsequent two blasts will be completed by December 31, 2008.

The existing Beach Boulevard Bridge traverses the AICWW in Sections 36 and 38, Township 2 South, Ranges 28 and 29 East, Duval County, Jacksonville, Florida (see Exhibit 1 of the Blasting Plan in JTA's application for more information). Approximate coordinates of the site are as follows: 30°17′17″ North latitude, 81°26′18″ West longitude.

Description of Marine Mammals and Habitat Affected in the Activity Area

Several cetacean species and a single species of sirenian are known to or could occur in the Duval County study area and off the Southeast Atlantic coastline (see Table 1 below). Species listed as Endangered under the U.S. Endangered Species Act (ESA), includes the humpback, sei, fin, blue, North Atlantic right, and sperm whale. The marine mammals that occur in the blasting area belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the manatee). Table 1 below outlines the cetacean species and their habitat in the region of the proposed project area.

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE SOUTHEAST U.S. ATLANTIC OCEAN.

Species	Habitat	ESA[1]
Mysticetes North Atlantic right whale (*Eubalaena glacialis*)	Coastal and shelf	EN
Humpback whale (*Megaptera novaeangliae*)	Pelagic and banks	EN
Bryde's whale (*Balaenoptera brydei*)	Pelagic and coastal	NL
Minke whale (*Balaenoptera acutorostrata*)	Shelf, coastal, and pelagic	NL
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal	EN
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic	EN
Fin whale (*Balaenoptera physalus*)	Slope, mostly pelagic	EN
Odontocetes Sperm whale (*Physeter macrocephalus*)	Pelagic, deep seas	EN
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	NL
Gervais' beaked whale (*Mesoplodon europaeus*)	Pelagic	NL

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE SOUTHEAST U.S. ATLANTIC OCEAN.—Continued

Species	Habitat	ESA[1]
True's beaked whale (*Mesoplodon mirus*)	Pelagic	NL
Blainville's beaked whale (*Mesoplodon densirostris*)	Pelagic	NL
Dwarf sperm whale (*Kogia sima*)	Offshore, pelagic	NL
Pygmy sperm whale (*Kogia breviceps*)	Offshore, pelagic	NL
Killer whale (*Orcinus orca*)	Widely distributed	NL
Short–finned pilot whale (*Globicephala macrorhynchus*)	Inshore and offshore	NL
False killer whale (*Pseudorca crassidens*)	Pelagic	NL
Mellon–headed whale (*Peponocephala electra*)	Pelagic	NL
Pygmy killer whale (*Feresa attenuata*)	Pelagic	NL
Risso's dolphin (*Grampus griseus*)	Pelagic, shelf	NL
Bottlenose dolphin (*Tursiops truncatus*)	Offshore, inshore, coastal, estuaries	NL
Rough toothed dolphin (*Steno bredanensis*)	Pelagic	NL
Fraser's dolphin (*Lagenodelphis hosei*)	Pelagic	NL
Striped dolphin (*Stenella coeruleoalba*)	Pelagic	NL
Pantropical spotted dolphin (*Stenella attenuata*)	Pelagic	NL
Atlantic spotted dolphin (*Stenella frontalis*)	Coastal to pelagic	NL
Spinner dolphin (*Stenella longirostris*)	Mostly pelagic	NL
Clymene dolphin (*Stenella clymene*)	Pelagic	NL

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE SOUTHEAST U.S. ATLANTIC OCEAN.—Continued

Species	Habitat	ESA[1]
Sirenians West Indian (Florida) manatee (*Trichechus manatus latirostris*)	Coastal, rivers and estuaries	EN

[1]U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed

The two species of marine mammals that are known to commonly occur in close proximity to the blasting area of the St. Johns River, AICWW, and Beach Boulevard (otherwise known as State Road 212– U.S. Highway 90) are the West Indian (Florida) manatee and Atlantic bottlenose dolphin.

Florida Manatee

The West Indian manatee in Florida and U.S. waters is managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and is listed as Endangered under the Endangered Species Act (ESA). They primarily inhabit coastal and inshore waters. The Atlantic population of this species frequents the AICWW (Pablo Creek) project vicinity, particularly as a migration route in the spring and fall, but may be found anytime during the year. The immediate area near the project site is considered foraging habitat and animals may potentially loaf for long periods of time in the marina basin adjacent to the site, which increases the likelihood of manatee presence during the explosive demolition of the structures. Manatee occurrences are extremely rare during winter months (December, January, and February) in typical years because of the cold water temperatures in the waterway and lack of warm water refuge sites nearby. To minimize potential involvement with manatees from underwater explosions, the optimal timeframe to utilize explosives is during the winter months of the year. The USFWS considers this timeframe ''the manatee construction window'' for utilizing explosives.

Atlantic Bottlenose Dolphins

Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters, and in U.S. waters occur in multiple complex stocks along the U.S. Atlantic coast. According to the 2005 NOAA stock assessment report, bottlenose dolphins inhabiting water

less than 66 ft (20 m) deep are divided into 36 separate inshore or coastal stocks while animals in water 66–656 ft (20–200 m) deep constitute three continental shelf stocks.

These complex stock segments of coastal bottlenose dolphins are based on a combination of geographical, ecological, and genetic research. However, because the data of structure of stocks is complex, coastal and continental shelf stocks may overlap, the exact structure of these stocks continues to be revised as research is completed. Analytical results of the overall genetic variation indicate a minimum of five stocks of coastal bottlenose dolphins along the U.S. Atlantic coast.

The action would occur inshore at a depth of less than 66 ft (20.1 m) and, therefore, has the potential to affect the coastal stocks. From genetic analysis, the bottlenose dolphin population around Duval County, Florida consists of part of the Western North Atlantic Coastal Morphotype stock. This stock may also include demographically distinct coastal and resident estuarine populations that are defined by seasonal migratory and transient movements throughout large home ranges. The movement along the southern portion of the Atlantic coast is poorly understood and is currently under study. The resident estuarine stocks are likely demographically distinct from coastal stocks and are currently included in the coastal management unit definitions. The estimated population for the U.S. Western North Atlantic Coastal Morphotype stock of Atlantic bottlenose dolphins, which are based on aerial surveys and counts conducted in winter 1995 and summer 2002, is approximately 17,466 animals; but these estimates do not include all estuarine waters and the abundance may be negatively biased.

Based upon available data and analysis, seven management units with the range of the coastal morphotype of western North Atlantic bottlenose dolphin have been defined, yet the population structure is probably more complex and will continue to be refined as research efforts continue. The best abundance estimate of the Northern Florida management unit is 448 individuals. The Atlantic bottlenose dolphin is not listed as threatened or endangered under the ESA, and the U.S. coastal migratory stock is considered depleted and the management units are considered strategic under the MMPA.

NMFS defines seven geographic management units within the range of the coastal morphotype of the Western North Atlantic bottlenose dolphin. The bottlenose dolphin stocks within the Western North Atlantic population are complex, and resident estuarine stocks likely exist, but they are currently included in coastal management unit definitions. Abundance estimates do not exist for estuarine waters. Further, each management unit definition likely encompasses seasonal residents and migratory or transient animals. Genetic analyses, photo–identification, radio transmitters, and stable isotope radios of oxygen were used to identify the stocks.

The AICWW Beach Boulevard Bridge project site is in the Northern Florida management unit for Atlantic bottlenose dolphin coastal morphotypes. Atlantic bottlenose dolphins are known to occur in the project area at or within a few hundred feet of the project several times a week. Dolphins, when present near the project site, usually occur in groups of two or three. Bottlenose dolphin occurrence in the Jacksonville area is year–round, however significant seasonal variation exists.

Based on photo–identification and behavioral data, Caldwell (2001) identified three behaviorally differentiated bottlenose dolphin communities in the Jacksonville, Florida area. These three distinct communities have been called Northern, Southern, and Coastal. The Northern community has year–round residency and random social affiliations, with a mean group size of 5 individuals. The Southern community has seasonal residency and non–random social affiliations, with a mean group size of 22 individuals. The Coastal community has no residency and random social affiliations, with a mean group size of 17 individuals. The social structure on a small geographic scale of these three distinct populations varies based on significant genetic differentiation and behavior. Although the three Jacksonville area communities use contiguous habitats, the Northern and Southern communities are primarily inshore, and the Coastal community generally uses the coastal waters of the Jacksonville area from the beach to 1.9 miles (3 km) offshore (Caldwell, 2001). The Southern and Coastal communities have partially overlapping ranges, while the Northern and Southern community's ranges may generally be separated by the St. John's River. Also, the Southern and Coastal communities are behaviorally and genetically differentiated from the Northern community (Caldwell, 2001).

In Florida and other states along the U.S. East Coast, bottlenose dolphin abundance and density is often correlated with water temperature and season. Significantly fewer dolphins were observed during the winter season when water temperature falls below 16 degrees Celsius (Caldwell, 2001).

NMFS anticipates that no bottlenose dolphins will be injured or killed during the three blasting events. The specific objective of JTA's wildlife watch plan is to ensure that no dolphins (or manatees) are in the area during the blast detonations. Because of the circumstances and the proposed mitigation and monitoring requirements discussed herein this document, NMFS believes it highly unlikely that the activities would result in injury (Level A harassment), serious injury or mortality of bottlenose dolphins, however, they may temporarily avoid the area where the proposed explosive demolition will occur. The JTA has requested the incidental take of six bottlenose dolphin for the action. The estimated abundance of the Western North Atlantic Coastal stock is approximately 17,466 animals and the estimated abundance of the North Florida management unit is approximately 448 animals. NMFS has determined that the number of requested incidental takes for the proposed action are small relative to population estimates, of Atlantic bottlenose dolphins.

Further information on the biology and local distribution of these species and others in the region can be found in JTA's application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/*

Potential Effects of Activities on Marine Mammals

In general, potential impacts to marine mammals from explosive detonations could include both lethal and non–lethal injury (Level A harassment), as well as Level B harassment. In the absence of mitigation, marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called ''cavitation.''

A second potential possible cause of mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine

mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS' criteria for determining non–lethal injury (Level A Harassment) from explosives are the peak pressure that will result in: (1) the onset of slight lung hemorrhage, or (2) a 50–percent probability level for a rupture of the tympanic membrane (TM). These are injuries from which animals would be expected to recover on their own.

NMFS has established dual criteria for what constitutes Level B Harassment: (1) An energy based temporary threshold shift (TTS) received sound levels 182 dB re 1 μPa^2–s cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (derived from experiments with bottlenose dolphins (Ridgway et al., 1997; Schlundt et al., 2000); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS). The Level B harassment zone, therefore, is the distance from the mortality, serious injury, injury (Level A harassment) zone to the radius where neither of these criterions is exceeded.

The primary potential impact to the Atlantic bottlenose dolphins occurring in the St. Johns River and AICWW from the detonations is Level B harassment incidental to noise generated by explosives. In the absence of any mitigation or monitoring measures, there is a very small chance that a marine mammal could be injured or killed when exposed to the energy generated from an explosive force on the sea floor. However, NMFS believes the proposed monitoring and mitigation measures will preclude this possibility in the case of this particular activity.

Non–lethal injurious impacts (Level A harassment) are defined in this proposed IHA as TM rupture and the onset of slight lung injury. The threshold for Level A Harassment corresponds to a 50–percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 μPa^2 s. TM rupture is well–correlated with permanent hearing impairment (Ketten, 1998) indicates a 30–percent incidence of permanent threshold shift (PTS) at the same threshold). The farthest distance from the source at which an animal is exposed to the EFD level for the Level A harassment threshold is 295 ft (89.9 m).

Level B (non–injurious) harassment includes temporary (auditory) threshold shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1 μPa^2 s maximum EFD level in any 1/3– octave band above 100 Hz for toothed whales (e.g., dolphins). A second criterion, 23 psi, has recently been established by NMFS to provide a more conservative range of TTS when the explosive or animals approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. The distance for 23 psi is 1,180 ft (359.8 m) (NMFS will apply the more conservative of these two distances).

Level B harassment also includes behavioral modifications resulting from repeated noise exposures (below TTS) to the same animals (usually resident) over a relatively short period of times. Threshold criteria for this particular type of harassment are currently still being considered. One recommendation is a level of 6 dB below TTS (see 69 FR 21816, April 22, 2004), which would be 176 dB re 1 μPa^2 s. Due, however, to the infrequency of detonations, the short overall time period of the project, and the continuous movement of marine mammals in the AICWW, NMFS believes that behavioral modification from repeated exposures to the same animals is highly unlikely.

The Safety Zone radius of the blast is determined by using the Navy Diver Formula for an uncontrolled blast suspended in the water column. In the current instance, the formula is conservative since the charges to be used for Beach Boulevard Bridge footers will be confined within the footers, effectively reducing both the pressure and impulse of a water shock wave. In addition, boreholes will be stemmed at the in collars to further contain the pressures. The Safety Zone radius formula in feet is expressed by the following: $R = 520 (W)^{1/3} + 500$ (R = exclusion zone radius, W = weight of explosive in pounds per delay)

For the designed maximum explosives per delay of 16.5 pounds, the resulting Safety Zone is 1,824 ft. The max/delay of explosives is 16.5 lbs dynamite, which is equivalent to 13.2 lbs TNT. A maximum psi of 23 is used to determine the TTS distance and a maximum psi of 100 is used to determine the PTS distance. Cole's equation for determining max pressures created by free–field underwater explosions used is expressed by the following: $P = 21{,}600 (W^{1/3} / R)^{1.13}$ (P = pressure, W = TNT weight/delay, R= radius in feet)

TTS Distance:

$R = (13.2^{1/3}) / (23/21{,}600)^{0.885} = 1{,}180$ ft

PTS Distance:

$R = (13.2^{1/3}) / (100/21{,}600)^{0.885} = 295$ ft

NMFS considers the Safety Zone radius calculated using the Navy Diver Formula conservative for marine mammals when compared to the calculated distances for TTS and PTS. The calculated Safety Zone will be used for both Atlantic bottlenose dolphin and the Florida manatee. Blasting is anticipated to be completed with three shots occurring over a two to three week period. The time frame for the blasting is subject to change dependent upon weather, tides, etc.

Comments and Responses

On Friday, October 24, 2008 (73 FR 63436), NMFS published in the **Federal Register** a notice of a proposed IHA for JTA's request to take marine mammals incidental to conducting the removal of bridge support structures by explosive demolition, and requested comments regarding this proposed IHA (FRNOR). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission).

Commission Comment 1: The Commission recommends that NMFS issue the requested authorization provided that NMFS consult with USFWS to ensure that it has reviewed the applicant's recent information supplementing the 1999 biological assessment, revised blasting plan, and the current Draft Manatee, Marine Mammal, and Sea Turtle Survey Watch Plan.

Response: Based on correspondence between NMFS, USFWS, and the applicant, both agency's have reviewed and determined JTA's recent information supplementing the 1999 biological assessment, revised blasting plan, and the current Draft Manatee, Marine Mammal, and Sea Turtle Survey Watch Plan are sufficient for the proposed action.

Commission Comment 2: The Commission recommends that NMFS issue the requested authorization provided that the applicant be required to conduct all practicable monitoring and mitigation measures that reasonably can be expected to protect the potentially affected marine mammal species from serious injury.

*Response:*NMFS concurs with the Commission's recommendation and has included requirements to this effect in the IHA.

Commission Comment 3: The Commission recommends that NMFS issue the requested authorization provided that operations be suspended immediately, pending review by NMFS, if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to those operations.

Response: NMFS concurs with the Commission's recommendation and has included a requirement to this effect in the IHA.

Commission Comment 4: The Commission reiterates its view that an across–the–board definition of temporary threshold shift (TTS) as constituting no more than Level B harassment inappropriately dismisses possible injury (Level A harassment) and biologically significant behavioral effects to the affected animals that may occur if an animal's hearing is compromised, even temporarily.

Response: This issue has been addressed several times by NMFS in the past and NMFS stated in previous **Federal Register** notices (68 FR 64595, November 14, 2003 and 71 FR 76989, December 22, 2006) that the reclassification of TTS from Level B to Level A harassment requires support and scientific documentation, and not be based on speculation that TTS might result in increased predation, for example. In addition, it is irrelevant for this IHA, because sound levels will not be high since mitigation and monitoring requirements under the IHA is expected to prevent TTS. Also, while there has been discussion among scientists regarding whether a permanent shift in hearing thresholds (PTS) can occur with repeated exposures of TTS, at least one study showed that long–term (4–7 years) noise exposure on 3 experimental pinnipeds species had caused no change on their underwater hearing thresholds at frequencies of 0.2–6.4 kHz (Southall et al., 2005).

TTS can effect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post–stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall et al. (2007) indicated that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, no loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to underwater detonations) as Level B harassment, no Level A harassment (injury).

Incidental Take Authorization Requested

Provided the proper mitigation and monitoring measures are implemented, the blasting activities may result in the incidental taking of marine mammals by Level B behavioral harassment only. As a result, the JTA has requested an IHA for Level B harassment.

Level A take (i.e., injury or mortality) due to the explosive demolition of bridge support structures is not anticipated during the blasting operations. Since the activities will occur during the winter season, the abundance of marine mammals in the action area should be at its lowest. Injuries or mortalities due to the blasting events are not anticipated because of the incorporation of mitigation and monitoring measures described below.

Estimated Number of Marine Mammal Takes

As discussed above, NMFS anticipated that take of marine mammals will occur in the form of disturbance from the explosive demolition of bridge support structures. As also discussed above, no lethal take is expected to result from the blasting activities. Due to NMFS estimates, the JTA has been authorized the incidental take of nine Atlantic bottlenose dolphins during the effective dates of the three planned blasting events.

The population size of the U.S. Western North Atlantic Coastal stock of bottlenose dolphins is estimated to be 17,466 animals. Population estimates for the North Florida management unit is estimated 448 animals. The estimated total possible number of individuals that may be incidentally harassed during the project is 9 animals, which is 0.05 and 2 percent of the respective Atlantic bottlenose dolphin population for the Western North Atlantic Coastal stock and North Florida management unit for this species. NMFS had determined that these are small numbers, relative to population estimates, of Atlantic bottlenose dolphins.

Possible Effects of Activities on Marine Mammal Habitat

The JTA expects the effects on marine mammal habitat to be minimal. The existing land cover and land use within the project area include the two bridge abutments, the open water of the AICWW, salt marsh, a marina to the northeast, and a navigable water body to the southeast. The salt marsh, largely occurring north and south of the western bridge abutment, is dominated by grasses (*Spartina alterniflora* and *Juncus roemaerianus*). Invertebrates (mollusks, polychaetes, crustaceans, and insects) and terrestrial vertebrates (mammals, wading birds) are common marsh associates. Fish frequent the marsh at high and mid–tides. The remainder of the submerged area is mud and sand. Polychaetes, crustaceans, and mollusks likely occur in areas where tidal flow velocity is not high. Fish occur over the bottoms. There is no submerged aquatic vegetation in the area.

The vast majority of the debris from the demolition will be gravel size and larger, as well as a small amount of sand–sized pieces (indicated in the Demolition Debris section and Exhibit 7 of the Blasting Plan). The blast debris will not disperse across an area wider than 80 ft (24.4 m).

No components of the bridge will be purposefully placed in the AICWW; only those demolition fragments which are impractical to keep out of the water will end up on the bottom. The bascule grates and all of the rebar in those portions of the supports that will be chipped will undergo controlled removal. Most of the rebar in those portions of the supports that will be demolished by explosives will remain intact and in place, and therefore will be easily cut and removed with heavy machinery. Only a small portion of the support structure rebar will end up in the AICWW.

Most of the horizontal portions of the bridges (i.e., spans) will be deconstructed through the use of cranes, large chippers, and trucks. Very little of this portion of the bridge will fall into the water. The vertical supports will be shipped to an elevation of 5 ft (1.5 m), with nearly all of the concrete fragments falling into the open water away from the channel, and the steel rebar cut and hauled away for disposal or recycling. Rubble generated by the explosive demolition of the remaining above water stubs and all of the submerged portions of the supports will be removed in accordance with the Debris Removal section of the Blasting Plan.

The profile and cross-section of the channel will be re–established within 6–8 hours of each of the three blasting events, as referenced in the Debris Removal section of the Blasting Plan. Debris in the project area, but outside of the channel, will be removed within 30 days of the final blasting event.

It is anticipated that the blasting events will not physically impact the

marine mammal habitat in the AICWW except for the blast debris which falls to the bottom. The anticipated biological impact of the explosive demolition is that benthic and water column dwelling vertebrate and invertebrate species near the blasts will be killed by pressure waves. Restoration of the physical habitat adjacent to the AICWW channel will begin within an hour or two of the two related blast events and will entail debris removal. Restoration of the physical habitat at the bridge will be completed within 30 days of the final blasting and will involve re–establishing the pre–blast contours through the use of a clamshell dredge and/or large back hoe.

The activity will have a small and inconsequential impact to the physical habitat at/near the bridge. The blasting events will have an ephemeral impact on the biological component of the near bridge habitat. Temporary disturbance of the project area during the proposed blasting activities is not expected to reduce post–construction use of the area by resident and transient species. The project is not expected to result in loss of bottlenose dolphin habitat. Habitat modifications, if any, are anticipated to be inconsequential and are not expected to have any effect on the dolphin species and/or stock.

The blasting versus non–blasting discussion hinges on whether the additional 500 hours of permitted tug/barge activity without several trained wildlife observers represents a greater risk to wildlife than the three proposed blast events which include a Watch Plan specifically designed and implemented to minimize risk provided the suggested mitigation and monitoring is implemented by JTA.

Impacts to navigation in the AICWW are expected to be low, whether blasting occurs or not. However, it is obvious that a project entailing 400 hours of tug/barge activity will be less impacting than 900 hours of tug/barge operations.

The only two practical means of removing the existing footers is by chipping or explosives, with chipping the no–action alternative, in this case. Chipping while protracted, is in fact possible. However, risks to wildlife, slight risks to boat navigation and brief channel closures are all positively correlated to the demolition duration. Therefore, explosive demolition, while not risk–free, is superior to chipping.

The location and nature of the blasting combine to indicate that impacts to the AICWW will be limited. The footprint of the bridge in the blasting area comprises a channel that experiences high scour, and shallower bottoms that are covered with rip rap, gravel, and rocks. It is highly manipulated and artificial setting. The blasting will consist of three brief shock waves and result in more rubble falling on top of the existing rubble.

Five complications to further impact minimization exist. First the area is tidally influenced with the normal tidal range over 4 ft (1.2 m). The constant ebb and flow limits turbidity control measures. Second, the AICWW is comparatively narrow at the bridge crossing, leading to strong currents. Third, the currents are bi–directional, eliminating any minimization measures that might be implementable at a uni–directional flow location. Fourth, interstitial gaps in the rip rap and general rubble all but prevent turbidity containment, particularly when combined with the three aforementioned complications. Finally, maintenance of navigation in the channel severely limits possible remediation and containment of blast rubble coming from the eight footers next to the channel.

The JTA anticipates no loss or modification to the habitat used by Atlantic bottlenose dolphins in the AICWW. The primary source of marine mammal habitat impact resulting from the explosive demolition is noise, which is intermittent (maximum 3 times per year) and of limited duration. The effects of debris (which will be recovered following test activities), were analyzed in JTA's application and concluded that marine mammal habitat would not be affected.

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the bridge support structures less desirable shortly after the blasting event. Three blasting events over a two to three week period are anticipated during the validity of the IHA.

Blasting impacts to the AICWW estuarine water column and bottoms will consist of three rapidly moving pressure waves. Excepting a very small area (approximately 40 ft or 12.2 m) immediately around the blasts, the substrate will not be affected. The estuarine water column will be affected for a distance less than 1,824 ft (556.4 m) from the blasts (according to the commonly used blasting safety formula). The impacts will be localized and instantaneous. Impacts to marine mammal, invertebrate, and fish species are not expected to be detrimental.

Mitigation

In the absence of acoustic measurements (due to the high cost and complex instrumentation needed), in order to protect endangered, threatened, and protected species, the following equation has been adopted by the JTA for the blasting project to determine the zone for potential harassment, injury or mortality from an open water explosion and to assist the JTA in establishing mitigation and monitoring to reduce impacts to the lowest level practicable. This equation is believed to be conservative because they are based on humans, who are more sensitive than dolphins, and on unconfined charges, while the proposed blasts in the AICWW will be confined (stemmed) charges. The equation, based on the Navy Diver Formula, is:

Safety Zone radius = 520 (lbs/delay)$^{1/3}$ + 500

The Safety Zone is the approximate distance in feet beyond which injury (Level A Harassment) is unlikely from an open water explosion and mortality is not expected. This zone will be used for implementing mitigation measures for both Florida manatees and Atlantic bottlenose dolphins.

In the AICWW or any area where explosives are required to remove bridge support structures, marine mammal protection measures will be employed by the JTA. For each explosive charge, the JTA will ensure that a detonation will not occur if a marine mammal is sighted by a dedicated biologically–trained observer within the safety zone, a circular area around the detonation site with the following radius: $R = 520(W)^{1/3} + 500$ (520 times the cube root of the weight of the explosive charge in pounds) where: R = radius of the safety zone in ft; W = weight of the explosive charge in lbs per delay (9 ms minimum separation).

Although the area inside the Safety Zone is considered to be an area for potential injury, the JTA and NMFS believe that because all explosive charges will be stemmed (placed in drilled hole and tamped with rock), the areas for potential mortality and injury will be significantly smaller than this area and, therefore, it is unlikely that even non–serious injury would occur if as is believed to be the case, monitoring and mitigating this zone will be effective. Since bottlenose dolphins are commonly found on the surface of the water, implementation of a mitigation and monitoring program is expected by NMFS to be effective.

The JTA will implement mitigation measures and a monitoring program that will establish the Safety Zone radius to ensure that bottlenose dolphins will not be injured during blasting and that impacts will be at the lowest level practicable. Additional mitigation measures include: (1) confining the

explosives in a borehole with drill patterns restricted to a minimum of 8 ft (2.4 m) separation from any other loaded borehole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hour before sunset to ensure adequate observation of marine mammals in the Safety Zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time; (4) capping or stemming the boreholes containing explosives with angular rock or crushed stone (sized at 1/20 to 1/8 of the borehole diameter) to a minimum of 12 inches in depth in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a marine mammal; (5) matching, to the extent possible, the energy needed in the ''work effort'' of the borehole to the rock mass to minimize excess energy vented into the water column; (6) establishing a Safety Zone (1,824 ft) for confined blasting based on the maximum weight of explosives detonated (16.5 lbs per 25 ms delay) and calculated using the Navy Diver Formula; (7) conducting a marine protected species watch (as described in the Marine Wildlife Safety Plan and Manatee, Marine Mammal, Sea Turtle Survey Watch Plan) with no less than five NMFS–qualified observers from a small water craft, aircraft, and/or an elevated platform on the explosives barge, beginning at least 60 minutes before and continuing for at least 30 minutes after each detonation to ensure that there are no marine mammals in the area at the time of detonation; (8) allowing animals to leave the Safety Zone under their own volition; and (9) conducting blasts during time periods of the year when there are low marine mammal abundance densities. Avoiding periods when marine mammals are in the blasting zone is another mitigation measure to protect marine mammals from underwater explosions. Given the poor water clarity and available habitat in the immediate area of the project, the USFWS recommended demolition utilizing explosives during the ''manatee construction window'' (December–February) when the occurrence or density of marine mammals in the Jacksonville area is at its lowest.

Monitoring

The JTA will be implementing a Marine Wildlife Safety Plan and a Manatee, Marine Mammal, and Sea Turtle Watch Plan (Watch Plan) that will minimize the possibility of incidental take to pressure waves from the blast to the fullest extent practicable. JTA is working on the Watch Plan with USFWS, SJRWMD, Florida Fish and Wildlife Conservation Commission (FWC), and ACOE. The Watch Plan has been prepared to ensure the protection of those species large enough to be located visually within the zone of blasting activities influence.

A nearly identical Watch Plan was used during the demolition of the Fuller Warren Bridge, which spans approximately 3,600 ft (1,097.6 m) over open water in downtown Jacksonville, Florida. The Beach Boulevard Bridge spans approximately 300 ft (91.5 m) over open water. Applying the same specifications for a project that is more than an order of magnitude smaller in scale represents an effort to provide more than adequate protection for large wildlife including bottlenose dolphins.

The observer monitoring program will take place in a large circular area around the blasting site (also referred to as the Watch Zone). Any marine mammal(s) in the Safety, or Watch Zone will not be forced to move out of those zones by human intervention. Detonation shall not occur until the animal(s) move(s) out of the Safety Zone on its own volition.

Monitoring and mitigation will consist primarily of surveying and taking action to avoid detonating charges when protected species are within the Safety Zone radius. The marine wildlife safety observer team will consist of five members. The team will have a chief observer, who will be the aerial observer in a helicopter, and four other stationary ground and/or waterborne observers. Observers will be equipped with two–way radios, binoculars, a sighting log, map, signal flags, and polarized sunglasses.

Proposed monitoring requirements in relation to JTA's blasting activities will include observations made by the applicant and their associates. Information recorded will include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors before, during and after blasting activities. Observations of unusual behaviors, numbers, or distributions of marine mammals and sea turtles in the activity area to NMFS and USFWS so that any potential follow–up observations can be conducted by the appropriate personnel. In addition, observations of tag–bearing marine mammal, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish will be reported to NMFS and USFWS.

If at any time injury or death of any marine mammal occurs that may be a result of the proposed blasting activities, the JTA will suspend activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Several mitigation measures to reduce the potential for harassment from explosive demolition activities would be (or are proposed to be implemented) implemented as part of the blasting construction activities. The potential risk of injury or mortality would be avoided with the following proposed mitigation and monitoring measures. Monitoring of the test area will continue throughout the activity until the last detonation is complete. The activity would be postponed if:

(1) Any marine mammal is visually detected with the Safety Zone (1,824 ft). The delay would continue until the animal(s) that caused the postponement is confirmed to be outside the Safety Zone (visually observed swimming out of the range and not likely to return).

(2) Any marine mammal is detected in the Safety Zone and subsequently is not seen again. The activity would not continue until the last verified location is outside the Safety Zone and the animal is moving away from the activity area, or the animal has not been seen for at least 30 minutes within the Safety Zone.

(3) Large schools of fish are observed in the water within the Safety Zone. The delay would continue until large schools are confirmed to be outside the Safety Zone.

In the event of a postponement, pre–activity monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, mitigation measures would continue while operations personnel attempted to recognize and solve the problem, i.e., detonate the charge.

A formal Plan Coordination Meeting will be held no later than three days before the first detonation event to review the items listed above, to discuss the responsibilities of all parties, and to review and approve the schedule of events. Attendees will include the contractor's representative, the entire Marine Wildlife Safety Observer team, the blasting consultant, the USFWS, FWC, the USCG, and other interested environmental parties such as NMFS and Florida Marine Patrol. The agenda will be coordinated by Superior Construction with the blasting contractor, USFWS, and FDEP. It will include the latest information about the possible presence of marine mammals during the operation, the logistics of the detonation schedule, the communications plan, and the responsibilities of all parties involved.

A summary report will be submitted to all interested parties.

Post–activity monitoring is designed to determine the effectiveness of pre–activity monitoring and mitigation by reporting any sightings of dead or injured marine mammals. Post–detonation monitoring, concentrating on the area down current of the test site, would commence immediately following each detonation and continue for at least one hour after the last detonation. The monitoring team would document and report to the appropriate marine mammals killed or injured during the activity and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the teams would be documented and reported to the project leader.

West Indian manatees, which are federally listed as Endangered under the ESA and managed by the USFWS, are not expected in the St. John's River and AICWW (Pablo Creek) during the time periods when the activities would be conducted. However, if manatees are sighted during the activities, the JTA would follow similar mitigation and monitoring procedures in place for bottlenose dolphins to avoid impacts, suspending activities in any areas manatees are occupying.

Reporting

After completion of all detonation events, the Chief Observer will submit a summary report to regulatory agencies. This report will contain the observer's logs, provide the names of the observers, and their positions during the event, the number and location of marine mammals sighted during the monitoring period, the behavior observations of the marine mammals, and the actions that were taken when the animals were observed in the project area.

The JTA will notify NMFS and the Regional Office prior to initiation of each explosive demolition session. Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, within 24 hours. A draft final report must be submitted to NMFS within 90 days after the conclusion of the blasting activities. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of detonations as well as pre– and post–blasting monitoring observations. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

ESA

For the reasons already described in this **Federal Register** Notice, NMFS has determined that the described blasting activities and the accompanying IHA may have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. The ACOE, on behalf of the JTA, requested a section 7 consultation pursuant to the ESA with NMFS. Since ESA–listed species are not expected to be adversely affected by the activities provided the described protected species avoidance measures for the use of explosives are implemented, a Letter of Concurrence was prepared by the NMFS Southeast Regional Office, dated October 9, 2008.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) on an Authorization for the Incidental Take of Marine Mammals Associated with Confined Underwater Blasting as a Construction Method for Civil Works Projects along the Coast of Florida by the Jacksonville District of the U.S. Army Corps of Engineers, which analyzed the issuance of multiple IHAs over several years for these activities, as well as prepared a SEA for the action. The action described in the SEA is similar to the action that was analyzed in the 2005 EA, and the EA and 2008 SEA remains applicable. A copy of the EA and SEA are available upon request (see **ADDRESSES**).

Determinations

Based on JTA's application, as well as the analysis contained herein, NMFS has determined that the impact of the described blasting project will result, at most, in a temporary modification in behavior by small numbers of Atlantic bottlenose dolphin, in the form of temporarily vacating the Beach Boulevard AICWW Bridge area to avoid blasting activity and potential for minor visual and acoustic disturbance from dredging and detonations. The effect of the blasting project is expected to be limited to short–term and localized TTS–related behavioral changes.

Due to the infrequency, short time–frame, and localized nature of these activities, the number of marine mammals, relative to the population size, potentially taken by harassment is small. In addition, no take by injury or death is anticipated, and take by Level B harassment will be at the lowest level practicable due to incorporation of the monitoring and mitigation measures mentioned previously in this document. NMFS has further determined that the anticipated takes will have a negligible impact on the affected species or stock of marine mammals. No injury (Level A harassment), serious injury, and/or mortality are authorized for marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply to this proposed action as there are no subsistence users within the geographic area of the proposed project.

Authorization

As a result of these determinations, NMFS proposes to issue an IHA to the JTA for the harassment of small numbers (based on populations of the species and stock) of Atlantic bottlenose dolphin incidental to the explosive demolition of bridge support structures, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 28, 2008.

Helen M. Golde

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–28720 Filed 12–3–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC72

Marine Mammals; File No. 881–1758

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that an amendment to scientific research Permit No. 881–1758–00 has been issued to the Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664 (Dr. Ian Dutton, Responsible Party).

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 21, 2007, a notice was published in the **Federal Register** (72 FR 54001) that an application had been filed by the above named organization. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit holder requested authorization to add ringed (*Phoca hispida*), spotted (*P. largha*), ribbon (*P. fasciata*), and bearded (*Erignathus barbatus*) seals undergoing rehabilitation at the ASLC to the permit for the same studies currently permitted on harbor seals (*P. vitulina*). The applicant also proposed changes to protocols used on harbor seals undergoing rehabilitation, including removing bioelectrical impedance measurements and adding blubber ultrasound measurements for body condition assessment; and adding resting metabolic measurements to aid in the understanding of metabolic changes associated with health, growth, and dietary transitions. The request to add ice seals to the permit has been denied, pursuant to regulations for application procedures (50 CFR 216.33). The permit amendment authorizes the requested changes to protocols for the harbor seal research.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the partial amendment is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 24, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–28722 Filed 12–3–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0152]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records notice.

SUMMARY: The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 5, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–2386.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense 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 specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 25, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DoDEA 21

Department of Defense Education Activity (DODEA) Grievance Records (August 15, 2006, 71 FR 46895).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Department of Defense Education Activity (DoDEA) Labor and Employment Grievance Records.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Current or former employees who have submitted grievances in accordance with 5 U.S.C. 2302, Prohibited personnel practices; 5 U.S.C. 7121, Grievance procedures or 5 CFR 771, Administrative practice and procedure, Government employees; and DoD Education Activity 5771.9, Administrative Grievance Procedures.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 1221, 2302, 7121 and 7532; 10 U.S.C. 2164, Department of Defense domestic dependent elementary and secondary schools; 20 U.S.C. 901–907, Overseas Teachers Pay Act; 20 U.S.C. 931, Regulations; issuance and contents; 5 CFR 771, Administrative practice and procedure, Government employees; DoD Directive 1342.20, Department of Defense Education Activity; DoD Education Activity 5771.9, Administrative Grievance Procedures and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with ''To maintain records for use by management in resolving employee grievances.

To generate statistical reports, work force studies, and perform other analytical activities supporting personnel management functions of DoD Education Activity.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Merit Systems Protection Board (MSPB), the Merit System Protection Board Office of Special Counsel, arbitrators appointed under DoD Education Activity collective bargaining agreements, the Federal Labor Relations Authority, the Department of Justice, the Offices of the United States Attorneys, alternate dispute resolutions specialists, and the Federal courts for purposes related to, or incident to, the adjudication or litigation of the grievance.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and the password or similar system. Password authorization, assignment, and monitoring are the responsibility of the functional managers.''

* * * * *

DoDEA 21

SYSTEM NAME:

Department of Defense Education Activity (DoDEA) Labor and Employment Grievance Records (August 15, 2006, 71 FR 46895).

SYSTEM LOCATION:

Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees who have submitted grievances in accordance with 5 U.S.C. 2302, Prohibited personnel practices; 5 U.S.C. 7121, Grievance procedures or 5 CFR 771, Administrative practice and procedure, Government employees; and DoD Education Activity 5771.9, Administrative Grievance Procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances and arbitrations filed by DoD Education Activity employees with the Agency, with the Office of Special Counsel, the Office of Personnel Management, or the Federal Labor Relations Authority. Includes records relating to the identity of third parties, pleadings, statements of witnesses, investigative reports, interviews, hearings, hearing examiner's findings and recommendations, copies of decisions relating to the grievance, and other relevant correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1221, 2302, 7121 and 7532; 10 U.S.C. 2164, Department of Defense domestic dependent elementary and secondary schools; 20 U.S.C. 901–907, Overseas Teachers Pay Act; 20 U.S.C. 931, Regulations; issuance and contents; 5 CFR 771, Administrative practice and procedure, Government employees; DoD Directive 1342.20, Department of Defense Education Activity; DoD Education Activity 5771.9, Administrative Grievance Procedures and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records for use by management in resolving employee grievances.

To generate statistical reports, work force studies, and perform other analytical activities supporting personnel management functions of DoD Education Activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Merit Systems Protection Board (MSPB), the Merit System Protection Board Office of Special Counsel, arbitrators appointed under DoD Education Activity collective bargaining agreements, the Federal Labor Relations Authority, the Department of Justice, the Offices of the United States Attorneys, alternate dispute resolutions specialists, and the Federal courts for purposes related to, or incident to, the adjudication or litigation of the grievance.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic records.

RETRIEVABILITY:

Names of the individuals initiating grievance procedures, case number, and by subject matter.

SAFEGUARDS:

Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and the password or similar system. Password authorization, assignment, and monitoring are the responsibility of the functional managers.

RETENTION AND DISPOSAL:

Records are destroyed 4 years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor-Management & Employee Relations Branch, Human Resources Regional Service Center, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Written requests for information should contain the full name and address of the individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, Office of the Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

Individuals should provide the name and number of this system of records notice so that your request can be tasked to the appropriate OSD/JS office. This section must also include a description of needed identifier so that the record may be retrieved.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

RECORD SOURCE CATEGORIES:

Individuals who have initiated a grievance; witness statements or testimony; agency officials; labor organization representatives; arbitrators, hearing officials and administrative law judges; officials in the Merit Service Protection Board Office of Special Counsel; and by officials of the Federal Labor Relations Authority or Merit Systems Protection Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–28762 Filed 12–3–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2008–0041]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Add a System of Records Notice.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on January 5, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCX, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems 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. 522a(r) of the Privacy Act of 1974, as amended, was submitted on November 18, 2008, to the House Committee on Oversight and 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: November 25, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F032 AFCES A

SYSTEM NAME:

Civil Engineer System-Fire Department Records.

SYSTEM LOCATION:

The Fire Departments or the Base Network Control Centers at Air Force installations worldwide. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in the fire operations to include active duty U.S. Air Force, civilians and contractors personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical, duty and background information including but not limited to individual's name, grade/rank, Social Security Number (SSN), date and place of birth, telephone number, line badge information, and certifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Department of Defense (DoD) Instruction (DoDI) 6055.06, DoD Fire and Emergency Services Program; Air Force Policy Directive 32–20, Fire Emergency Services; and E.O. 9397 (SSN).

PURPOSE(S):

To support the resources, equipment, and personnel that will be dispatched in fire emergency operations. In addition, it will provide fire prevention and protection, fire fighting, rescue, and Hazardous Materials (HazMat) response capabilities to prevent or minimize injury, loss of life, and damage to property and the environment. The fire prevention program consisting of fire safety education, inspections, enforcement and facility design review. This will ensure an early intervention at emergency events by occupants, operators, and automatic fire protection systems.

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 of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's name and Social Security Number (SSN).

SAFEGUARDS:

Access to records is limited to persons responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to the application is restricted by passwords which are changed periodically.

RETENTION AND DISPOSAL:

Retained for 30 years or until no longer needed and then deleted from the database.

SYSTEM MANAGER(S) AND ADDRESS:

ACES/IWIMS Program Manager, HQ AFCESA/CEOI, 139 Barnes Drive, Suite 1, Tyndall AFB, FL 32403–5319.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the ACES/IWIMS Program Manager, HQ AFCESA/CEOI, 139 Barnes Drive, Suite 1, Tyndall AFB, FL 32403–5319.

Written requests will contain individual's name, Social Security Number (SSN), office or organization where currently assigned, if applicable, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the ACES/IWIMS Program Manager, HQ AFCESA/CEOI, 139 Barnes Drive, Suite 1, Tyndall AFB, FL 32403–5319.

Written requests will contain individual's name, Social Security Number (SSN), office or organization where currently assigned, if applicable, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332;32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–28714 Filed 12–3–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2008–0040]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force is proposing to add a system of

records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on January 5, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on November 18, 2008, to the House Committee on Government Oversight and 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: November 25, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F024 AF AFMC A

SYSTEM NAME:

Cargo Movement Operations System Records.

SYSTEM LOCATION:

Defense Enterprise Computing Center Montgomery, Bldg 857, Room 200, 401 East Moore Drive, Maxwell AFB-Gunter Annex 36114–3004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual (military or civilian) who is a passenger on a military or civilian contracted aircraft or any Cargo Movement Operations System user.

CATEGORIES OF RECORDS IN THE SYSTEM:

Include but not limited to travel order, transportation authorizations, individual's name and Social Security Number (SSN), grade, seats required; origin; destination; requested travel dates, routing indicator (identifies the activity/installation requesting the reservation); cancellation and standby codes (identifies the reason the passenger did not depart as scheduled); flight number; departure date and reporting time, and other administrative coding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; DoD Regulation 4500.9E, Transportation and Traffic Management; Air Force Program Management Directive #5272(2)/38610F, Cargo Movement Operations System; and E.O. 9397 (SSN).

PURPOSE(S):

To establish a system that will provides the capability to effectively plan, document, and manage outbound and inbound cargo and to plan, schedule, and monitor the execution of transportation activities in support of deployment and reception of forces. The system will accumulate and aggregate shipment data, track the completion of transportation actions, prepare and print movement documentation, prepare and transmit advance shipment notification to all involved activities, and prepare and transmit system reports. As a management tool, the records will determine passenger movement trends and prepare aircraft manifests.

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 other Federal agencies and offices to provide passenger manifest information.

To Global Air Transportation Execution System and Global Transportation Network to use the data for the purpose to manifest passengers on military and government civilian contracted aircrafts.

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Transportation authorizations and orders are retained in office files for five years after the annual cutoff, and then destroyed. Other records in the system are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, and then destroyed. These records are destroyed by one of the following means tearing into pieces, shredding, pulping, macerating, burning, or degaussing in the case of magnetic computer media.

SYSTEM MANAGER(S) AND ADDRESS:

Director, 754th Electronic Systems Group, Headquarters, Air Force Material Command, 200 East Moore Drive, Maxwell AFB Gunter Annex, AL 36114–3014.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to 754th Electronic Systems Group, Headquarters, Air Force Material Command, 200 East Moore Drive, Maxwell AFB Gunter Annex, AL 36114–3014.

Written requests should contain individual's name, Social Security Number (SSN), reservation identification code, and movement channel.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the 754th Electronic Systems Group, Headquarters, Air Force Material Command, 200 East Moore Drive, Maxwell AFB Gunter Annex, AL 36114–3014.

Written requests should contain individual's name, Social Security Number (SSN), reservation identification code, and movement channel.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR parts 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, military transportation and personnel activities, or other agencies designated to arrange air passenger reservations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–28754 Filed 12–3–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13274–000]

Monadnock Paper Mills, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

November 26, 2008.

Monadnock Paper Mills, Inc. (MPM), filed an application on August 7, 2008, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of adding additional capacity to the Monadnock Hydroelectric Project at the project's Powder Mill Dam Development, which would be located near the towns of Bennington and Antrim on the Contoocook River in Hillsborough County, New Hampshire.

The proposed Powder Mill Dam Hydroelectric Project would utilize MPM's licensed Powder Mill Dam of the Monadnock Hydroelectric Project, FERC No. 6597 for which MPM is the licensee and would consist of: (1) A new generating unit with a total installed capacity of 200 kW, (2) a new transmission line connecting to existing power lines, and (3) appurtenant facilities. The project would have an annual generation of 0.7 gigawatts-hours, which would be sold to a local utility.

Applicant Contact: Mr. Paul Ciccone, Vice President Research and Development, Technical Services, Monadnock Paper Mills, Inc., 117 Antrim Road, Bennington, NH 03442; phone: (603) 588–3311. FERC Contact: Tom Papsidero, (202) 502–6002.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13274) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–28700 Filed 12–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–30–000]

Northwest Pipeline GP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Sundance Trail Expansion Project; Request for Comments on Environmental Issues

November 26, 2008.

The Federal Energy Regulatory Commission (FERC or Commission) is in the process of preparing an environmental assessment (EA) on the environmental impacts of the Sundance Trail Expansion Project (Project) involving the construction and operation of new underground natural gas pipeline looping[1] and a modified compressor station proposed by Northwest Pipeline GP (Northwest). The Project is under review in Docket No. PF08–30–000.

This Notice of Intent (NOI) explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help determine which issues will be evaluated in the EA. Please note that the scoping period for this Project will close on December 29, 2008.

Although a formal application has not been filed, the FERC has already initiated its NEPA review under its pre-filing process. A pre-filing docket number has been assigned to the proposed Project (PF08–30–000). The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

This NOI is being sent to Federal, State, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors and other interested parties; and local libraries and newspapers. We[2] encourage government representatives to notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Northwest representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. Northwest would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by the FERC, that approval conveys with it the right of federal eminent domain. Therefore, if easement negotiations fail to produce an agreement, and the Project is ultimately approved by the FERC, Northwest could initiate condemnation proceedings in accordance with Federal law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov/for-citizens/citizen-guides.asp*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in FERC's proceedings.

Summary of the Proposed Project

Northwest has proposed to construct and operate the Project to provide 150 Mdth/d of transportation capacity out of the Piceance Basin for delivery into the Kern River Gas Transmission Company system where it can be transported to Utah, southern Nevada, and southern California markets. The Project's pipeline loop would be located in Lincoln County, Wyoming, and the compressor station modification would take place in Uintah County, Utah.

[1] A pipeline loop is a segment of pipeline immediately adjacent to an existing pipeline.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Location maps depicting the proposed facilities are attached to this NOI as Appendix 1.[3]

Specifically, Northwest proposes the following components for the Project:

- Construction of 15.5 miles of 30-inch-diameter underground natural gas pipeline originating with northwest's mainline at Valve 6–2 at milepost (MP) 422.2 (MP 0.0 of the Project) and terminating at a tie-in at mainline MP 437.7 in Lincoln county Wyoming.
- Abandonment by removal of two obsolete 3,165-horsepower (hp) at the existing Vernal compressor Station in Uintah County, Utah, and replacing them with one 9,700-hp compressor unit, as well as installation of associated gas piping and gas coolers.
- Use of two or three of the following five potential construction yard sites:
- *Muddy Creek Construction Yard*, located within the Northwest's existing Muddy Creek Compressor Station, about 6 miles south of Opal in Lincoln County, Wyoming;
- *Kemmerer Construction Yard*, an existing pipe unloading and storage area located adjacent to the Union Pacific Railroad, about 4 miles south of Kemmerer, in Lincoln County, Wyoming;
- *James Town Construction Yard*, an existing industrial site located about 4 miles west of Green River, in Sweetwater County, Wyoming;
- *Granger Construction Yard*, an existing industrial site located about 0.5 mile northwest of Granger in Sweetwater County, Wyoming; and
- *Peru Cutoff Construction Yard*, an existing industrial site located about 7 miles west of Green River in Sweetwater County, Wyoming.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources.
- Aquatic resources.
- Vegetation and wildlife.
- Threatened and endangered species.
- Land use, recreation, and visual resources.
- Cultural resources.
- Socioeconomics.
- Air quality and noise.
- Reliability and safety.
- Cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before December 29, 2008.

Comments on the proposed Project should be submitted to the FERC in written form. For your convenience, there are three methods which you can use to submit your written comments to the Commission. In all instances please reference the Project docket number (PF08–30–000) with your submission. The three methods are:

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

Label one copy of the comments for the attention of Gas Branch 3, PJ–11.3.

The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

Once Northwest formally files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

[3] The appendices referenced in this notice are not printed in the **Federal Register**, but they are being provided to all those who receive this notice in the mail. Copies of the NOI can be obtained from the Commission's Web site at the ''eLibrary'' link, from the Commission's Public Reference Room, or by calling (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners whose property may be used temporarily for project purposes, who have existing easements from the pipeline, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372), or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the Project docket number, excluding the last three digits (*i.e.*, PF08–30) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or by e-mail at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–28699 Filed 12–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2166–000]

Pennsylvania Windfarms, Inc.; Notice of Issuance of Order

November 26, 2008.

Pennsylvania Windfarms, Inc. (Pennsylvania Windfarms) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Pennsylvania Windfarms also requested waivers of various Commission regulations. In particular, Pennsylvania Windfarms requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Pennsylvania Windfarms.

On August 5, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Pennsylvania Windfarms, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is December 8, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Pennsylvania Windfarms is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Pennsylvania Windfarms, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Pennsylvania Windfarm's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. 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. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–28701 Filed 12–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Request for Interest for Purchase of Renewable Energy Products

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Availability of Request for Interest for Purchase of Renewable Energy Products.

SUMMARY: The Western Area Power Administration, DOE (Western), a Federal power marketing agency of the U.S. Department of Energy, announces the availability of a Request for Interest (RFI) for the Purchase of Renewable Energy Products. Western is seeking interest from any supplier regarding the long-term purchase (10 to 15 years) of renewable energy with or without Renewable Energy Certificates (RECs). The energy may be delivered to the Upper Great Plains Region, the Rocky Mountain Region's Loveland Area Projects, the Colorado River Storage Project, and/or the Desert Southwest Region. All available points of delivery are located within the Western Interconnection.

DATES: Responses to the RFI must be received by Western on or before December 18, 2008.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the RFI, please contact Mr. Tim Vigil, Western Area Power Administration, Colorado River Storage Project, Energy Management and Marketing Office, 1800

South Rio Grande Avenue, Montrose, CO 81401, (970) 240–6218, fax (970) 240–6295, e-mail *renewable-rfi@wapa.gov*. The RFI is also available on Western's Web site at *http://www.wapa.gov*.

SUPPLEMENTARY INFORMATION: Western is seeking interest from any supplier regarding the long-term purchase of renewable energy to supplement any one or more of, or possibly combinations of, four regions. These regions span a large area, including Arizona, New Mexico, Utah, Colorado, and Wyoming, but are connected by contiguous transmission lines. Western would prefer renewable energy with RECs, but will entertain offsets on price for renewable energy without RECs. Delivery points and approximate amounts of energy desired for each region are listed in the RFI. Currently, Western is only requesting information concerning renewable energy priced at or below $100 per MWh.

Dated: November 21, 2008.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–28712 Filed 12–3–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8746–5; Docket ID No. EPA–HQ–ORD–2008–0663]

An Exposure Assessment of Polybrominated Diphenyl Ethers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, ''An Exposure Assessment of Polybrominated Diphenyl Ethers'' (EPA/600/R–08/086A). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development. The document provides a comprehensive assessment of the exposure of Americans to polybrominated diphenyl ethers, PBDEs, a class of brominated flame retardants. It includes chapters on use and production of PBDEs, environmental fate, environmental and exposure media concentrations, and an exposure assessment including background exposures and exposures to special populations.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins December 4, 2008, and ends January 5, 2009. Technical comments should be in writing and must be received by EPA by January 5, 2009.

ADDRESSES: The draft ''An Exposure Assessment of Polybrominated Diphenyl Ethers '' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, ''An Exposure Assessment of Polybrominated Diphenyl Ethers''.

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

For technical information, contact Matthew Lorber, NCEA; telephone: 703–347–8535; facsimile: 703–347–8692; or e-mail: *lorber.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The United States Environmental Protection Agency (EPA) has formed a working group comprised of individuals from several program offices including the Offices of Pesticides, Prevention, and Toxic Substances; the Office of Water; the Office of Research and Development; and the Office of Policy, Economics, and Innovation, to study production, use, alternatives, environmental fate, exposure, and health effects of polybrominated diphenyl ethers (PBDEs). This working group issued a project plan in 2006 that outlined projects in these areas. EPA reports regularly on progress in completing the activities identified in the project plan, with the most recent status report issued in March 2008. The Web site that describes this working group, including the project plan, is *http://www.epa.gov/oppt/pbde*. This draft document addresses the exposure assessment needs identified in that project plan. It provides a comprehensive assessment of the exposure of Americans to this class of persistent organic pollutants. Individual chapters in this document address: The production, use, and lifecycle of PBDEs; environmental fate; environmental and exposure media levels; and human exposure.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2008–0663, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov*.
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2008–0663. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to

make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: November 19, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–28713 Filed 12–3–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

November 25, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 5, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B._Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0816.

Title: Local Telephone Competition and Broadband Reporting (Report and Order, WC Docket No. 07–38, FCC 08–89; Order on Reconsideration, WC Docket No. 07–38, FC 08–148).

Form No.: FCC Form 477.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,610 respondents; 3,220 responses.

Estimated Time per Response: 337 hours (average).

Frequency of Response: Semi-annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 201, 218–220, 251–252, 271, 303(r), 332 and 403 of the Communications Act of 1934, as amended; as well as Section 706 of the Telecommunications Act of 1996, 47 U.S.C. Section 157nt.

Total Annual Burden: 1,085,140 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission will continue to allow respondents to certify, on the first page of each submission, that some data contained in that submission are privileged or confidential, commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity making the submission. If the Commission receives a request for, or proposes to disclose the information, the respondent would be required to make a full showing pursuant to the Commission's rules for withholding from public inspection information submitted to the Commission. The Commission will retain its current policies and procedures regarding the

confidential treatment of submitted FCC Form 477 data, including use only of aggregated, non-company specific data in its published reports. The Commission will, however, continue its current practice of publishing most of the local telephone information reported by the Bell Operating Companies (BOCs) after consultation with the individual companies.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as a revision during this comment period to obtain the full three-year clearance from them. The Commission is reporting an increase of 956,340 hours to the total annual burden. This program change increase is due to an increase in the estimated number of respondents and responses since this IC was last submitted to the OMB in June 2008.

The Commission is submitting two rulemakings to the OMB for approval. The first is a Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 07–38, FCC 08–89 and the second is an Order on Reconsideration in WC Docket No. 07–38, FCC 08–148.

With these two Orders, the Commission revises the FCC Form 477 data collection to improve the Commission's understanding of the extent of broadband deployment, facilitating the development of appropriate broadband policies. In particular, these amendments will improve the Commission's ability to carry out its obligation under section 706 of the Telecommunications Act of 1996 to ''determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.''

The Report and Order revises the FCC Form 477 to require all broadband providers to report the number of broadband connections in service in individual Census Tracts. The Report and Order adopts three additional changes to FCC Form 477. First, it requires providers to report broadband service speed data in conjunction with subscriber counts according to new categories for download and upload speeds. These new speed tiers will better identify services that support advanced applications. Second, it amends reporting requirements for mobile wireless broadband providers to require them to report the number of subscribers whose data plans allow them to browse the Internet and access the lawful Internet content of their choice. Third, it requires providers of interconnected Voice over Internet Protocol (interconnected VoIP) service to report subscribership information on FCC Form 477.

The Order on Reconsideration amends FCC Form 477 to require filers to report the percentage of broadband connections that are residential at the Census Tract level.

The Telecommunications Act of 1996 directs the Commission to take actions to open all telecommunications markets to competition and to seek to promote innovation and investment by all participants, including new entrants. A central task in creating this framework is the opening of previously monopolized local telecommunications markets. By collecting timely and reliable information about the pace and extent of competition for local telephony service in different geographic areas—including rural areas—the Commission significantly improves the ability to evaluate the effectiveness of actions the Commission and the states are taking to facilitate economic competition in those markets. The Report and Order provides for additional methods to supplement the data reported by FCC Form 477 filers, including a voluntary self-reporting system, and a recommendation to the Census Bureau that the American Community Survey questionnaire be modified to gather information about broadband availability and subscription in households.

The information is used by the Commission to prepare reports that help inform consumers and policy makers at the federal and state level of the development of competition in the local telephone service market and the deployment of broadband services. The Commission will continue to use the information to better inform its understanding of broadband deployment in conjunction with its congressionally mandated section 706 reports. The Commission also uses the data to support its analyses in a variety of rulemaking proceedings under the Communications Act of 1934, as amended. Absent this information collection, the Commission would lack essential data for assisting it in determining the effectiveness of its policies and fulfilling its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–28755 Filed 12–3–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 28, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently 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.

DATES: Written PRA comments should be submitted on or before February 2, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your comments by e-mail to *PRA@fcc.gov*. Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below, or call Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0927.

Title: Auditor's Annual Independence and Objectivity Certification.

Form Number: N/A.

Type of Review: Extension without change of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 4 respondents; 4 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory. *See* 47 U.S.C. 201(b), 219(b), and 220, and 47 CFR Section 64.904.

Total Annual Burden: 20 hours.

Annual Cost Burden: $0.00.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: 47 CFR Section 64.904 requires certain local exchange carriers, in connection with their cost allocation manual filings and the accompanying financial reports the Commission prescribes under 47 U.S.C. Sections 220, 219(b) and 201(b), to have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or have a financial audit performed by an independent auditor every two years, covering the prior two year period. The attest engagement is to be performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants (AICPA), except as otherwise directed by the Chief, Enforcement Bureau. The audit is to be conducted in compliance with generally accepted auditing standards (GAAS), except as otherwise directed by the Enforcement Bureau. The Responsible Accounting Officer letter requires that carriers' independent auditors (a) disclose in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence; (b) confirm in writing that in its professional judgment it is independent of the carrier; and (c) discuss the auditor's independence. The information is used to determine whether the independent auditors are performing their audits independently and unbiased of the carrier they audit.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–28757 Filed 12–3–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. F.W. Carraway, Jr., Caroline Carraway Sutton, Ann Elizabeth Ray, Leslie Erin Hammelman, Nicholas Stephens Sutton, Matthew Yancey Sutton, and Emily Carraway Kemp, all of Tallahassee, Florida; F. Wilson Carraway, III, and Evan Caroline Carraway, both of Carrabelle, Florida; Edward H. Carraway and F.W. Carraway, II, both of Sarasota, Florida; Elizabeth Leigh Neilson, Destin, Florida; Rena Katherine Taylor, Alligator Point, Florida; the FMB Banking Corporation KSOP, F. Wilson Carraway and R. Michael Sims, trustees, all of Monticello, Florida; to collectively acquire additional voting shares of FMB Banking Corporation, and thereby indirectly acquire additional voting shares of Farmers & Merchants Bank, both of Monticello, Florida.

Board of Governors of the Federal Reserve System, December 1, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–28716 Filed 12–3–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Comments regarding each of application must be received at the Reserve Bank indicated or the offices of the Board of Governors by the date indicated.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Educational Funding of the South, Inc., Knoxville, Tennessee, to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of the Cumberlands, Jamestown, Tennessee.

Comments regarding this application must be received by December 26, 2008.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. 1st Security Bancorp, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of 1st Security Bank of Washington, both of Mountlake Terrace, Washington.

Comments regarding this application must be received by December 29, 2008.

Board of Governors of the Federal Reserve System, December 1, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–28715 Filed 12–3–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Projects

Title: Supporting Healthy Marriage Project Baseline Data Collection Extension OMB No.: 0970–0299.

Description: The Administration for Children and Families (ACF) is conducting an evaluation study titled Supporting Healthy Marriage (SHM). This is a largescale, multi-site, rigorous test of marriage and relationship skills education programs for low-income married couples. The baseline information collection for the study was previously approved by the Office of Management and Budget (OMB Number 0970–0299) and expires on of May 31, 2009. The purpose of this notice is to inform the public of ACF's intent to request an extension of this clearance prior to its expiration.

The SHM project is founded on research that indicates that both adults in healthy marriages and their children do better on a host of outcomes. The evaluation study will determine the interim and long-term effectiveness of eight local programs by comparing outcomes on a range of measures for couples and children in the program group to a comparable group of couples randomly assigned to a control group.

Baseline information is collected from couples at the time they volunteer to participate in an SHM program. The baseline data collection provides information about the characteristics of the husband and wife and information about their attitudes and beliefs about their relationship at study entry.

This information will be used to inform the public, program operators and policymakers about the characteristics of married couples who volunteer for marriage education programs and, among other uses, it will be used to define and conduct analyses of key subgroups, addressing a key study question of who benefits most from this type of marriage education service.

Respondents: Low-income married couples.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response (in minutes)	Estimated annual burden hours
Eligibility Checklist	3126	1	5	260
Informed Consent Form	3126	1	10	521
Baseline Information Form	3126	1	9	469
Self-Administered Questionnaire	3126	1	11	573
Contact Information Sheet	3126	1	10	521
Estimated Annual Burden Hours				2344

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *OPREinfocollection@acf.hhs.gov.*

OMB Coment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: November 26, 2008.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. E8–28625 Filed 12–3–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Head Start Family and Child Experiences Survey (FACES).

OMB No.: 0970–0151.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is planning to collect data on a new cohort for the Head Start Family and Child Experiences Survey (FACES). FACESis a longitudinal study of a nationally representative sample of Head Start programs and children that will collect information for Head Start performance measures. Data for FACES will be collected annually through interviews with Head Start parents, teachers, program directors and other Head Start staff, as well as direct child assessments and observations of Head Start classrooms.

Information will be collected on a sample of approximately 3,500 children and families from 60 Head Start programs. The methods of data collection will include assessments of Head Start children, interviews with their parents, and ratings by their Head Start teachers. Site visitors will interview Head Start teachers in approximately 350 classrooms and make observations of the types and quality of classroom activities. Interviews will also be conducted with Head Start program directors and other staff. A follow-up for children in Kindergarten will include child assessments, parent interviews, and teacher questionnaires and child ratings.

Respondents: Parents of Head Start Children, Head Start Children, Head Start Teachers, Head Start Program Directors and Staff, and Kindergarten Teachers of former Head Start enrollees.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Estimated annual burden hours
Head Start Parent Interview	2,589	1	0.83	2,149
Head Start Child Assessment	2,589	1	0.75	1,942
Head Start Teacher Interview	300	1	0.83	249
Head Start Teacher Child Rating	300	8.6	0.25	645
Head Start Program Director Interview	20	1	0.25	5
Head Start Center Director Interview	40	1	0.75	30
Head Start Education Coordinator Interview	40	1	0.75	30
Kindergarten Parent Interview	771	1	0.75	578
Kindergarten Child Assessment	771	1	0.75	578
Kindergarten Teacher Questionnaire and Child Rating	643	1.2	0.50	386
Estimated Total Burden Hours				6,592

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Familiesis soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *OPREinfocollection@acf.hhs.gov.* All requests shouldbe identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarityof the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 28, 2008.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. E8–28655 Filed 12–3–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Building Strong Families (BSF) Demonstration and Evaluation—Impact Study Second Follow-up.

OMB No.: 0970–0304.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), anticipates continuing data collection for the 15-month follow-up surveys of the Building Strong Families (BSF) Demonstration and Evaluation. Data collection will continue for an additional 6 months beyond the current date of expiration (July 31, 2009).

This data collection is a part of the BSF evaluation, which is an important opportunity to learn if well-designed interventions can help low-income couples develop the knowledge and relationship skills that research has shown are associated with healthy marriages. The BSF evaluation uses an experimental design that randomly assigns couples who volunteer to participate in BSF programs to a program or control group.

Materials for the original 15-month data collection effort, previously submitted to OMB, covered impact and implementation data collections. Data collection for the impact study is complete. ACF anticipates collecting data for an additional 6 months in order to complete data collection for the entire sample of participants.

Respondents: Couples enrolled in the BSF evaluation, including program and control groups.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
15-month telephone survey (female partner)	1,434	1	.91	1,305
15-month telephone survey (male partner)	1,434	1	.83	1,190
Total Burden Hours				2,495

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@acfjov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 28, 2008.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. E8–28656 Filed 12–3–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Interstate Referral Guide (IRG).

OMB No.: 0970–0209.

Description: The purpose of the Intergovernmental Referral Guide (IRG) project is to provide States, Foreign Nations and Tribes with an effective and efficient way of viewing and updating their profiles with child support enforcement policies and procedures, and their address and location code information by consolidating data available through numerous discrete sources into a centralized, automated repository.

Respondents: State IV–D Child Support Programs, Foreign Nation Child Support Programs and Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
IRG State User Guide (Foreign Nations)	23	2	0.10	4.60
IRG Tribal User Guide	44	18	0.30	237.60
IRG State User Guide (States and Territories)	54	18	0.30	291.60

Estimated Total Annual Burden Hours: 533.80.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: December 1, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–28728 Filed 12–3–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0454]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Contact Substances Notification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 5, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to oira_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910–0495. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Contact Substances Notification System—(OMB Control Number 0910–0495—Extension)

Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the act

defines a ''food contact substance'' as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Section 409(h)(3) of the act requires that the notification process be used for authorizing the marketing of food contact substances except when: (1) FDA determines that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the act is necessary to provide adequate assurance of safety or (2) FDA and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the act requires that a notification include: (1) Information on the identity and the intended use of the food contact substance and (2) the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 of FDA's regulations (21 CFR 170.101 and 170.106) specify the information that a notification must contain and require that: (1) A food contact notification (FCN) include FDA Form 3480 entitled ''Notification for New Use of a Food Contact Substance'' and (2) a notification for a food contact substance formulation include FDA Form 3479 entitled ''Notification for a Food Contact Substance Formulation.'' These forms will serve to summarize pertinent information in the notification. FDA believes that these forms will facilitate both preparation and review of notifications because the forms will serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to: (1) Establish that the proposed use of an indirect food additive is safe and (2) secure the publication of an indirect food additive regulation in parts 175 through 178 (21 CFR parts 175 through 178). Parts 175 through 178 describe the conditions under which the additive may be safely used.

In addition, FDA's guidance document entitled ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations'' provides assistance to manufacturers of food packaging in evaluating processes for producing packaging from post-consumer recycled plastic. The recommendations in the guidance address the process by which manufacturers certify to FDA that their plastic products are safe for food contact.

Description of Respondents: Manufacturers of food contact substances.

In the **Federal Register** of August 27, 2008 (73 FR 50628), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.106 [2] (Category A)	FDA 3479	5	1	5	2	10
170.101 [3,7] (Category B)	FDA 3480	5	1	5	25	125
170.101 [4,7] (Category C)	FDA 3480	5	2	10	120	1,200
170.101 [5,7] (Category D)	FDA 3480	33	2	66	150	9,900
170.101 [6,7] (Category E)	FDA 3480	30	1	30	150	4,500
171.1 Indirect Food Additive Petitions		2	2	2	10,995	21,990
Guidance, ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations''		10	1	10	25	250
Total						37,975

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]Notifications for food contact substance formulations and food contact articles. These notifications require the submission of FDA Form 3479 (''Notification for a Food Contact Substance Formulation'') only.
[3]Duplicate notifications for uses of food contact substances.
[4]Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.
[5]Notifications for uses that are the subject of moderately complex food additive petitions.
[6]Notifications for uses that are the subject of very complex food additive petitions.
[7]These notifications require the submission of FDA Form 3480.

These estimates are based on FDA's experience with the food contact substances notification system. Based on input from industry sources, FDA estimates that approximately five respondents will submit one notification annually for food contact substance formulations (Form FDA 3479), for a total of five responses. FDA estimates the reporting burden to be 2.0 hours per response, for a total burden of 10 hours. FDA also has included five expected duplicate submissions in the second row of table 1 of this document. FDA expects that the burden for preparing these notifications primarily will consist of the manufacturer or supplier filling out FDA Form 3480, verifying that a previous notification is effective and preparing necessary documentation. Thus, FDA estimates that five respondents will submit one such submission annually, for a total of five responses. FDA estimates the reporting burden to be 25.0 hours per response, for a total burden of 125 hours.

Based on the submissions received, FDA identified three other tiers of FCNs that represent escalating levels of burden required to collect information (denoted as Categories C, D, and E in the third, fourth, and fifth rows of table 1 of this document). FDA estimated the median number of hours necessary for collecting information for each type of notification within each of the three tiers based on input from industry sources. FDA estimates that five respondents will submit two Category C submissions annually, for a total of 10 responses. FDA estimates the reporting burden to be 120 hours per response, for a total burden of 1,200 hours. FDA estimates that 33 respondents will submit 2 Category D submissions annually, for a total of 66 responses. FDA estimates the reporting burden to be 150 hours per response, for a total burden of 9,900 hours. FDA estimates that 30 respondents will submit 1 Category E submission annually, for a total of 30 responses.

FDA estimates the reporting burden to be 150 hours per response, for a total burden of 4,500 hours.

FDA estimates that two respondents will submit one indirect food additive petition under § 171.1, for a total of two responses. FDA estimates the reporting burden to be 10,995 hours per response, for a total burden of 21,990 hours.

FDA estimates that 10 respondents will utilize the recommendations in the guidance document entitled ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations,'' to develop the additional information for one such submission annually, for a total of 10 responses. FDA estimates the reporting burden to be 25 hours per response, for a total burden of 250 hours.

Dated: November 25, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–28694 Filed 12–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0607]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reclassification petitions for medical devices.

DATES: Submit written or electronic comments on the collection of information by February 2, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr.,Office Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reclassification Petitions for Medical Devices—21 CFR Section 860.123 (OMB Control Number 0910–0138)—Extension

FDA has responsibility under sections 513(e) and (f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(l)) and part 860 (21 CFR part 860), subpart C, to collect data and information contained in reclassification petitions. The reclassification provisions of the act allow any person to petition for reclassification of a device from any one of the three classes, i.e., I, II, and III, to another class. The reclassification content regulation (§ 860.123) requires the submission of sufficient, valid scientific evidence demonstrating that the proposed reclassification will provide a reasonable assurance of safety and effectiveness of the device type for its indications for use. Thus, the reclassification provisions of the act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device type or to seek reclassification from a lower to a higher class, thereby increasing the regulatory requirements. The reclassification petitions requesting classification from class III to class II or class I, if approved, provides an alternative route to the market in lieu of premarket approval for class III devices or from class I or II to one or the other class, which may increase requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
860.123	6	1	6	500	3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the last 3 years, and actual reclassification petitions received, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff that are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: November 25, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–28695 Filed 12–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0453]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations Under the Federal Import Milk Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 5, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0212. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations Under the Federal Import Milk Act—(OMB Control Number 0910–0212—Extension)

Under the Federal Import Milk Act (FIMA) (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit (21 U.S.C. 141). Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50° F (21 U.S.C. 142).

FDA's regulations in part 1210 (21 CFR part 1210) implement the provisions of FIMA. Sections 1210.11 and 1210.14 require reports on the sanitary conditions of, respectively, dairy farms and plants producing milk and/or cream to be shipped to the United States. Section 1210.12 requires reports on the physical examination of herds, while § 1210.13 requires the reporting of tuberculin testing of the herds. In addition, the regulations in part 1210 require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address (§ 1210.22). Section 1210.20 requires that an application for a permit to ship or transport milk or cream into the United States be made by the actual shipper. Section 1210.23 allows permits to be granted based on certificates from accredited officials.

In the **Federal Register** of August 25, 2008 (73 FR 50031), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1210.11	FDA 1996/Sanitary inspection of dairy farms	8	200	1,600	1.5	2,400
1210.12	FDA 1995/Physical examination of cows	1	1	1	0.5	0.5

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1210.13	FDA 1994/Tuberculin test	1	1	1	0.5	0.5
1210.14	FDA 1997/Sanitary inspections of plants	8	1	8	2.0	16.0
1210.20	FDA 1993/Application for permit	8	1	8	0.5	4.0
1210.23	FDA 1815/Permits granted on certificates	8	1	8	0.5	4.0
Total						2,425.0

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
1210.15	8	1	8	0.05	0.40

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of respondents and hours per response are based on FDA's experience with the import milk permit program and the average number of import milk permit holders over the past 3 years. FDA estimates that 8 respondents will submit approximately 200 Form FDA 1996 reports annually, for a total of 1,600 responses. FDA estimates the reporting burden to be 1.5 hours per response, for a total burden of 2,400 hours.

The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FDA 1994 and 1995. To date, Form FDA 1815 has been submitted in lieu of these forms. Because FDA has not received any Forms FDA 1994 and 1995 in the last 3 years, the agency estimates no more than one will be submitted annually. FDA estimates the reporting burden for each to be 0.5 hours per response for a total burden reporting burden of 0.5 hours each.

FDA estimates that eight respondents will submit one Form FDA 1997 report annually, for a total of eight responses. FDA estimates the reporting burden to be 2.0 hours per response, for a total burden of 16 hours. FDA estimates that eight respondents will submit one Form FDA 1993 report annually, for a total of eight responses. FDA estimates the reporting burden to be 0.5 hours per response, for a total burden of 4 hours. FDA estimates that eight respondents will submit one Form FDA 1815 report annually, for a total of eight responses. FDA estimates the reporting burden to be 0.5 hours per response, for a total burden of 4 hours.

With regard to records maintenance, FDA estimates that approximately eight recordkeepers will spend 0.05 hours annually maintaining the additional pasteurization records required by § 1210.15, for a total of 0.40 hours annually.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by FDA (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: November 25, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–28692 Filed 12–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1999–D–0128] (formerly Docket No. 1999D–2013)

Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics,'' dated November 2008. The guidance document provides information concerning cooperative manufacturing arrangements applicable to biological products subject to licensure under the U.S. Public Health Service Act (PHS Act). The guidance describes the licensing strategies for meeting the increased need for flexible manufacturing arrangements. The guidance announced in this notice finalizes the draft guidance of the same title.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and

Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, or the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210; or

David Cummings, Center for Drug Evaluation and Research (HFD–354), Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 21, rm. 3525, Silver Spring, MD 20993, 301–796–2400.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics'' dated November 2008. The guidance document provides information concerning the various cooperative manufacturing arrangements used in the production of biological products subject to licensure under section 351 of the PHS Act (42 U.S.C. 262). The guidance describes FDA's current thinking on licensing strategies for meeting the increased need for planning flexible manufacturing arrangements. Because cooperative manufacturing arrangements can take a considerable amount of time to develop, the guidance may also be useful for planning purposes in the early phases of product development. Several types of manufacturing arrangements discussed in the guidance include short supply arrangements, divided manufacturing arrangements, shared manufacturing arrangements, and contract manufacturing arrangements. The guidance supersedes ''FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics'' published in the **Federal Register** of November 25, 1992 (57 FR 55544).

In the **Federal Register** of August 3, 1999 (64 FR 42136), FDA announced the availability of the draft guidance of the same title dated August 1999. FDA received several comments on the draft guidance; those comments were considered as the guidance was finalized. In response to public comments, we clarified the document and reformatted it into plain language. In the **Federal Register** of July 23, 2007 (72 FR 40157), FDA published a 60-day notice requesting public comment on the information collections in the draft guidance of the same title dated July 2007, which revised the draft guidance dated August 1999. The guidance announced in this notice finalizes the draft guidance dated July 2007.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0629.

III. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.regulations.gov*.

Dated: November 24, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–28693 Filed 12–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0043]
[FDA No. 225–08–8006]

Memorandum of Understanding Between the Food and Drug Administration and WebMD, LLC

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA's Office of External Relations and WebMD, LLC. The purpose of the MOU is to extend the reach of FDA Consumer Health Information and to provide consumers with better information and timely content concerning public health and safety topics, including alerts of emerging safety issues and product recalls.

Specific elements of the MOU include the creation of an FDA/WebMD online resource on the WebMD.com site, which will feature editorial and visual FDA Consumer Health Information, and the inclusion of FDA Consumer Health Information in at least three issues per year of *WebMD The Magazine*.

An agency policy statement summarizing the criteria and processes for development of this type of collaboration is available on FDA's Web site at *www.fda.gov/consumer/co_brandpolicy.html*.

DATES: The agreement became effective October 10, 2008.

FOR FURTHER INFORMATION CONTACT: Jason Brodsky, Director, Consumer Health Information Staff, Office of External Relations (HFI–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6251

Nan Forte, Executive Vice President,

WebMD, LLC, 111 8th Ave., 7th floor, New York, NY 10011, 212–624–3821

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH & HUMAN SERVICES

FDA Record No. 225-08-8006

Food and Drug Administration
Rockville MD 20857

MEMORANDUM OF UNDERSTANDING
between
THE FOOD AND DRUG ADMINISTRATION
and
WEBMD, LLC

I. PURPOSE AND GOALS

This Memorandum of Understanding ("MOU") establishes a cooperative public education program between two entities (individually a Party -- collectively the Parties): The Food and Drug Administration (FDA), Office of External Relations (OER), Consumer Health Information Staff and WebMD, LLC.

The purpose of the cooperative program is to:

- extend the reach of FDA Consumer Health Information; and
- provide consumers with better information and timely content concerning public health and safety topics, including alerts of emerging safety issues and product recalls.

II. AUTHORITY

This MOU is authorized pursuant to section 903 of the Food, Drug and Cosmetic Act (21 USC 393(d)(2)).

III. BACKGROUND

The Parties have entered into this Agreement in mutual recognition of the need to empower consumers with health information they can apply in everyday life.

The FDA Web site currently receives approximately 6 million visitors per month, most of which are representatives of regulated industry. Within the agency's site, FDA Consumer Health Information receives approximately 130,000 page views per month. WebMD.com has more than 40 million unique users in a 30-day period. *WebMD the Magazine* is published six times per year and each issue reaches more than 7.8 million health-conscious consumers.

This non-exclusive agreement is consistent with FDA's guiding principles on leveraging practices, which are available online at http://www.fda.gov/oc/leveraging/principles.htm. This MOU also meets the requirements set forth in FDA's policy statement on co-branding of FDA Consumer Health Information, which is available online at www.fda.gov/consumer/cobrand_policy.html.

FDA and WebMD recognize that this partnership agreement is not intended, and may not be relied on, to create any right or benefit, substantive or procedural, enforceable by law by any party against the United States or against WebMD.

IV. PROGRAM COMPONENTS AND ACTIVITIES

The components and activities of the Program are expected to increase FDA's capacity to disseminate time-sensitive public health information and safety alerts and WebMD's ability to amplify Web-based dialogue amongst consumers on public health topics. The specifics elements of the Program will include:

- An FDA/WebMD online resource on the WebMD.com site (the "Program"), which will feature editorial and visual FDA Consumer Health Information. The parties will mutually agree to the type and exact items of content made available through the Program and on other parts of the Site. As a general matter, the Program will feature a minimum of 50 articles of FDA content and provide users with access to the agency's full catalog of Consumer Updates.

- Boxed and clearly identified FDA Consumer Health Information, either complementing a story or standing alone, in at least three issues per year of *WebMD The Magazine*. All published content will include the tagline, "Published as part of a U.S. Food and Drug Administration and WebMD partnership to promote public health" or another mutually agreed to tagline.

V. TERMS OF THE MOU

1. FDA Consumer Health Information must be easily distinguishable from non-FDA content within the Program. Placement of FDA Consumer Health Information within the Program should be clearly identified as such. Examples of clearly identifying FDA Consumer Health Information would be placing this information in a box and/or using a distinct color to distinguish it from non-FDA content, and/or otherwise clearly distinguishing the non-FDA content via an adequate disclaimer statement.

2. Printed and online Web pages containing FDA Consumer Health Information must be free of advertisements to avoid implying FDA's endorsement or support for a particular product, service or Web site.

3. This MOU does not grant exclusivity to either party. Neither party is restricted from participating in similar initiatives with other public or private agencies, organizations or individuals.

4. All activities within the scope of this Agreement must comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998 (see HHS policy on Section 508 compliance at http://www.hhs.gov/od/508policy/index.html); and Office of Management and Budget (OMB) policies for protecting private information (see www.usa.gov/webcontent/reqs_bestpractices/laws_regs/privacy.shtml).

5. FDA and WebMD will cooperate in maintenance of each party's trademarks and logos. The FDA will not permit use of its logo for marketing purposes other than to promote the Program. The use of FDA names or logos shall not imply any exclusive arrangement. Any use of FDA logos must be approved, in advance, by FDA's Consumer Health Information Staff and adhere to published FDA logo policies (see http://www.fda.gov/graphics/FDAlogos1999/).

6. Both parties agree that information FDA provides to WebMD shall be public domain material. FDA shall have full rights to reuse the content for all FDA purposes, and the right to share with other collaborators or requestors.

7. WebMD agrees to maintain current FDA Consumer Health Information within the Site and Program. FDA Consumer Health Information must be removed from the Program in the following circumstances: (1) within 3 years of the date of its first publication; (2) upon termination of this Agreement, if the partnership Agreement terminates less than 3 years after the material is posted; (3) upon FDA's request in circumstances in which the information becomes outdated; or (4) as soon as commercially practicable but no longer than 72 hours after receipt of a written request from FDA to remove the material, regardless of reason. WebMD's failure to display current FDA Consumer Health Information may result in the termination of this Agreement.

8. This Agreement does not and is not intended to transfer to either party any rights in any technology or intellectual property.

V. LINKS

FDA and WebMD will provide inbound and outbound links on FDA Consumer Health Information materials to and from the individual piece of content as well as the Program. Links to FDA Consumer Health Information Web site and the Program may also appear on other WebMD Web pages and sites, including but not limited to: Medscape, MedicineNet, eMedicine Health, RxList, and www.theheart.Org, as determined by WebMD.

FDA will not provide WebMD access to any document or information to the extent that providing such access would place the FDA in breach of the Trade Secrets Act, codified at 18 U.S.C. sec. 1905; the Privacy Act, codified at 5 U.S.C. sec. 552a; the Food, Drug, and Cosmetic Act, codified at 21 U.S.C. sec. 301, et seq (particularly 21 U.S.C. sec. 331(j)); FDA regulations (21 Code of Federal Regulations (CFR)); or any other Federal law or regulation.

VI. LIAISON OFFICERS

Jason Brodsky
Director, Consumer Health Information Staff
Office of External Relations
U.S. Food and Drug Administration
5600 Fishers Lane, Room 15A-29
Rockville, Maryland 20857
PHONE: 301-827-6251
E-mail: jason.brodsky@fda.hhs.gov

Nan Forte
Executive Vice President
WebMD, LLC
111 8th Avenue 7th Floor
New York, NY 10011
PHONE: 212-624-3821
E-mail: nforte@webmd.net

Each Party shall appoint a representative who shall act as the liaisons between such party and the other party's representative. A party may update its representative upon written notice to the other party.

VII. ASSESSMENT MECHANISMS

This MOU will be effective for one year from the date of signature by the later Party to sign it. At the end of that year, and annually thereafter, as long as the Agreement remains in force, the Parties will evaluate the effectiveness of the Agreement in meeting their goals and may amend the Agreement, continue it as written, or dissolve the Agreement by mutual consent. In addition, at any time, the Parties may modify or terminate the Agreement by mutual written consent, and either Party may terminate the Agreement at any time by means of a written notice of termination.

At least every two months, WebMD will provide gratuitously, and with no expectation of reimbursement, FDA statistical information concerning the number of users visiting the FDA/WebMD joint online resource and individual content items contained therein. The Parties agree that WebMD will provide information regarding usage of the Program to the FDA. This information will be jointly reviewed. The purpose of reviewing this information will be to evaluate the effectiveness of the collaboration and to make any necessary adjustments in approach, which may include termination of the partnership.

FDA Record No. 225-08-8006

VIII. NO COMMITMENT OF FUNDS
Nothing in this MOU shall be construed to obligate either party to make payments to the other.

IX. LIMITATIONS ON LIABILITY
IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY THEORY OF LIABILITY, HOWEVER ARISING, FOR ANY COSTS OF COVER OR FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT.
The provisions of this Section IX shall survive termination, cancellation or expiration of this MOU or any reason whatsoever.

X. SIGNATURES OF RESPONSIBLE PARTIES
By signing this agreement, the responsible parties agree to the terms and conditions of this MOU, and they further agree to adhere to FDA's policy statement on co-branding of FDA Consumer Health Information.

APPROVED AND ACCEPTED FOR WebMD, LLC

By: Eric A. Aledort
ERIC S ALEDORT

Title: SVP Business Partner Development

Date: October 1, 2008

APPROVED AND ACCEPTED FOR THE FOOD & DRUG ADMINISTRATION

By: Susan C Winckler
Susan C. Winckler

Title: Chief of Staff

Date: October 10, 2008

[FR Doc. E8–28690 Filed 12–3–08; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(cX4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Musculoskeletal Rehabilitation Sciences.

Date: December 9, 2008.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–496–8551, *holdenjo@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–28622 Filed 12–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

The purpose of the Services Subcommittee is to review the current state of services and supports for individuals with Autism Spectrum Disorder (ASD) and their families in order to improve these services. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 5 business days in advance of the meeting. The Subcommittee will report on its meeting at the February meeting of the IACC.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Services Subcommittee.

Date: December 10, 2008.

Time: 2 p.m. to 5:30 p.m. Eastern Time.

Agenda: To review public comments received in response to a completed Request for Information from Autism Spectrum Disorders (ASD) stakeholders about what they consider to be high-priority issues and concerns surrounding services and supports for children, youth, and adults with ASD.

Place:

In Person: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 7,Bethesda, MD 20892.

Webinar: *https://www1.gotomeeting.com/register/563207085*. To Access the Conference Call: Dial: 888–455–2920, Access code: 3857872.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8204a, Bethesda, MD 20892–9669, 301–443–6040, *IACCPublicInquiries@mail.nih.gov*.

Please Note: The meeting will be open to the public with limited seating. In addition, the public can access the meeting through a conference call phone number and a Web presentation tool on the Internet. Individuals who participate using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 5 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. There may be an opportunity for members of the public to submit written comments during the Subcommittee meeting through the Web presentation tool. Submitted comments will be reviewed after the meeting. If you experience any technical problems with the Web presentation tool, please contact GoToWebinar at (800) 263–6317.

To access the Web presentation tool on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

This notice is being published less than 15 days prior to the meeting due to the urgency to review the public comments received in response to a completed Request for Information from Autism Spectrum Disorders stakeholders.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov*.

Dated: November 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–28743 Filed 12–3–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, December 9, 2008, 8:30 a.m. to 3:55 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, which was published in the **Federal Register** on November 24, 2008 73 FR 71015.

This notice is amended to change the start time of the open session on December 9, 2008 to approximately 11:15 a.m. and the end time to 3:30 p.m. The closed session will be held from 3:30 p.m. to 3:55 p.m.

Dated: November 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–28727 Filed 12–3–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Minority Biomedical Research Support.

Date: December 19, 2008.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, 45 Center Drive, Natcher Building, Room 3AN12, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lisa Dunbar, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–28729 Filed 12–3–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 5 business days in advance of the meeting. The public can also access the meeting through a conference call phone number and a Web presentation on the Internet.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Date: December 12, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: To review and make decisions about the IACC Strategic Plan for Autism Spectrum Disorder (ASD) Research.

Place: In Person: National Institutes of Health, Neuroscience Center, Conference Room A, 6001 Executive Boulevard, Rockville, MD 20892. Webinar: *https://www1.gotomeeting.com/register/446892042.*

Conference Call: USA/Canada Phone Number: 888–455–2920; International Phone Number: 212–287–1838; Access Number: 3857872.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9669, (301) 443–6040, *IACCpublicinquiries@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of the oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Members of the public who wish to participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the Web presentation tool, please contact GoToWebinar at 800–263–6317.

To access the Web presentation tool on the Internet, the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

This meeting is being published less than 15 days prior to the meeting due to the urgency to complete the review of the IACC Strategic Plan.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–28731 Filed 12–3–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Brain Tumor SEP.

Date: December 11, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Neuroaids SEP.

Date: December 17, 2008.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard,Rockville, MD 20852,(Telephone Conference Call).

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch,Division of Extramural Research,NINDS/NIH/DHHS/Neuroscience Center,6001 Executive Blvd., Suite 3208, Msc9529,Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to NeurologicalDisorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–28745 Filed 12–3–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: February 4–5, 2009.

Closed: February 4, 2009, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: February 5, 2009, 9 a.m. to 3:30 p.m.

Agenda: Program reports and presentations.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, PhD, Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2085, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, AlcoholResearch Career Development Awards for Scientists and Clinicians; 93.272,Alcohol National Research Service Awards for Research Training; 93.273,Alcohol Research Programs; 93.891, Alcohol Research Center Grants, NationalInstitutes of Health, HHS)

Dated: November 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–28746 Filed 12–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Revision of a currently approved collection, OMB Number: 1660–0070, FEMA Form 75–100.

SUMMARY: The Federal Emergency Management Agency, 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 a revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the use of a form to collect data for the development and continuation of the National Fire Department Census database.

SUPPLEMENTARY INFORMATION: Public Law 93–498 provides for the gathering and analyzing of data as deemed useful and applicable for fire departments. The U.S. Fire Administration (USFA) receives many requests from fire service organizations and the general public for information related to fire departments, including total number of departments, number of stations per department, population protected, and number of firefighters. The USFA also has a need for this information to guide programmatic decisions, and produce mailing lists for USFA publications. Recommendations for the creation of the fire department database came out of a Blue Ribbon Panel's review of the USFA. The report included a review of the structure, mission and funding of the USFA, future policies, programmatic needs, course development and delivery, and the role of the USFA to reflect changes in the fire service. As a result of those recommendations, the USFA is working to identify all fire departments in the United States to develop a database that will include information related to demographics, capabilities, and activities of fire departments Nationwide. In the first year of this effort, information was collected from 16,000 fire departments. Since the first year of the collection, an additional 10,000 departments have registered.

Collection of Information

Title: National Fire Department Census.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0070.

Form Numbers: FEMA Form 75–100, National Fire Department Census.

Abstract: This collection seeks to identify fire departments in the U.S. to compile a database related to demographics, capabilities, and activities. The database will be used to guide programmatic decisions and provide information to the public.

Affected Public: Federal Government, State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 1,667 burden hours.

Annual Hour Burden

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local, or Tribal	FF 75–100	528	1	25 minutes (.4167 hours)	220.02	$21.22	$4,668.82
State, Local, or Tribal (volunteers).	FF 75–100	3472	1	25 minutes (.4167 hours)	1,446.78	0	0
Total		4,000			1,667		$4,668.82

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $4,668.82. The estimated annual cost to the Federal Government is $65,550.00.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before February 2, 2009.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Gayle Kelch, Statistician, United States Fire Administration, National Fire Data Center, (301) 447–1154 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Lawann B. Johnson,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–28689 Filed 12–3–08; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing InformationCollection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Exemption from NSEERS Registration Requirements (File No. OMB–40); OMB Control No. 1653–0035.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), 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 February 2, 2009.

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), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until February 2, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the 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 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 currently approved information collection.

(2) *Title of the Form/Collection:* Exemption from NSEERS Registration Requirements.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–40), U.S. Immigration and Customs Enforcement.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or Households. This information collection allows an alien to seek an exemption from the NSEERS registration requirements by submitting a letter to the Department of Homeland Security, U.S. Immigration and Customs Enforcement containing specific information.

(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 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,900 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Joseph M. Gerhart, Chief, Records Management

Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Dated: December 1, 2008.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement,Department of Homeland Security.

[FR Doc. E8–28751 Filed 12–3–08; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form G–79A, Information Relating to Beneficiary of Private Bill; OMB Control No. 1653–0026.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), 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 February 2, 2009.

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), Joe Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until February 2, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the 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 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 currently approved information collection.

(2) *Title of the Form/Collection:* Information Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–79A, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. The information is needed to report on Private Bills to Congress when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 1 hour (60 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Dated: December 1, 2008.

Joseph M. Gerhart,

Chief, Records Management Branch,U.S. Immigration and Customs Enforcement,Department of Homeland Security.

[FR Doc. E8–28764 Filed 12–3–08; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0250; 40136–1265–0000–S3]

Currituck National Wildlife Refuge, Currituck County, NC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for Currituck National Wildlife Refuge (NWR).

ADDRESSES: A copy of the CCP may be obtained by writing to: Mike Hoff, Refuge Manager, Mackay Island National Wildlife Refuge, P.O. Box 39, Knotts Island, NC 27950. The CCP may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning/.*

FOR FURTHER INFORMATION CONTACT: Mike Hoff; Telephone: 252/429–3100; Fax: 252/429–3185.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Currituck NWR. We started this process through a notice in the **Federal Register** on November 3, 2000 (65 FR 66256).

Currituck NWR, in northeastern North Carolina, consists of 4,570 acres of fee simple land and 3,931 acres of conservation easements. Of the fee simple land, 2,202 acres are brackish marsh, 778 acres are brackish shrub, 637 acres are maritime forest, 202 acres are dune, and 143 acres are managed wetlands (impoundments). Currituck NWR was established in 1984 to conserve and protect the coastal barrier island ecosystem. These refuge lands are managed to provide wintering habitat for waterfowl, shorebirds, wading birds, marsh birds, and neotropical migratory songbirds, as well as to protect threatened and endangered species, such as piping plovers, sea turtles, and the sea beach amaranth.

We announce our decision and the availability of the final CCP and FONSI for Currituck NWR in accordance with the National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the

Draft CCP/EA. The CCP will guide us in managing and administering Currituck NWR for the next 15 years. Alternative 2 is the foundation for the CCP.

The compatibility determinations for recreational hunting, fishing, wildlife observation, wildlife photography, environmental education and interpretation, and trapping of selected furbearers for nuisance animal management are also available in the CCP.

Background

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan 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 our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Comments

Approximately 100 copies of the Draft CCP/EA were made available for a 30-day public review period as announced in the **Federal Register** on February 9, 2006 (71 FR 6786). Eleven comments on the Draft CCP/EA were received. The Draft CCP/EA identified and evaluated three alternatives for managing the refuge over a 15-year period.

Selected Alternative

After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative 2 for implementation. The preferred alternative will result in moderate program increases. All habitats on the refuge, including water levels of the impoundments and the vegetation, will be managed very intensively for migrating waterfowl. The staff will monitor vegetation in the marshes before and after prescribed burns and inventory vegetation in the maritime swamp forest. The refuge will continue to allow the priority public uses (e.g., hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation) and will have the capacity to increase the number of opportunities for public use.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: September 29, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–28705 Filed 12–3–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The human remains and associated funerary objects were removed from Montezuma County, CO, and San Juan County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1898, human remains representing a minimum of one individual were removed from ''cliff house,'' Mesa Verde, Montezuma, CO, by Warren King Moorehead for Robert S. Peabody. No known individual was identified. The one associated funerary object is the cotton cloth in which the mummified infant is wrapped.

''Cliff house'' may be Cliff Palace or it may be one of several unidentifiable structures excavated by Moorehead. Occupation dates for Mesa Verde are A.D. 600 to A.D. 1300. Based on Moorehead's description and the cotton wrapping, the human remains fall within these dates. The Mesa Verde area was the center of important cultural developments archeologically classified as Pueblo I-III periods, during which people established aggregated agricultural villages with distinctive architecture, ceramics, and ceremonial practices.

In 1897, human remains representing a minimum of one individual were removed from Pueblo Bonito, Chaco Group, San Juan County, NM, by Warren King Moorehead for Robert S. Peabody. No known individual was identified. The one associated funerary object is a reed mat.

In 1897, human remains representing a minimum of two individuals were removed from Pueblo Bonito, Chaco Group, San Juan County, NM, by Warren King Moorehead for Robert S. Peabody. No known individuals were identified. No associated funerary objects are present.

In 1897, five associated funerary objects were removed from Pueblo Bonito, Chaco Group, San Juan County, NM, by Warren King Moorehead for Robert S. Peabody. The human remains are held by the Peabody Museum of Archaeology and Ethnology at Harvard University, Cambridge, MA, which is a separate institution from the Robert S. Peabody Museum of Archaeology. The five associated funerary objects are one wood mat, one feathered robe, and three ceramic pitchers.

Pueblo Bonito is the largest and most famous site in Chaco Canyon, and among the most well documented of the 12 Ancestral Puebloan ''great houses'' located there. As an architectural type, it shares with the others multiple stories, core-and-veneer masonry

construction, and larger rooms and subterranean kivas than found in preceding periods. Pueblo Bonito's planned D-shaped structure was five stories high along its back wall and may have had 800 rooms. It was built in three major episodes beginning around A.D. 919 and ending about A.D. 1140. At its peak in the late 10th century as many as 600 rooms may have been in use.

In 1897, human remains representing a minimum of one individual were removed from a ''Graveyard'' near Chaco Group, San Juan County, NM, by Warren King Moorehead for Robert S. Peabody. No known individual was identified. No associated funerary objects are present.

This site is a small ''cemetery'' about a mile from Pueblo Bonito. Archeological evidence indicates that Puebloan people were in Chaco Canyon since at least the Basketmaker period (circa A.D. 1). A survey of the Chaco area has identified what archeologists refer to as Pueblo I sites that date from A.D. 700 to 900. Pueblo Bonito was built and occupied during later Pueblo II and III, a period of time lasting from approximately A.D. 900 to 1200.

Robert S. Peabody's collection became the basis for the Robert S. Peabody Museum of Archaeology at its founding in 1901. Peabody hired Moorehead to excavate Chaco Canyon and Mesa Verde. The items Moorehead collected were added to Peabody's already existing collection. The oral tradition evidence describes dynamic population movements from Mesa Verde around A.D. 1300. It also describes migration and trade routes at the time of occupation. The archeological literature refers to this widespread cultural tradition as ''Anasazi,'' ''Ancestral Puebloan,'' or ''Ancient Puebloan.'' After approximately A.D. 1300, climatic changes evidently caused the populations to leave the Four Corners region, and resettle in Pueblos along the Rio Grande and in the Pueblos of Acoma, Zuni, and Hopi. Pueblo oral tradition places Chaco Canyon, including Pueblo Bonito, on migration routes. Songs and stories include Chaco as a place of occupation, trade, and migration. Based on scientific evidence, the establishment of trading networks with neighboring areas during the preliminary stages of Pueblo II at Pueblo Bonito is indicated by decorated ceramics from sources to the south and corrugated utility wares that originated to the west (Cordell 1979:149). These relationships expanded during Pueblo III and resulted in a cultural florescence typified by the construction of great kivas, a system of trails and roads connecting the site to a network of others, and a complex irrigation system. Diagnostic ceramics in the museum's Moorehead collection are Pueblo II and III types tentatively identified as Red Mesa Black-on-white (A.D. 875–1000), Gallup Black-on-white (A.D. 1000–1100), Chaco Black-on-white (A.D. 1075–1130), and Mesa Verde Black-on-white (A.D. 1140–1225).

After about A.D. 1200, the entire Chaco area, including Pueblo Bonito, went into a decline that roughly corresponds to population growth occurring in regions to the east and south. Continuities in architecture, ceramics, agricultural practices, food-processing technology, and rituals from Chaco Canyon's prehistoric settlements to the present-day Pueblos and Hopi Tribe bolster claims of cultural affiliation by these communities. Anthropological research corroborated during consultation indicates that many Puebloan peoples have additional bases for claiming cultural affiliation with the ancient residents of Chaco Canyon due to clan migrations, intermarriage, and the regrouping of communities over time.

Navajo Nation oral history, which includes stories, songs and prayers, supports a relationship with Mesa Verde and Chaco Canyon, but there is not a preponderance of evidence to support a relationship of shared group identity to the human remains described in this notice.

Based on oral history, architecture, archeological, anthropological, consultation evidence, and scientific evidence, a relationship of shared group identity can be reasonably traced between the human remains from Mesa Verde, Pueblo Bonito, and the ''Graveyard'' near Chaco group and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the seven objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Malinda Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, 175 Main Street, Andover, MA 01810, telephone (978) 749–4493, before January 5, 2009. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New

Mexico may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: November 6, 2008

Sherry Hutt.

Manager, National NAGPRA Program.

[FR Doc. E8–28696 Filed 12–3–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Michigan Department of Natural Resources, Mackinac State Historic Parks, Mackinaw City, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Michigan Department of Natural Resources, Mackinac State Historic Parks, Mackinaw City, MI. The human remains and associated funerary objects were removed from Emmet and Mackinac Counties, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Mackinac State Historic Parks professional staff in consultation with representatives from the Bay Mills Indian Community, Michigan; Grand Traverse Bay Band of Ottawa and Chippewa Indians, Michigan; Little Traverse Bay Band of Odawa, Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and the Michigan Anishnaabek Cultural Preservation and Repatriation Alliance (MACPRA), a non-Federally recognized Indian group.

In 1966, human remains representing a minimum of one individual were excavated from Fort Michilimackinac, Mackinaw City in Emmet County, MI, by Dr. Lyle Stone, archeologist, during excavations to locate Fort Michilimackinac. The human remains were placed into the parks' collection at that time (Accn. ι MS2.3438). No known individual was identified. No associated funerary objects are present.

In 1973, human remains representing a minimum of one individual were excavated from the Fort Michilimackinac suburbs, Mackinaw City in Emmet County, MI, by W.L. Minnerly, archeologist, during excavations in preparation for construction done by the state park. The human remains were placed into the parks'collection at that time (Accn. ι F.533). No known individual was identified. The 15 associated funerary objects are 12 white seed beads, 2 glass French trade beads, and 1 kaolin pipestem fragment.

In 1981, human remains representing a minimum of five individuals were recovered from Arch Rock on Mackinac Island in Mackinac County, MI, by a park visitor who notified the state park. Dr. Roger Grange, archeologist, investigated and determined that the location was a Native American rock-shelter burial. The human remains were placed into the parks' collection at that time. No known individuals were identified. No associated funerary objects are present.

In 1994, human remains representing a minimum of one individual were excavated at the Island House Hotel on Mackinac Island in Mackinac County, MI, by Richard Clute, contractual archeologist, during excavations to construct a hotel pool. The human remains were transferred to the park and were placed into the collection. No known individual was identified. No associated funerary objects are present.

The area of Emmet and Mackinac Counties, encompassing the Straits of Mackinac, are situated at the top of Michigan's lower peninsula (Emmet County) and lower southeast corner of Michigan's upper peninsula (Mackinac County). Within the boundaries of Mackinac County, Mackinac Island is situated in northern Lake Huron. This area has a long established history of Native American occupation before European encroachment in the early 17th century. The Anishnaabek, which is comprised of the Odawa/Ottawa, Ojibwe/Chippewa and Potawatomi, have long called this area home. Officials of the Mackinac State Historic Parks have reasonably determined that the individuals described above from Emmet and Mackinac Counties are Native American, however, officials of the Mackinac State Historic Parks have determined that the evidence is insufficient to determine cultural affiliation to any present-day Indian tribe.

Officials of the Mackinac State Historic Parks have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the Mackinac State Historic Parks also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 15 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Mackinac State Historic Parks have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In May 2008, Mackinac State Historic Parks requested that the Review Committee recommend disposition of eight culturally unidentifiable human remains to the Bay Mills Indian Community, Michigan; Little Traverse Bay Band of Odawa, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan, as the aboriginal occupants of the lands encompassing the present-day Emmet and Mackinac Counties, MI.

The Review Committee considered the proposal at its May 15–16, 2008 meeting and recommended disposition of the human remains to the Bay Mills Indian Community, Michigan; Little Traverse Bay Band of Odawa, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan. A July 18, 2008

letter on behalf of the Secretary of Interior from the Designated Federal Official, transmitted the authorization for the state park to effect disposition of the human remains and associated funerary objects of the culturally unidentifiable individuals to the three Indian tribes listed above contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Brian Jaeschke, Registrar, Mackinac State Historic Parks, P.O. Box 873, Mackinaw City, MI 40701, telephone (231) 436–4100, fax (231) 436–4210, before January 5, 2009. Disposition of the human remains and associated funerary objects to the Bay Mills Indian Community, Michigan; Little Traverse Bay Band of Odawa, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan may proceed after that date if no additional claimants come forward.

Mackinac State Historic Parks is responsible for notifying the Bay Mills Indian Community, Michigan; Grand Traverse Bay Band of Ottawa and Chippewa Indians, Michigan; Little Traverse Bay Band of Odawa, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and the Michigan Anishnaabek Cultural Preservation and Repatriation Alliance (MACPRA), a non-Federally recognized Indian group, that this notice has been published.

Dated: October 21, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–28697 Filed 12–3–08; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–656]

In the Matter of Certain Integrated Circuits and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 7) granting the joint motion to terminate the captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on September 18, 2008, based on a complaint filed by Freescale Semiconductor, Inc., of Austin, Texas (''Freescale''). 73 FR 54164 (September 18, 2008). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits or products containing the same that infringe one or more of claims of U.S. Patent Nos. 5,467,455; 5,776,798; and 6,473,349. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named LSI Corporation of Milpitas, California (''LSI''), as the sole respondent.

On October 27, 2008, Freescale and LSI jointly moved to terminate the investigation on the basis of a settlement agreement. On November 6, 2008, the Commission investigative attorney filed a response supporting the motion.

On November 10, 2008, the ALJ issued the subject ID granting the joint motion to terminate the investigation based on the settlement agreement. The ALJ found that the motion complied with the requirements of Commission Rule 210.21 (19 CFR 210.21). The ALJ also concluded that, pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)), there is no evidence that termination of this investigation will prejudice the public interest. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: November 29, 2008.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8–28698 Filed 12–3–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–456 and 731–TA–1151–1152 (Final)]

Citric Acid and Certain Citrate Salts From Canada and China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–456 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731–TA–1151–1152 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from China and less-than-fair-value imports from Canada and China of citric acid and certain citrate salts, provided for in subheadings 2918.14.00, 2918.15.10, 2918.15.50, and 3824.90.92 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of these investigations, the Department of Commerce hasdefined the subject merchandise as ''all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this investigation also includes all forms of crude calcium citrate,

Continued

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* November 20, 2008.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of citric acid and certain citric salts, and that imports from Canada and China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on April 14, 2008, by Archer Daniels Midland Co., Decatur, IL; Cargill, Inc., Wayzata, MN; and Tate & Lyle Americas, Inc., Decatur, IL.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 24, 2009, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on April 7, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 30, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 1, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 31, 2009. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 15, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before April 15, 2009. On May 1, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 5, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in

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including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this investigation does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2%, by weight, of the product. The scope of this investigation includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.''

II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: December 1, 2008.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8–28730 Filed 12–3–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–034]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 12, 2008 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–459 and 731–TA–1155 (Preliminary) (Commodity Matchbooks from India)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before December 15, 2008; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 22, 2008.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 1, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–28796 Filed 12–3–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., Wednesday, December 3, 2008.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of August 2008 Quarterly Business Meeting.
2. Reports from the Chairman, Commissioners, Chief of Staff, and Section Administrators.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Date: November 26, 2008.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. E8–28669 Filed 12–3–08; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

Information Collection Request for the ETA 9128, Reemployment and Eligibility Assessments Workloads Report, and the ETA 9129, Reemployment and Eligibility Assessments Outcomes Report: Extension Without Change, Comment Request

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 2, 2009.

ADDRESSES: Send comments to Diane Wood, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4531, Washington, DC 20210, telephone number (202) 693–3212 (this is not a toll-free number) or by e-mail at *wood.diane@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background: Funds were awarded to participating states in fiscal year 2008 to continue the Reemployment and Eligibility Assessment (REA) initiative. The REA guidelines require that these funds be used to conduct in-person assessments in the One-Stop Career Centers. The REA must include an unemployment insurance (UI) continued eligibility review, the provision of labor market information, development of a work-search plan and referral to reemployment services and/or training, as appropriate. The guidelines require that participation exclude those claimants who have a specific return-to-work date or who secure employment solely through a union hiring hall.

II. Desired Focus of Comments: Currently, the Employment and Training Administration is soliciting comments on extending the collection of the ETA 9128, Reemployment and Eligibility Assessments Workloads Report and the ETA 9129, Reemployment and Eligibility Assessments Outcomes Report. Comments are requested to:

• Evaluate whether the proposed collection of information is necessary to assess performance of the REA initiative, including whether the information has practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The continued collection of the information contained on the ETA 9128 and the ETA 9129 reports is necessary to enable the Office of Workforce Security (OWS) to continue evaluating the effectiveness of this initiative through workload and outcomes reports.

Type of Review: Extension without change.

Agency: Employment and Training Administration (ETA).

Title: Reemployment and Eligibility Assessments Workloads Report and Reemployment and Eligibility Assessments Outcomes Report.

OMB Number: 1205–0456.

Agency Number: ETA 9128 and ETA 9129.

Affected Public: State and Local Governments.

Total Respondents: 53 potentially—In fiscal year 2009, 18 State Workforce Agencies are participating in the REA initiative. Additional states are expected to participate if funds are appropriated.

Frequency: Quarterly.

Total Responses: 72.

Average Time per Response: .5 hours.

Estimated Total Burden Hours: 36 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 12, 2008.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E8–28708 Filed 12–3–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Information Collection Request for Unemployment Insurance (UI) Trust Fund Activities Reports: Extension Without Change, Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 2, 2009.

ADDRESSES: Send comments to Joe Williams, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–2928 (this is not a toll-free number) or by e-mail: *Williams.joseph@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: Section 303(a)(4) of the Social Security Act (SSA) and Section 3304(a)(3) of the Federal Unemployment Tax Act (FUTA) require that all monies received in the unemployment fund of a state be paid immediately to the Secretary of Treasury to the credit of the Unemployment Trust Fund (UTF). This is the ''immediate deposit'' standard.

Section 303(a)(5) of the SSA and Section 3304(a)(4) of the FUTA require that all monies withdrawn from the UTF be used solely for the payment of unemployment compensation, exclusive of the expenses of administration. This is the ''limited withdrawal'' standard.

Federal law (Section 303(a)(6) of the SSA) gives the Secretary of Labor the authority to require the reporting of information deemed necessary to assure state compliance with the provisions of the SSA.

Under this authority, the Secretary of Labor requires the following reports to monitor state compliance with the immediate deposit and limited withdrawal standards:

ETA 2112: UI Financial Transactions Summary, Unemployment Fund;

ETA 8401: Monthly Analysis of Benefit Payment Account;

ETA 8405: Monthly Analysis of Clearing Account;

ETA 8413: Income—Expense Analysis UC Fund, Benefit Payment Account;

ETA 8414: Income—Expense Analysis UC Fund, Clearing Account;

ETA 8403: Summary of Financial Transactions—Title IX Funds.

These reports are submitted to the Office of Workforce Security (OWS) within the Employment and Training Administration which uses them to:

• Monitor cash flows into and out of the UTF to determine state compliance with the immediate deposit and limited withdrawal standards.

• Assure proper accounting for unemployment funds, an integral part of preparing the Department's consolidated financial statements, required by the Chief Financial Officer Act of 1990. The UTF is the single largest asset and liability on the statements.

• Reconcile the Department's records with the U.S. Treasury records.

• Develop UI research and actuarial reports, especially to monitor the solvency of the UTF.

The Department seeks renewal of this collection since the reports are essential to the Department's financial statements and program oversight responsibilities.

II. Desired Focus of Comments: Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of these reports. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: The continued collection of these financial data are necessary for the purposes of monitoring and evaluating state financial transactions for proper oversight and administration of the UI system.

Type of Review: Extension without change.

Agency: Employment and Training Administration (ETA).

Title: Unemployment Insurance Trust Fund Activities Reports.

OMB Number: 1205–0154.

Agency Number: ETA 2112, 8401, 8405, 8413, 8414, 8403.

Affected Public: State Workforce Agencies.

Total Respondents: 53.

Frequency: ETA 2112, 8401, 8405, 8413, 8414: Monthly.

Total Responses: 53 states × 12 months = 636 responses.

Average Time per Response: The ETA 2112, 8401, 8405, 8413, 8414 are all submitted on a monthly basis. We estimate the state burden to be: 636 total responses × 2.5 hours for all 5 reports (.5 hours for each report) = 1,590 hours. The ETA 8403 is submitted only when there is activity requiring update of the state's Reed Act account. We estimate the state burden to be: 53 states × 6 annual responses × 30 minutes per response = 159 reporting hours.

Estimated Total Burden Hours: 1,749 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 12, 2008.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E8–28709 Filed 12–3–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Oregon

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB Program for Oregon.

The following change has occurred since the publication of the last notice regarding the State's EB status:

• Based on data reported by the Bureau of Labor Statistics on November 21, 2008, Oregon's 3-month seasonally adjusted total unemployment rate rose to the 6.5 percent threshold and exceeded 110 percent of the corresponding rate in the prior year. This causes Oregon to be triggered ''on'' to an EB period beginning December 07, 2008.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov*.

Signed in Washington, DC, this 28th day of November, 2008.

Brent R. Orrell,

Deputy Assistant Secretary of Labor for Employment and Training.

[FR Doc. E8–28702 Filed 12–3–08; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 5, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records

Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–08–1, 1 item, 1 temporary item). Records of the Division of Global Migration and Quarantine, including passenger manifests and customs declarations containing flight information on travelers.

2. Department of Homeland Security, Headquarters Offices (N1–563–08–6, 4 items, 2 temporary items). Working papers of mission-related agency committees and inter-agency committees for which the Department serves as lead. Proposed for permanent retention are records documenting the committee's establishment, organization, membership, meetings, and actions.

3. Department of Homeland Security, Federal Emergency Management Agency (N1–311–09–1, 1 item, 1 temporary item). Master files associated with an electronic information system used to record, track, and search for the location of displaced or separated individuals after a major disaster. Records associated with a catastrophic disaster are scheduled separately as permanent.

4. Department of Justice, Civil Rights Division (N1–60–09–3, 1 item, 1 temporary item). Master files for an electronic information system that contains demographic information on individuals who call employment discrimination hotlines.

5. Department of Justice, National Drug Intelligence Center (N1–523–08–3, 2 items, 2 temporary items). Records relating to the agency's emergency management and security programs, including agency compliance with regulations issued at the departmental level.

6. Department of Justice, Federal Bureau of Prisons (N1–129–09–6, 1 item, 1 temporary item). Web content and administrative records for the Federal Prison Industries intranet.

7. Department of Justice, Federal Bureau of Prisons (N1–129–09–7, 1 item, 1 temporary item). Inmate case files for individuals convicted and held at Federal penal and correctional institutions. This schedule covers inmate case files previously scheduled as temporary and does not cover inmate case files previously scheduled as permanent such as notorious offenders and Alcatraz inmate case files.

8. Department of Justice, Federal Bureau of Prisons (N1–129–09–8, 1 item, 1 temporary item). Web content and administrative records for the National Institute of Corrections public Web site.

9. Department of Justice, Federal Bureau of Prisons (N1–129–09–9, 2 items, 2 temporary items). Inputs and data from an electronic information system used to track program and institution reviews and inspections.

10. Department of Justice, Federal Bureau of Prisons (N1–129–09–10, 1 item, 1 temporary item). Web content and administrative records for the National Institute of Corrections intranet.

11. Department of the Navy, United States Marine Corps (N1–127–08–3, 1 item, 1 temporary item). Master files of an electronic information system used in the management of military family housing. Records relate to such matters as assignments, referrals, fund control, and maintenance planning.

12. Department of the Navy, United States Marine Corps (N1–127–08–4, 3 items, 3 temporary items). Records relating to the management of training ranges and other training facilities, including master files of an electronic information system.

13. Social Security Administration, Office of Disability Adjudication and Review (N1–47–09–1, 3 items, 3 temporary items). Records relating to the investigation of misconduct and bias complaints made against administrative law judges.

Dated: November 26, 2008.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E8–28799 Filed 12–3–08; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board

AGENCY: National Institute for Literacy.

ACTION: Notice of a Closed Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming closed teleconference meeting of the National Institute for Literacy Advisory Board. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is

intended to notify the public of its opportunity to attend.

DATES: December 22, 2008.

Time: Closed teleconference meeting 8:30 a.m. to 4 p.m.

ADDRESSES: The National Institute for Literacy, 1775 I St., NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Steve Langley, Staff Assistant, the National Institute for Literacy; 1775 I St., NW., Suite 730; phone: (202) 233–2025; fax: (202) 233–2050; e-mail: *slangley@nifl.gov*.

SUPPLEMENTARY INFORMATION: The National Institute for Literacy Advisory Board is authorized by section 242 of the Workforce Investment Act of 1998, Public Law 105–220 (20 U.S.C. 9252). The Board consists of 10 individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The purpose of this meeting is to interview candidates for the position of Director. The discussion is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Request for Public Written Comment. The public may send written comments to the Advisory Board no later than 5 p.m. on December 18, 2008, to Steve Langley at the National Institute for Literacy, 1775 I St., NW., Suite 730, Washington, DC 20006, e-mail: *slangley@nifl.gov*.

Records are kept of all Committee proceedings and are available for public inspection at the National Institute for Literacy, 1775 I St., NW., Suite 730, Washington, DC 20006, from the hours of 9 a.m. to 5 p.m., Eastern Time Monday through Friday.

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/federegister*.

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/nara/index.html*.

Dated: December 1, 2008.

Daniel Miller,

Acting Director, The National Institute for Literacy.

[FR Doc. E8–28719 Filed 12–3–08; 8:45 am]

BILLING CODE 6055–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0607]

Commonwealth of Virginia: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Virginia

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the Commonwealth of Virginia.

SUMMARY: By letter dated June 12, 2008, Governor Timothy M. Kaine of Virginia requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the Commonwealth of Virginia (Commonwealth or Virginia) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and the Commonwealth would assume, portions of the Commission's regulatory authority exercised within the Commonwealth. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the Commonwealth's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Commonwealth's program, and the Commonwealth's program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in the Commonwealth from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires December 22, 2008. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Members of the public are invited and encouraged to submit comments electronically to *http://www.regulations.gov.* Search on Docket ID: [NRC–2008–0607] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Virginia including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room—

ADAMS Accession Numbers: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624, ML082470314, and ML083180102.

FOR FURTHER INFORMATION CONTACT: Ms. Monica L. Orendi, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–3938 or e-mail to *monica.orendi@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 35 States. The Agreement States currently regulate approximately 18,000 Agreement material licenses, while the NRC regulates approximately 4,000 licenses. Under the proposed Agreement, approximately 400 NRC licenses will transfer to the Commonwealth. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated June 12, 2008, Governor Kaine certified that the Commonwealth of Virginia has a program for the control of radiation hazards that is adequate to protect public health and safety within Virginia for the materials and activities specified in the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the Commonwealth requests authority over are:

(1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;

(4) The possession and use of source materials; and

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass.

The materials and activities the Commonwealth is not requesting authority over are:

(1) The regulation of extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material;

(2) The regulation of land disposal of byproduct material or special nuclear material waste received from other persons; and

(3) The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution.

(b) The proposed Agreement contains articles that:

(1) Specify the materials and activities over which authority is transferred;

(2) Specify the activities over which the Commission will retain regulatory authority;

(3) Continue the authority of the Commission to safeguard nuclear materials and restricted data;

(4) Commit the Commonwealth and NRC to exchange information as necessary to maintain coordinated and compatible programs;

(5) Provide for the reciprocal recognition of licenses;

(6) Provide for the suspension or termination of the Agreement; and

(7) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Virginia.

(c) The regulatory program is authorized by law under the Code of Virginia (32.1–227—32.1–238). Section 32.1–235 provides the Governor with the authority to enter into an Agreement with the Commission. Virginia law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the Commonwealth. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Commonwealth licenses until the licenses expire or are replaced by Commonwealth-issued licenses. NRC licenses transferred to the Commonwealth which contain requirements for decommissioning and express intent to terminate the license when decommissioning has been completed under a Commission approved decommissioning plan will continue as Commonwealth licenses and will be terminated by the Commonwealth when the Commission approved decommissioning plan has been completed.

The Commonwealth currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements. Under the proposed Agreement, the Commonwealth would assume regulatory authority for these radioactive materials. Therefore, if the proposed Agreement is approved, the Commission would terminate the time-limited waiver in the Commonwealth coincident with the effective date of the Agreement. Also, a notification of waiver termination would be provided in the **Federal Register** for the final Agreement.

(d) The NRC draft staff assessment finds that the Commonwealth's Division of Radiological Health, an organizational unit of the Virginia Department of Health (VDH), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the Commonwealth's Program for the Control of Agreement Materials

The NRC staff has examined the Commonwealth's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of

[1] The radioactive materials, sometimes referred to as ''Agreement materials,'' are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(3) of the Act; (c) byproduct materials as defined in Section 11e.(4) of the Act; (d) source materials as defined in Section 11z. of the Act; and (e) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, ''Processing an Agreement.''

(a) Organization and Personnel. The Agreement materials program will be located within the existing Division of Radiological Health (DRH) of the VDH. The DRH will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the DRH staff members are specified in the Commonwealth's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. All have had additional training and work experience in radiation protection. Supervisory level staff has at least seven years working experience in radiation protection.

The DRH performed and the NRC staff reviewed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the DRH's staff analysis, the DRH has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The DRH will employ a staff with at least the equivalent of 6.0 full-time professional/technical and administrative employees for the Agreement materials program.

The Commonwealth has indicated that the DRH has an adequate number of trained and qualified staff in place. The Commonwealth has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff are working with NRC license reviewers in the NRC Region I Office and accompanying NRC staff on inspections of NRC licensees in Virginia. DRH staff is also actively supplementing their experience through direct meetings, discussions, and facility walk-downs with NRC licensees in the Commonwealth, and through self-study, in-house training, and formal training.

Overall, the NRC staff believes that the DRH technical staff identified by the Commonwealth to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of agreement materials.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the Virginia Board of Health by Section 32.1–229 of the Code of Virginia, the DRH has the requisite authority to promulgate regulations for protection against radiation. The law provides DRH the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the Commonwealth adopted the relevant NRC regulations in 10 CFR parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into Virginia Administrative Code Title 12, Section 5–481. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain Commonwealth licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA–05–090 and EA–07–305) to these licensees that will transfer to the Commonwealth. As a result of the restructuring of Virginia Regulations, the Commonwealth deleted financial assurance requirements equivalent to 10 CFR 40.36. The Commonwealth is proceeding with the necessary revisions to their regulations to ensure compatibility, and these revisions will be effective by January 1, 2009. Therefore, on the proposed effective date of the Agreement, the Commonwealth will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that the Commonwealth will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The Commonwealth has adopted NRC compatible requirements for the handling and storage of radioactive material. The Commonwealth will not seek authority to regulate the land disposal of radioactive material as waste. The Commonwealth waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by Commonwealth licensees for transfer for disposal to an authorized waste disposal site or broker.

(d) Transportation of Radioactive Material. Virginia has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Virginia will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. The Commonwealth has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) Evaluation of License Applications. The Commonwealth has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The Commonwealth has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The Commonwealth has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The Commonwealth has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The Commonwealth is bound by requirements specified in Commonwealth law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Commonwealth law prescribes standards of ethical conduct for Commonwealth employees.

(i) Cooperation with Other Agencies. Commonwealth law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by the Commonwealth. The law provides that these former NRC licenses will expire either 90 days after receipt from the

radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions required by 10 CFR 20.1403 prior to the effective date of the proposed Agreement, the Commonwealth deems the termination to be final despite any other provisions of Commonwealth law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by the Commonwealth under the plan so long as the licensee conforms to the approved plan.

The Commonwealth also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Code of Virginia provides exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the Commonwealth to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the Commonwealth's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the Commonwealth to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of section 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the Commonwealth of Virginia in the application for an Agreement submitted by Governor Kaine on June 12, 2008, and the supporting information provided by the staff of the DRH of the Virginia Department of Health, and concludes that the Commonwealth of Virginia satisfies the criteria in the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' and therefore, meets the requirements of Section 274 of the Act. The proposed Commonwealth of Virginia program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this 25th day of November, 2008.

For the Nuclear Regulatory Commission.

Terrence Reis,

Acting Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

Appendix A

AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE COMMONWEALTH OF VIRGINIA FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE COMMONWEALTH PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Whereas, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Virginia is authorized under the Code of Virginia Section 32.1–235, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Virginia certified on June 12, 2008, that the Commonwealth of Virginia (the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date] that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, Therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth acting on behalf of the Commonwealth as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;

4. Source materials; and
5. Special nuclear materials in quantities not sufficient to form a critical mass.

ARTICLE II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act;
7. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons.

ARTICLE III

With the exception of those activities identified in Article II.1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commission and Commonwealth programs for protection against hazards of radiation will be coordinated and compatible.

The Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The Commonwealth and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The Commonwealth and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [Richmond, Virginia] this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

Dale E. Klein,

Chairman,

FOR THE COMMONWEALTH OF VIRGINIA.

Timothy M. Kaine,

Governor.

[FR Doc. E8–28663 Filed 12–3–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–08–288]

In the Matter of Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures (Effective Immediately)

I.

The Licensees identified in Attachment A [1] to this Order, hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or

[1] Attachment A contains sensitive information and will not be released by the public.

Commission) or an Agreement State, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 30, 32, 70 and 71, or equivalent Agreement State regulations. The licenses authorize them to possess and transfer items containing radioactive material quantities of concern. This Order is being issued to all such Licensees identified in Attachment A to this Order who may transport radioactive material quantities of concern under the NRC's authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Orders require compliance with specific additional security measures to enhance the security for transport of certain radioactive material quantities of concern.

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on this regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of the current security measures. In addition, the Commission commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain security measures are required to be implemented by Licensees as prudent, interim measures to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment B [2] of this Order, on all Licensees identified in Attachment A of this Order. These additional security measures, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. Attachment C of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when licensee's reviewing official is determining access to Safeguards Information or unescorted access to the radioactive materials. These requirements will remain in effect until the Commission determines otherwise.

It is also recognized that some measures may not be possible or necessary for all shipments of radioactive material quantities of concern, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of radioactive material quantities of concern.

In light of the continuing threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. The Commission has determined that some of the security measures contained in Attachment B of this Order contain Safeguards Information and will not be released to the public as per NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–03–199 or EA–08–161), issued specifically to the Licensees identified in Attachment A to this Order. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–155 or EA–08–162). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–155 or EA–08–162) do not need to be fingerprinted again for purposes of being considered for unescorted access.

This Order also requires that a reviewing official must consider the results of the Federal Bureau of Investigations criminal history records check in conjunction with other applicable requirements to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official may be one that has previously been approved by NRC in accordance with the ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–155 or EA–08–162). Licensees may nominate additional reviewing officials for making unescorted access determinations in accordance with NRC Orders EA–06–155 or EA–08–162. The nominated reviewing officials must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties.

To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees identified in Attachment A to this Order shall implement the requirements identified in Attachments B and C to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health and safety require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR § 2.202 and 10 CFR Parts 30, 32, 70 and 71, *it is hereby ordered*, EFFECTIVE IMMEDIATELY, *that all licensees identified in attachment a to this order shall comply with the following:*

A. All Licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments B and C to this Order. The Licensees shall immediately start implementation of the requirements in Attachments B and C to the Order and shall complete implementation by May 23, 2009, or before the first shipment of radioactive material quantities of concern, whichever is sooner.

B. 1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they

[2] Attachment B contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public. The remainder of the requirements contained in Attachment B that are not SAFEGUARDS INFORMATION will be released to the public.

are unable to comply with any of the requirements described in Attachments B or C, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensees' justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachments B or C to this Order would adversely impact the safe transport of radioactive material quantities of concern must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachments B or requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–155 or EA–08–162) only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The licensee may use a reviewing official previously approved by the NRC as its reviewing official for determining access to Safeguards Information or the licensee may nominate another individual specifically for making unescorted access to radioactive material determinations, using the process described in EA–06–155 or EA–08–162. The reviewing official must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive materials that equal or exceed the quantities in Attachment B to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Atomic Energy Act of 1954, as amended, fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to radioactive materials if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility, or radioactive material or other property subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Order EA–06–155 or EA–08–162, do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with this Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment B to this Order. The licensee shall complete implementation of the requirements of Attachments B and C to this Order by May 23, 2009.

F. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments B and C.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments B and C.

G. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as ''SAFEGUARDS INFORMATION—MODIFIED HANDLING'' and mailed (no electronic transmittals, i.e., no e-mail or FAX) to the NRC.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested

governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007) and codified in pertinent part at 10 CFR part 2, subpart B. The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E–Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E–Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application. Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 24th day of November 2008.

For The Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment A: List of Licensees—Redacted; Attachment B: Additional Security Measures for Transportation of Radioactive Material Quantities of Concern—Revision 2

A. General Basis Criteria

These Additional Security Measures (ASMs) are established to delineate licensee responsibility in response to the current threat environment. The following security measures apply to Nuclear Regulatory Commission (NRC) and Agreement States licensees, who ship Radioactive Material Quantities of Concern (RAMQC) as defined in Section A.1. Shipments of RAMQC that do not fall within the NRC's jurisdiction under the Atomic Energy Act of 1954, as amended, are not subject to the provisions of these ASMs.

1. Licensees who are subject to this Order shall ensure that the requirements listed in Section B below are in effect when they ship radioactive materials that meet the following criterion:

a. Radionuclides listed in Table A, greater than or equal to the quantities specified,

b. For mixtures of radionuclides listed in Table A, the sum of the fractions of those radionuclides if greater than or equal to 1, or

c. For shipments of spent nuclear fuel containing greater than or equal to 1000 Terabecquerels (TBq) (27,000 Curies) but less than or equal to 100 grams of spent nuclear fuel.

For shipments containing greater than 100 grams of spent nuclear fuel, licensees shall follow the ASMs for ''Transportation of Spent Nuclear Fuel Greater than 100 Grams,'' dated October 3, 2002.

These ASMs supercede Safeguards Advisories SA–01–01, Rev. 1, and SA–03–02. For radioactive materials shipments containing radionuclides not addressed by this ASM guidance will be provided by Safeguards Advisory.

2. The requirements of these ASMs apply to a conveyance (i.e., the requirements apply irrespective of whether the RAMQC is shipped in a single package or in multiple packages in a single conveyance).

3. Licensees are not responsible for complying with the requirements of these ASMs if a carrier aggregates, during transport or storage incident to transport, radioactive material from two or more conveyances from separate licensees which individually do not exceed the limits of Paragraph A.1. but which together meet or exceed any of the criteria in Paragraph A.1.

4. The requirements of these ASMs only apply to RAMQC shipments using highway or rail modes of transportation. For multi-mode shipments, the requirements of these ASMs apply only to the portion of shipments that are made using highway or rail modes of transportation, as appropriate.

5. For domestic highway and rail shipments of materials in quantities greater than or equal to the quantities in Paragraph A.1, per conveyance, the licensee shall ensure that:

a. Only carriers are used which:

(1) Use established package tracking systems,

(2) Implement methods to assure trustworthiness and reliability of personnel associated with the transportation of RAMQC,

(3) Maintain constant control and/or surveillance during transit, and

(4) Have the capability for immediate communication to summon appropriate response or assistance.

b. The licensee shall verify and document that the carrier employs the measures listed above.

6. The preplanning, coordination, and tracking requirements of these ASMs are intended to reduce unnecessary delays and shipment duration and to facilitate the transfer of the RAMQC shipment and any escorts at State borders.

7. Unless specifically noted otherwise, the requirements of these ASMs do not apply to local law enforcement agencies (LLEA) personnel performing escort duties.

8. The requirements of these ASMs apply to RAMQC domestic shipments within the United States (U.S.), imports into the U.S., or exports from the U.S. The requirements of these ASMs do not apply to transshipments through the U.S. Licensees are responsible for complying with the requirements of Section B for the highway and rail shipment portion of an import or export which occurs inside of the U.S.

For import and export RAMQC shipments, while located at the port or shipments on U.S. navigable waterways, the U.S. Coast Guard Maritime Transportation security regulations will be in effect and these ASMs are not applicable. For RAMQC shipments while located at the air freight terminal, security requirements will be performed in accordance with the Transportation Security Administration security regulations.

For import and export RAMQC shipments, the licensee shall ensure that the requirements of these ASMs are implemented after the transportation package has been loaded onto the highway or rail vehicle (except for the advance notification requirements in section B.4) and the package begins the domestic portion of the shipment to or from the U.S. port of entry [i.e., the package(s) departs for or from the port of entry facility or the airfreight terminal].

B. Specific Requirements

Licensees who ship RAMQC in quantities that meet the criteria of Paragraph A.1. shall ensure that carriers used have developed and implemented transportation security plans that embody the additional security measures imposed by this Order.

1. Licensee Verification

Before transfer of radioactive materials in quantities which meet the criterion of Paragraph A.1, per conveyance, the licensee shall:

a. For new recipient(s), verify that the intended recipient's license authorizes receipt of the regulated material by direct contact with the regulatory authority that issued the license (NRC Region or Agreement State) prior to transferring the material,

b. Verify the validity of unusual orders or changes (if applicable) that depart from historical patterns of ordering by existing recipients,

c. Verify the material is shipped to an address authorized in the license and that the address is valid,

d. Verify the address for a delivery to a temporary job site is valid,

e. Document the verification and validation process, and

f. Coordinate departure and arrival times with the recipient.

2. Background Investigations

a. Background investigations are intended to provide high assurance that individuals performing assigned duties associated with the transport of RAMQC are trustworthy and reliable, and do not constitute an unreasonable risk to the common defense and security, including the potential to commit radiological sabotage.

b. For highway shipments only, the licensee shall ensure background investigations for all drivers, accompanying individuals, communications center managers, and other appropriate communications center personnel have been performed. The NRC only has the authority to impose a Federal Bureau of Investigation (FBI) criminal history check, which includes fingerprinting, on those individuals who seek access to Safeguards Information (SGI) or unescorted access to licensed material.

c. For rail shipments, the licensee shall ensure background investigations for employees filling the positions of communications center managers and other appropriate communications center personnel have been performed. The NRC only has the authority to impose a Federal Bureau of Investigation (FBI) criminal history check, which includes fingerprinting, on those individuals who seek access to SGI or unescorted access to licensed material.

d. Licensees shall document the basis for concluding that there is high assurance that individuals granted access to safeguards information or unescorted access to licensed material are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the regulated material. ''Access'' means that an individual could exercise some physical control over the material or device containing radioactive material.

(1) The trustworthiness, reliability, and verification of an individual's true identity shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and an FBI criminal history check, verification of employment history, education, employment eligibility, and

personal references. If an individual's employment has been less than the required three (3) years period, educational references may be used in lieu of employment history.

(2) Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C to this Order.

(3) A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' is the only individual that may make trustworthiness and reliability determinations.

e. Licensees background investigation requirements may also be satisfied for an individual that has:

(1) Current access authorization permitting unescorted access to a power reactor facility or access to Safeguards Information,

(2) Current U.S. government-issued security clearance (based upon a national agency check, at a minimum), or

(3) Satisfactorily completed a background investigation under an NRC-approved access authorization program.

f. Individuals shall not perform assigned duties associated with the transport of RAMQC until the licensee has confirmed that a determination of trustworthiness and reliability, based on the appropriate background investigation requirements in B.2.d. and B.2.e., has been performed and documented.

3. Preplanning and Coordination

a. As part of the shipment planning process, the licensee shall ensure that appropriate security information is provided to and is coordinated with affected States through which the shipment will pass to ensure minimal delays. These discussions shall include whether a State intends to provide escorts for a shipment.

b. The licensee shall ensure States are provided with position information on a shipment (see Paragraph B.5.a), if requested and practical.

c. For shipments by highway, the licensee's coordination required in Paragraph B.3.a. shall include identification of Highway Route Controlled Quantity (HRCQ) shipments of material and safe havens.[1]

4. Notifications

a. The licensee shall ensure an advance notification of a shipment is provided, or of a series of shipments, of RAMQC to the NRC. The licensee shall ensure the notification is submitted sufficiently in advance to ensure it is received by NRC at least seven (7) days, where practicable, before the shipment commences physically within the U.S.

For written notifications, the notice should be addressed to (10 CFR 2.390): U.S. Nuclear Regulatory Commission, ATTN: Director, Division of Nuclear Security, M/S: T–4–D–8, Office of Nuclear Security and Incident Response, 11555 Rockville Pike, Rockville, MD 20852–2738.

Notifications may also be submitted electronically via e-mail to *RAMQC_SHIPMENTS@nrc.gov* or via fax to (301) 816–5151. (10 CFR 2.390)

b. The advance notification shall contain the following information:

(1) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(2) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(3) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(4) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(5) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(6) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(7) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

Refer to Paragraph B.7.c. for determination of information designation of advance notifications during preplanning, coordinating, and reporting information activities.

c. The licensee shall ensure the information required by Paragraph B.4.b. is provided to each State through which the shipment will pass. The licensee shall ensure that the notification is received at least seven (7) days, where practicable, before the U.S. highway or railroad portion of a shipment commences.

d. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

5. Communications

a. (1) For highway shipments, monitor each RAMQC shipment with a telemetric position monitoring system that communicates with a communication center or is equipped with an alternative tracking system that communicates position information to a communications center.

(2) For rail shipments, monitor each RAMQC shipment with either: (i) A telemetric position monitoring system that communicates with a licensee or third-party communication center, (ii) a railroad track-side car location monitoring systems tracking system that relays a car's position to a railroad communications center (which can provide position information to any separate licensee communications center per Paragraph B.5.b), or (iii) alternate licensee monitoring system. Additionally, licensees may use a railroad communications center to monitor the rail portion of a shipment, in lieu of using a separate communications center.

b. (1) For highway shipments, provide for a communication center that has the capability to continuously and actively monitor in-progress shipments to ensure positive confirmation of the location, status, and control over the shipment and implement pre-planned procedures in response to deviations from the authorized route or notification of actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include identification of the designated LLEA contact(s) along the shipment route.

(2) For rail shipments, provide for a communication center that has the capability to periodically monitor in-progress shipments to ensure positive confirmation of the location of the shipment and implement pre-planned procedures in response to notification of actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include identification of the designated LLEA contact(s) along the shipment route. Licensees may use a railroad

[1] In general, a safe haven is a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities (LLEA). The following criteria are used by the NRC to determine the safe haven sites and licensees should use these criteria in identifying safe havens for shipments subject to this Order:

—Close proximity to the route, i.e., readily available to the transport vehicle.

—Security from local, State, or Federal assets is present or is accessible for timely response.

—Site is well lit, has adequate parking, and can be used for emergency repair or wait for LLEA response on a 24-hours-a-day basis.

—Have additional telephone facilities should the communications system of the transport vehicle not function properly.

—Possible safe haven sites include:

Military installations and other Federal sites having significant security assets; secure company terminals; State weigh stations; truck stops with secure areas; and LLEA sites, including State police barracks.

communications center in lieu of establishing a separate communications center.

c. (1) For highway shipments, ensure that a two-way telecommunication capability is available for the transport and any escort vehicles allowing them to communicate with each other with the communications center, and with designated LLEAs along the route. The communications center must be capable of contacting the designated authorities along the shipment route.

(2) For rail shipments, ensure that a two-way telecommunication capability is available between the train and the communications center and between any escort vehicles and the communications center. The communications center must be capable of contacting the designated authorities along the shipment route.

d. A licensee may utilize a carrier or third-party communications center in lieu of establishing such a facility itself. A commercial communications center must have the capabilities, necessary procedures, training, and personnel background investigations to meet the applicable requirements of these ASMs.

e. (1) For highway shipments, provide a backup means for the transport and any escort vehicle to communicate with the communications center, using a diverse method not subject to the same interference factors as the primary capability selected for compliance with Paragraph B.5.c. (e.g., two-way radio or portable telephone).

(2) For rail shipments, provide a backup means for the train to talk with the communications center, using a diverse method not subject to the same interference factors as the primary capability selected for compliance with Paragraph B.5.c. (e.g., two-way radio or portable telephone).

f. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(1) Not later than one hour after the time when, through the course of the investigation, it is determined the shipment is lost or stolen, the licensee shall ensure the appropriate local law enforcement agency, the NRC Operations Center at (301) 816–5100, and the appropriate Agreement State regulatory agency, if any, are notified.

(2) If after 24 hours of initiating the investigation, the radioactive material cannot be located, licensee shall ensure the NRC Operations Center and, for Agreement State licensees, the appropriate Agreement State regulatory agency are immediately notified.

g. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

6. Drivers and Accompanying Individuals

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

b. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

c. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

d. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

7. Procedures, Training, and Control of Information

a. (1) For highway shipments the licensee shall ensure that normal and contingency procedures have been developed, including, for example: notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. Communication protocols must include a strategy for use of authentication and duress codes, provision for refueling or other stops, detours, and locations where communication is expected to be temporarily lost.

(2) For rail shipments, the licensee shall ensure that normal and contingency procedures have been developed, including, for example: notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. Communication protocols must include a strategy for use of authentication and duress codes, provision for stops, and locations where communication is expected to be temporarily lost.

b. (1) For highway shipments, the licensee shall ensure that personnel, including drivers, accompanying individuals, responsible communication center managers, and other appropriate communication center personnel are trained in and understand the normal and contingency procedures.

(2) For rail shipments, the licensee shall ensure that personnel, including the appropriate train crew members and responsible railroad communication center managers, and other appropriate railroad communication center personnel are trained in and understand the normal and contingency procedures.

c. Information to be protected as Safeguards Information—Modified Handling, shall include, but is not limited to:

(1) Integrated transportation physical security plans.

(2) Schedules and itineraries for shipments. For shipments that are not inherently self disclosing, schedule and itineraries information may be decontrolled 2 days after a shipment is completed. For shipments that are inherently self disclosing, schedule may be released as necessary after departure.

(3) Details of alarm and communications systems, communication protocols and duress codes, and security contingency response procedures.

(4) Arrangements with designated LLEA (i.e., Federal, State Police, and/or local police departments) and information on whether a State intends to provide armed escorts for a shipment.

For preplanning; coordinating, for example with States' organizations and carriers; reporting information as described in B.1., B.4., and B.5. related to shipments of radioactive material, and the radionuclides identified in Paragraph A.1, the licensee shall ensure the information is protected at least as sensitive information (for example, proprietary or business financial information). Licensees shall ensure access is restricted to this information to those licensee and contractor personnel with a need to know. Licensees shall ensure all parties receiving this information protect it similarly. Information may be transmitted either in writing or electronically and shall be marked as ''Sensitive Information—Not for Public Disclosure.''

C. Implementation Schedule

1. Licensees shall implement the requirements of this ASM within 180 days of the date of issuance of the Order or before the first shipment of RAMQC, whichever is sooner.

TABLE A—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern (TBq) threshold limit	Quantity of concern (Ci) information only—rounded after conversion
Am-241	60	1,600
Am-241/Be	60	1,600
Cf-252	20	540
Cm-244	50	1,400
Co-60	30	810
Cs-137	100	2,700
Gd-153	1,000	27,000
Ir-192	80	2,200
Pm-147	40,000	1,100,000
Pu-238	60	1,600
Pu-239/Be	60	1,600
Ra-226 [1]	40	1,100
Se-75	200	5,400
Sr-90 (Y-90)	1,000	27,000
Tm-170	20,000	540,000
Yb-169	300	8,100

[1] The Atomic Energy Act, as amended by the Energy Policy Act of 2005, authorizes NRC to regulate Ra-226 and NRC is in the process of amending its regulations for discrete sources of Ra-226.

Notes:

1. The regulatory standard values to be used are given in Terabecquerels (TBq). Curie (Ci) values are provided for practical usefulness only and are rounded after conversion.

2. If several radionuclides are present, the sum of the fractions of the activity of each radionuclide must be determined. Using the equation below calculate the ratio by inserting the actual activity of each radionuclide as the numerator and the corresponding activity limit in Table A as the denominator. Ensure the numerator and the denominator are in Terabecquerels.

R_1 = activity for radionuclide number 1
R_2 = activity for radionuclide number 2
R_3, R_4, R_5 * * * etc.
AR_1 = activity limit for radionuclide number 1
AR_2 = activity limit for radionuclide number 2
AR_3, AR_4, AR_5 * * * etc.

$$\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \frac{R_3}{AR_3} + \frac{R_n}{AR_n} \geqq 1$$

Attachment C: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information or Unescorted Access to Radioactive Materials

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to safeguards information (SGI) or unescorted access to RAMQC. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in this Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right To Correct and Complete Information'' section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to RAMQC.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to RAMQC.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to RAMQC, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access RAMQC based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to RAMQC, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to RAMQC shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to RAMQC. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to access SGI or unescorted access to RAMQC. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E8–28682 Filed 12–3–08; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Notice of Public Hearing

December 9, 2008.

TIME AND DATE: 2 p.m., Tuesday, December 9, 2008.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, December 5, 2008. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Friday, December 5, 2008. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: December 1, 2008.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E8–28840 Filed 12–2–08; 4:15 pm]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Board of Directors Meeting

December 11, 2008.

TIME AND DATE: Thursday, December 11, 2008, 10 a.m. (open portion); 10:15 a.m. (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of September 18, 2008 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 10:15 a.m.)

1. Report from Audit Committee.
2. Resolution on Housing Exposure.
3. Finance Project—Georgia.
4. Finance Project—Georgia.
5. Finance Project—Turkey.
6. Finance Project—Bulgaria and the Balkans.
7. Approval of September 18, 2008 Minutes (Closed Portion).
8. Pending Major Projects.
9. Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: December 2, 2008.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. E8–28841 Filed 12–2–08; 4:15 pm]

BILLING CODE 3210–01–P

DEPARTMENT OF STATE

[Public Notice 6442]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Open Competition for Professional Exchange Programs in Africa, East Asia, Europe, the Near East, North Africa, South Central Asia and the Western Hemisphere and the Nqwang Choephel Fellowship Program for Tibet

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C–09–01.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates:

Application Deadline: February 20, 2009.

Executive Summary: The Office of Citizen Exchanges, ECA/PE/C, of the Bureau of Educational and Cultural Affairs announces an open competition for grants that support exchanges and build relationships between U.S. non-profit organizations and civil society and cultural groups in Africa, East Asia, Europe, the Near East, North Africa, South Central Asia and the Western Hemisphere. Pending availability of funds, it is anticipated that approximately $5,600,000 or more will be available to support this competition. ECA/PE/C expects to fund approximately 10–15 projects under this competition in FY 2009. U.S. public and non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support the goals of The Professional Exchange Program. Projects should promote mutual understanding and partnerships between key professional and cultural groups in the United States and counterpart groups in other countries through multi-phased exchanges taking place over one to two years. Proposals should encourage citizen engagement in current issues and promote the development of democratic societies and institutions, with a view toward creating a more stable world. All programs should be two-way exchanges and involve participants from the U.S. and foreign countries.

Proposed projects should transform institutional and individual understanding of key issues, foster dialogue, share expertise, and develop capacity. Through these people-to-people exchanges, the Bureau seeks to break down stereotypes that divide peoples, to promote good governance and economic growth, to contribute to conflict prevention and management, and to build respect for cultural expression and identity in the world. Projects should be structured to allow American professionals and their international counterparts in eligible countries to develop a common dialogue for dealing with shared challenges and concerns. Projects should include current or potential leaders who will effect positive change in their communities.

Applicants may not submit more than one proposal per theme in this competition. Also, applicants may not include countries not eligible under a specific theme designated in the RFGP. Proposals that do so will be declared technically ineligible and will receive no further consideration in the review process. For the purposes of this competition, eligible regions are Africa, East Asia, Europe, the Near East, North Africa, South Central Asia, and the Western Hemisphere. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural

Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The competition is based on the premise that people-to-people exchanges encourage and strengthen understanding of democratic values, nurture the social, political, cultural, and economic development of societies and encourage a more active citizenry. Exchanges supported by institutional grants from the Bureau should operate at two levels: They should enhance partnerships between U.S. and foreign institutions, and they should establish a common language to develop practical solutions for shared problems and concerns. The Bureau is particularly interested in projects that will create mutually beneficial and self-sustaining linkages between professional communities in the U.S. and their counterpart communities in other countries. Applicants must identify the U.S. and foreign organizations and individuals with whom they are proposing to collaborate and describe previous cooperative activities, if any. Information about the mission, activities, and accomplishments of partner organizations should be included in the submission. Proposals should contain letters of commitment or support from partner organizations for the proposed project. Applicants should clearly outline and describe the role and responsibilities of all partner organizations in terms of project logistics, management and oversight.

Competitive proposals will include the following:

- A brief description of the theme to be addressed and how it relates to the target country or region. (Proposals that request resources for an initial needs assessment will be deemed less competitive under the review criterion Program Planning and Ability to Achieve Objectives, per item V.1 below.);
- A clear, succinct statement of program objectives and expected outcomes that responds to Bureau goals as listed in this RFGP. Desired outcomes should be described in qualitative and quantitative terms. (See the Program Monitoring and Evaluation section per item V.1 below, for more information on project objectives and outcomes.);
- A proposed timeline;
- A description of participant recruitment and selection processes;
- Letters of support from foreign and U.S. partners. (*Letters from prospective partner institutions should demonstrate a capacity to arrange and conduct U.S. and overseas activities.*);
- An outline of the applicant organization's relevant expertise in the project theme and country(ies);
- An outline of relevant experience managing previous exchange programs;
- Resumes of experienced staff who have demonstrated a commitment to implement and monitor projects and ensure outcomes;
- A comprehensive plan to evaluate whether program outcomes will achieve the specific objectives described in the narrative. (See the Program Monitoring and Evaluation section [IV.3d.d below] for further guidance on evaluation.);
- A post-grant plan that demonstrates how the grantee plans to maintain contacts initiated through the program. Applicants should discuss ways that U.S. and foreign participants or host institutions will collaborate and communicate after the ECA-funded grant has concluded. (See Review Criterion #5, per item V.1 below for more information on post-grant activities.)
- Successful projects will demonstrate the importance Americans place on community service as an element of active citizenship and may include ideas and projects to strengthen civil society through community service either during participants' stay in the U.S. or upon their return to their countries.
- In addition to addressing the specific themes described below, proposals should develop partner organizations' capacity in such areas as strategic planning, performance management, fund raising, financial management, human resources management, and decision-making.

U.S. Embassy Involvement: Before submitting a proposal, all applicants are *strongly* encouraged to consult with the Washington, DC-based State Department contact for the themes/regions listed in this solicitation. Applicants are also *strongly* encouraged to consult with Public Affairs Officers at U.S. Embassies in relevant countries as they develop proposals responding to this RFGP. Also, it is important that the proposal narrative clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. Embassy in the relevant country(ies) to develop plans for project implementation and to select project participants. Proposals should also acknowledge U.S. Embassy involvement in the final selection of all participants. Applicants should state their willingness to invite representatives of the Embassy(ies) and/or consulate(s) to participate in program sessions or site visits.

ECA/DOS Acknowledgement: Narratives should state that all material developed for the project will prominently acknowledge Department of State ECA Bureau funding for the program. They should also state that in any contact with the media (print, television, blogging, etc.) applicants will acknowledge Department of State ECA Bureau funding for the program.

Alumni Outreach and Engagement: Proposals must include a plan outlining alumni outreach and engagement. Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Reviewers will assess ways in which proposals provide substantive plans to prepare exchange program participants for their role as active, effective alumni and how the grantee organization will continue to engage with alumni once they return home. Recipient organization(s) must outline how alumni activities will be sustained after the grant period.

All recipients of ECA grants or cooperative agreements (hereafter referred to as ''recipients organization(s)'') will be expected to provide regular updates on alumni activities throughout the period of performance. Proposals should also include plans to use alumni in recruitment and orientation programming of future participants. Recipient organization(s) should connect alumni with local private sector partners such as NGOs and businesses to ensure sustainability of alumni activities.

The Bureau expects that all recipient organization(s) will encourage and assist participants in registering and using the State Alumni Web site (alumni.state.gov) at multiple points during their exchange experience, at a minimum during program orientations and pre-departure briefings. Proposals should detail how the State Alumni Web site will be promoted to exchange participants and how the recipient organization(s) will facilitate participant registration. The Bureau expects that all

recipient organization(s) will place a link to State Alumni on their own Web sites.

State Alumni is an interactive global community where alumni from all over the world can stay connected with their exchange experience by sharing ideas, projects, and experiences.

On State Alumni, exchange participants can:

- Find the latest research in their field, plus career enhancing information;
- Participate in live Q&A discussions with experts on a variety of current issues;
- Find grant and job opportunities;
- Post résumés and academic articles;
- Access 20,000 free journals, newspapers, and more;
- Find a local alumni association to join;
- Share their experience with a global audience;
- Read alumni success stories, perspectives, and ideas. All statistical information collected on ECA funded program participant(s) should be transferable to databases maintained by ECA.

While applicant organizations may propose the use of Web sites for recruitment and selection, pre-departure and re-entry efforts/activities, the Bureau will not fund or support Web sites and/or Web site activities that are duplicative or run parallel to alumni opportunities on ECA's State Alumni Web site.

Recipient organizations will be granted access to the password-protected State Alumni Web site to interact with program participants and alumni. ECA funds can be used to support the recipient organization's interaction with alumni via the State Alumni Web site.

After awards have been finalized, all recipient organization(s) will be expected to work directly with the respective ECA program office, ECA's Office of Alumni Affairs and the Embassy-based alumni coordinator to provide regular updates on alumni activities, alumni follow-up and alumni participant data. Proposals should specifically acknowledge a commitment to this effort.

ECA will provide general information on alumni outreach ideas as well as illustrative examples of State Alumni Web site pages on exchanges.state.gov that interested organizations can use in designing their alumni outreach strategies.

FY 2009 Thematic Topics

1. The Legislative Fellows Program (LFP)

ECA priorities continue to focus on engagement with young professionals in positions to influence and develop their societies, including young professionals involved in the local and national legislatures of developing democracies. ECA is seeking competitive proposals for the LFP program in all regions of the world involving specific countries listed below. The LFP program is designed to strengthen understanding of the U.S. legislative process and enhance appreciation of the role of civic society and its engagement in the political process. LFP will provide young professionals from identified countries with hands-on exposure to the U.S. political process through internships in U.S. Congressional offices (including state/district offices), state legislatures, city councils or local governments across the U.S. The program will also involve U.S. participants who will be selected from staff members at the various internship sites who will act as primary host/mentors to the foreign fellows during their U.S.-based program. After the internships are completed, these U.S. staff members will travel overseas to the interns' home countries to continue their engagement by participating in joint outreach activities, engaging the local media, and on-site consultancies and presentations to wider audiences.

The foreign participants should be selected through a merit-based, competitive process. They should be college graduates involved in political affairs or other relevant fields, approximately 25 to 35 years in age, with some professional experience in the political or legislative arenas. Because of the nature of this program, all selected participants must have good English language skills (except for the program in the Western Hemisphere as noted below). Participants should have demonstrated leadership abilities and a commitment to or participation in the political process or policy-making through involvement in civic education activities, citizen advocacy groups, political campaigns, political parties, or election monitoring. U.S. participants will be staff members of the U.S. Congress, state legislatures, city councils or local governments who act as host for foreign participants during the inbound portion of the program.

Proposals must include qualified and established partner organizations/offices in each of the foreign countries where participants are being recruited. Also, proposals must demonstrate capacity in the U.S. to secure relevant placements for foreign participants. Proposals that include such information, especially with letters of commitment from possible U.S-based host organizations, will be deemed more competitive.

Applicants should strive to maximize the number of participants and the length of U.S.-based program given funding levels. Therefore, applicants that use homestays for foreign participants, establish public-private partnerships that provide programming support, and employ other creative techniques will be deemed more competitive than those that do not.

Successful applicants must fully demonstrate a capacity to achieve the following key activities:

(1) Recruit and select qualified individuals throughout the target country(ies). The foreign participants should be selected through a merit-based, competitive process. An in-country partner organization(s)/office is required to coordinate programming and fellowships.

(2) In addition to identifying in-country partner and screening, selecting, and preparing participants prior to departure for the United States, the recipient of this grant will also conduct a thorough orientation program for foreign participants upon their arrival in the United States. After the orientation session, grantees will be responsible for implementing fellowships in the United States for participants. This will include individualized fellowships for the LFP fellows in legislative offices/bodies at the national, state, and local levels. Selection of foreign LFP Fellows should take into account the types of positions that are available for placement/job shadowing in the U.S. ECA is open to creative and cost-efficient approaches to this selection and placement program. Specifically, U.S-based homestays for foreign participants are strongly recommended.

(3) Conducting an in-country program where U.S. mentors will travel overseas to conduct on-site consultancies and joint programming with foreign participants and their colleagues. The in-country program should be designed to engage a broad audience, not only traveling participants.

(4) The development of enhancement activities that reinforce program goals after the participants' return to their home country. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

ECA envisions that the LFP program calendar will approximately be as follows:

September 2009–January 2010: Recruitment and selection of foreign participants and securing U.S.-based hosts and host sites.

February–April 2010: Travel to the United States by ½ of all the foreign

participants to U.S. for orientation and placement at internship sites for a four to eight week program.

April 2010: Travel by the foreign participants to Washington, DC at/towards the end of their U.S.-based program for a two-day enrichment program. ECA will coordinate the dates and arrangements with each eventual grantee. Proposal budgets should include airfare, lodging, and per diem for each foreign participant for two working days in Washington, DC.

May–September 2010: The U.S. participants who were involved in the winter 2010 hosting will travel overseas for approximately two week program.

October–November 2010: Travel to the United States by the remaining ½ of all the foreign participants to the U.S. for orientation and placement at internship sites for a four to eight week program.

November–December 2010: Travel by the remaining foreign participants to Washington, DC at/towards the end of their U.S.-based program for a two-day program. ECA will coordinate the dates and arrangements with each eventual grantee. Proposal budgets should include airfare, lodging, and per diem for each foreign participant for two working days in Washington, DC.

January–May 2011: The U.S. participants who were involved in the fall 2010 hosting will travel overseas for approximately two week program.

Program Regions/Countries:

ECA could award up to six separate grants by region to administer the LFP program. However, ECA will consider proposals that cover multiple regions (or all the regions) as long as the applicant demonstrates particular program capacity in those regions.

Grantees should construct their proposals to fit the general outline and schedule of the LFP program as described above, but also to tailor it to the following regional priorities, participant numbers, and specifications as noted. Applicant organizations are highly encouraged to contact the relevant ECA program officer responsible for the relevant region(s) BEFORE submitting a proposal.

Africa (AF):

Program Contact: Curtis Huff, tel: (202) 453–8159, e-mail: *HuffCE@State.gov.*

Approximate Grant Award: $300,000 to $375,000 for a program involving approximately 35 to 40 participants.

For Africa, proposals for the LFP program should recruit foreign participants from one or more of the following countries: Nigeria, South Africa, Kenya, Democratic Republic of the Congo, Liberia, and Sudan. Placements may be considered at the Federal, State or local level and should be consistent with the participant's professional experience. Both single-country and multiple-country proposals will be considered, although applicants are cautioned not to spread their project so thinly across multiple countries or communities that it cannot be sustained. Internships should emphasize the hands-on work of legislators and their staff, including research on legislative issues, bill drafting, outreach to constituencies, fiscal analysis of legislation, policy debate, and understanding the ethical and legal parameters for such work.

East Asia and the Pacific (EAP):

Program Contact: Adam Meier, tel: (202) 453–8151, e-mail: *MeierAW2@state.gov.*

Approximate Grant Award: $300,000 to $375,000 for a program involving approximately 35 to 40 participants.

For East Asia and the Pacific, proposals for the LFP program should recruit foreign participants from Indonesia, Malaysia, Mongolia, Philippines, Singapore, and Taiwan. While a proposal does not require participation from all of these countries, ECA would like to see participation from as many of these countries as possible. Placements may be considered at the Federal, State or local level and should be consistent with the participant's professional experience.

Europe (EUR):

Program Contact: Brent Beemer, tel: (202) 453–8147, e-mail: *BeemerBT@state.gov.*

Approximate Grant Award: $600,000 to $675,000 for a program involving approximately 70 to 75 total participants.

In Europe, proposals for the LFP program should recruit foreign participants from only Russia, Ukraine, and Georgia. 50% of the foreign participants in the EUR program should be recruited from Russia. 25% of the participants should be recruited from Ukraine and 25% of the participants should be recruited from Georgia. Placements may be considered at the Federal, State or local level and should be consistent with the participant's professional experience.

Near East and North Africa (NEA):

Program Contact: Thomas Johnston, Tel: (202) 453–8162; e-mail: *JohnstonTJ@state.gov*

Approximate Grant Award: $300,000 to $375,000 for a program involving approximately 35 to 40 participants.

For the Near East and North Africa, proposals for the LFP program should recruit foreign participants from Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, and Oman. While a proposal does not require participation from all of these countries, ECA would like to see participation from as many of these countries as possible. It is recommended that, given the nature of this exchange, applicants focus primarily on placing Middle Eastern and North African participants in Federal/Congressional offices in the United States, though proposals that recommend state-level placement, with solid justification, will receive full consideration. Placements should be consistent with the participant's professional experience.

South and Central Asia (SCA):

Program Contact: Adam Meier, tel: (202) 453–8151, e-mail: *MeierAW2@state.gov.*

Approximate Grant Award: $300,000 to $375,000 for a program involving approximately 35 to 40 participants.

For South and Central Asia, proposals for the LFP program should recruit foreign participants from Bhutan, India, Kazakhstan, Kyrgyzstan, Nepal and Pakistan. At least 50% of the foreign participants should come from Kyrgyzstan and Nepal with the remaining 50% coming from the other countries listed. Placements may be considered at the Federal, State or local level and should be consistent with the participant's professional experience.

Western Hemisphere (WHA):

Program Contact: Laverne Johnson, tel: (202) 453–8160, e-mail: *JohnsonLV@state.gov.*

Approximate Grant Award: $300,000 to $375,000 for a program involving approximately 35 to 40 total participants.

In the Western Hemisphere, proposals for the LFP program should recruit only from Colombia, Brazil, Nicaragua, and Bolivia. 75% of the foreign participants in the WHA program should be from Colombia, Nicaragua and Bolivia. For these three countries, ECA prefers that the participants be Spanish speakers placed in Spanish language internships in the United States. The remaining 25% of the foreign participants should be from Brazil. For Brazil, ECA prefers that the participants be Portuguese speakers placed in Portuguese language internships in the United States. Placements may be considered at the Federal, State or local level and should be consistent with the participant's professional experience as well as language ability.

2. Young Entrepreneurs Program (YEP)

Support and development of business entrepreneurs in emerging free market societies remains a top priority for the State Department worldwide. In

response, ECA is seeking proposals to implement the Young Entrepreneurs Program (YEP) program. YEP seeks to promote entrepreneurial thinking, job creation, business planning, and management skills that will assist young emerging entrepreneurs worldwide (approximately 25–35 years old) in launching business careers. The YEP program will increase understanding of the links between entrepreneurial activity and free markets as well as the importance of transparency and accountability in business and government. The YEP program will introduce young men and women to entrepreneurial thinking, business management skills, attracting investment, and also in designing programs to teach others these skills. The program will enhance appreciation for American business practices and the role of the individual in creating growth through grassroots-focused entrepreneurial efforts.

The YEP Program will provide its participants with exposure to day-to-day functioning of a free market system. Programs for English-speaking fellows would be designed as individual fellowships. They may include seminars, internships, workshops and site visits. Programs for fellows who do not speak English would be less individualized and more groups focused, and use a variety of training methodologies. These programs would be implemented with the assistance of U.S.-based interpreters. American participants would come from the same firms and organizations that the foreign participants worked with while in the United States. They would travel as a group overseas and do on-site workshops with foreign audiences. This program would work to establish long-term professional links between U.S. mentors and overseas fellows.

Proposals must include qualified and established partner organizations/offices in each of the foreign countries where participants are being recruited.

Applicants should strive to maximize the number of participants and the length of U.S.-based program given funding levels. Therefore, applicants that use homestays for foreign participants, establish public-private partnerships that provide programming support, and employ other creative techniques will be deemed more competitive than those that do not.

Successful applicants must fully demonstrate a capacity to achieve the following key activities:

(1) Recruit and select qualified individuals throughout the target country(ies), through a merit-based open competition. Program should be designed for foreign fellows to travel to the U.S. as a group, even if they will be doing individualized programs. An in-country partner organization or offices to help coordinate recruitment and overseas programming is required.

(2) In addition to identifying an in-country partner and screening, selecting, and preparing participants prior to departure for the United States, the grant recipient will be responsible for building and executing an orientation program upon arrival in the U.S. and a business-based program in the United States. This may include individualized internships for the appropriate foreign participants at U.S. businesses that are analogous in size and scope to their own domestic workplaces. This may also include group-based programming that relies on job-shadowing and group sessions on business topics that are facilitated through U.S.-based interpreters. Selection of foreign participants should take into account the types of businesses that are available for placement/job shadowing in the U.S. ECA is open to creative and cost-efficient approaches to this selection and placement program. This could include U.S.-based homestays for foreign participants.

(3) Conducting an in-country program where U.S. mentors will travel to the target country(ies) to conduct on-site consultancies for foreign participants and their firms. Workshops should be designed based on foreign participant's requests and could cover issues such as basic business principles, marketing, customer-service strategies, business ethics, etc. The workshop(s) should be designed to engage a broad audience, not only traveling program participants.

(4) The development of enhancement activities and development opportunities that reinforce program goals after the participants' return to their home country. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

ECA envisions that the YEP program calendar will approximately be as follows:

September 2009–January 2010: Recruitment and selection of foreign participants and development of U.S.-based programs.

February–April 2010: Travel to the United States by ½ of all the foreign participants for a three to eight week program.

May–September 2010: Travel overseas by U.S. participants for an approximately two week program.

October–December 2010: Travel to the United States by all the remaining foreign participants for a three to eight week program.

January–May 2011: Travel overseas by remaining U.S. participants for an approximately two week program.

Program Regions/Countries:

ECA could award up to three separate grants by region to administer the YEP program. However, ECA will consider proposals that cover multiple regions (or all the regions) as long as the applicant demonstrates strong program capacity in all the regions included in a single proposal. Applicant organizations are highly encouraged to contact the relevant ECA program officer responsible for the relevant region(s) BEFORE submitting a proposal.

Africa (AF):

Program Contact: Curtis Huff, tel: (202) 453–8159, e-mail: *HuffCE@State.gov.*

Approximate Grant Award: $300,000 to $375,000 for a program involving approximately 35 to 40 total participants.

In Africa, proposals for the YEP program should recruit only from Nigeria, South Africa, Kenya, Democratic Republic of the Congo, Liberia, and Sudan. Both single-country and multiple-country proposals will be considered, although applicants are cautioned not to spread their project so thinly across multiple countries or communities that it cannot be sustained. For YEP Africa, English fluency is strongly recommended. Programs should emphasize developing skills to create jobs and to start and build new businesses, not expecting the government to do it.

Near East and North Africa (NEA):

Program Contact: Thomas Johnston, Tel: (202) 453–8162; e-mail: *JohnstonTJ@state.gov*

Approximate Grant Award: $300,000 to $375,000 for a program involving approximately 35 to 40 total participants.

For the YEP program in the NEA region, foreign participants can be recruited from all countries in the Middle East, North Africa, and the Persian Gulf region with the understanding that a minimum of six and a maximum of ten participants be recruited from each country involved. Both single-country and multiple-country proposals will be considered.

South and Central Asia (SCA):

Program Contact: Adam Meier, tel: (202) 453–8151, e-mail: *MeierAW2@state.gov.*

Approximate Grant Award: $300,000 to $375,000 for a program involving approximately 35 to 40 total participants.

For the YEP program in South and Central Asia, ECA seeks proposals for a single-country program in Afghanistan. Because of the changing nature of the security situation, U.S. participants may not be able to travel to Afghanistan as part of the YEP program. Therefore, proposals should include a contingency plan to bring U.S. and Afghan participants together in a third country (preferably within the South and Central Asia region) for those relevant program components.

3. Outreach and Integration of Minority Communities

ECA seeks proposals for programs that will engage community leaders, educators, youth influencers, journalists, and community-based organizations in examination of programs and practices to facilitate integration and empowerment of minority populations, particularly youth, in selected countries. This program would look at issues related to the integration of immigrant and minority populations into a modern democratic society. This includes integration in the political system, economic opportunity, freedom of expression, access to education, and practice of an open social/cultural life, while maintaining ethnic identity within a multi-ethnic society. A specific concentration of programming on immigrant and minority youth populations and the special needs/challenges they face in modern society should be a major focus. An overall comparison and sharing of best practices in the U.S. and in foreign countries on these issues should also be included. Programming should include an overview of U.S. and foreign government and legal structures, an understanding of the diversity of American and foreign societies and efforts to increase tolerance and respect for others with differing views and beliefs. Program content should include an overview of the range of historical and current American and foreign experiences with integrating various immigrant and minority citizens, examination of what has worked well and what has not, and analysis of the range of actors including government, NGOs, religious organizations, immigrant organizations, educational institutions, and the role of the media and public who report on these issues. Participants (from the U.S. and foreign countries) in the program should include representatives of non-governmental organizations, community leaders, educators, youth influencers, religious leaders, and journalists from minority communities.

Successful applicants must fully demonstrate a capacity to achieve the following:

(1) Recruit and select approximately 20 to 25 individuals throughout the target country. Program should be designed for two groups to travel to the U.S. Partnering with organizations based in target country is required.

(2) In addition to identifying in-country partner and screening, selecting, and preparing participants prior to departure for the United States, the recipient of this grant will be responsible for building and executing a three to four week informative travel and training program in the United States.

(3) Conduct an in-country (overseas) workshop(s) to examine the process of integration of marginalized populations in foreign country for approximately 10 to 15 U.S. participants. Ideally, the U.S. participants will be professionals who have worked with foreign participants and are recommended by foreign participants. The overseas program/workshop(s) should be designed to engage a broad audience, not just program participants.

(4) Develop enhancement activities that reinforce program goals after the participants' return to their home country. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

ECA envisions that the program calendar will approximately be as follows:

September 2009–January 2010: Recruitment and selection of foreign participants and development of U.S.-based programs.

February–April 2010: Travel to the United States by ½ of all the foreign participants to the for a three to six week program.

May–September 2010: Travel overseas by U.S. participants for an approximately two week program.

October–December 2010: Travel to the United States by of all the remaining foreign participants for a three to six week program.

January–May 2011: Travel overseas by remaining U.S. participants for an approximately two week program.

Program Countries:

ECA plans to award up to two grants under this theme at $300,000 to $350,000 each. ECA seeks separate programs in the following countries:

Thailand: Program should specifically address the minority communities in southern Thailand.

Philippines: Program should specifically address the minority communities in the Mindanao region.

Note: Applicants must be aware of security related travel restrictions for U.S. citizens in southern Thailand and the Mindanao region in the Philippines. Therefore, proposals should include plans to conduct programming in Thailand and the Philippines that involves U.S. participants in alternative locations within those countries.

Applicant organizations are highly encouraged to contact the ECA program officer responsible for this theme(s) BEFORE submitting a proposal.

Program Contact: Brent Beemer, tel: (202) 453–8147, e-mail: *BeemerBT@state.gov*.

4. Nqwang Choephel Fellowship Program for Tibet

The Office of Citizen Exchanges welcomes proposals in an open competition for the Ngwang Choepel Fellows program that focus on the themes of Cultural Preservation and Economic Self-sufficiency. The Office seeks proposals that train and assist Tibetans living in Tibetan communities in China by providing professional experience and exposure to American society and culture through internships, workshops and other learning activities hosted by U.S. institutions. The experiences will also provide Americans the opportunity to learn about Tibetan culture and the social and economic challenges that Tibetans face today. Applicants may propose programming for Tibetans who travel to the United States and/or for Americans who travel to Tibet. Programs designed for participants from Tibet should not be simply academic in nature, but should provide practical, hands-on experience in U.S. public or private sector settings that may be adapted to an individual's institution upon return home. Proposals may combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants. Americans who travel to Tibet will be expected to participate in activities that further the goals and objectives of the Tibet Policy Act of 2002, as described below. Applicants should ensure that their proposals comply with the Tibet Policy Act of 2002, particularly that their projects promote in all stages the active participation of Tibetans. Section 616(d) of the Foreign Relations Authorization Act, 2003 (Pub. L. 107–228) defines the Tibet Project Principles:

(d) Tibet Project Principles—Projects in Tibet supported by international financial institutions, other international organizations, nongovernmental organizations, and the United States entities referred to in subsection (c), should (1) Be

implemented only after conducting a thorough assessment of the needs of the Tibetan people through field visits and interviews; (2) Be preceded by cultural and environmental impact assessments; (3) Foster self-sufficiency and self-reliance of Tibetans; (4) Promote accountability of the development agencies to the Tibetan people and active participation of Tibetans in all project stages; (5) Respect Tibetan culture, traditions, and the Tibetan knowledge and wisdom about their landscape and survival techniques; (6) Be subject to on-site monitoring by the development agencies to ensure that the intended target group benefits; (7) Be implemented by development agencies prepared to use Tibetan as the working language of the projects; (8) Neither provide incentive for, nor facilitate the migration and settlement of, non-Tibetans into Tibet; and (9) Neither provide incentive for, nor facilitate the transfer of ownership of, Tibetan land or natural resources to non-Tibetans.

The Office of Citizen Exchanges welcomes proposals that focus on the themes of Cultural Preservation and Economic Self-sufficiency under this competition for FY–2009 Ngwang Choepel Fellows program.

Cultural Preservation

Projects under this theme should aim to assist Tibetans in preserving their cultural heritage through activities designed to reduce the pillage of irreplaceable cultural artifacts, and to create opportunities that develop long-term strategies for preserving cultural property through training and conservation, museum development, and education. Projects might include the preservation of cultural sites; objects in a site, museum or similar institution; or forms of traditional cultural expression. The proposals may encompass topics such as museum needs, historic buildings, collections, archaeological sites, rare manuscripts, language, or traditional arts, crafts, or music.

Economic Self-Sufficiency

Vocational Education:

The Bureau seeks proposals that emphasize vocational training or the administration and development of vocational schools targeted towards the practical needs of Tibetan communities. Discussion of how to integrate education with economic planning, how to diversify revenue sources, and how to recruit, train and retain strong faculty would all contribute towards increased emphasis on vocational education and its importance to both Americans and Tibetans in a modern and changing economy. Vocational education may include practical training of entrepreneurs, development of Tibetan-language educational materials (such as Tibetan-English teaching guides or Tibetan-language public health education materials), or the development of distance learning technology for remote rural schools. English-language training projects that are held in China are preferred over ones that would bring Tibetans to the United States for training.

Developing Entrepreneurship:

Projects under this theme should focus on the skills that Tibetans, many of whom come from rural backgrounds with rudimentary economies, need to function effectively in a modern economy (*e.g.*, finance, accounting, and language skills). Projects should explore how the government and the private sector can help promote sustainable entrepreneurship, including access to credit, ecologically-conscious tourism policies and investment, or English language training for trade or tourism purposes. Programs that train aspiring entrepreneurs and develop micro-finance programs for them are welcome.

Sustainable Growth and Ecotourism:

Exchanges funded under this theme should help American and Tibetan conservationists, tourism planners, and economic planners share their experience in managing tourism resources and development projects, particularly in ecologically fragile areas, and should contribute to increased understanding of conservation and concepts essential to responsible economic growth. Local community projects are invited in fields such as ecotourism, renewable energy, or poverty alleviation projects, including farm technology, animal husbandry, or agricultural marketing.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2009.

Approximate Total Funding: $5,600,000 (Pending Availability of Funds).

Approximate Number of Awards: 10–15.

Approximate Average Award: $325,000–$350,000. Grants that cover several components (regions/countries) of LFP and YEP will be larger. Please contact ECA for further information on this.

Floor of Award Range: $300,000 per region of the LFP and YEP programs and per country for the Integration of Minority Communities Program. Grants that cover several components (regions) will be larger. Please contact ECA for further information on this.

Ceiling of Award Range: $350,000 per region of the LFP and YEP programs and per country for the Integration of Minority Communities Program. Grants that cover several components (regions) will be larger. Please contact ECA for further information on this.

Anticipated Award Date: Pending availability of funds, September 1, 2009.

Anticipated Project Completion Date: August 31, 2011.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Proposals that offer significant cost-sharing will be judged more competitive than those that do not.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110 (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making awards in an amount from $300,000 and higher to support program and administrative costs required to implement the programs in this RFGP. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) Technical Eligibility: All proposals must comply with the following or will be declared technically ineligible and will receive no further consideration in the review process:

—Eligible applicants may not submit more than one proposal per theme under this competition;
—Eligible applicants may only propose working with the countries and themes listed under each of the themes of this RFGP.
—No funding is available exclusively to send U.S. citizens to conferences or conference type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Please refer to the Proposal Submission Instruction (PSI) document for additional requirements.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package:

Please contact the Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 453–8174 (202) 453–8169, *GustafsonDP@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C–09–01 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Brent Beemer and refer to the Funding Opportunity Number ECA/PE/C–09–01 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet:

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. *Please note:* Effective March 14, 2008, all applicants for ECA federal assistance awards must include with their application, a copy of page 5, Part V–A, ''Current Officers, Directors, Trustees, and Key Employees'' of their most recent Internal Revenue Service (IRS) Form 990, ''Return of Organization Exempt From Income Tax.'' If an applicant does not file an IRS Form 990, but instead files Schedule A (Form 990 or 990–EZ)—''Organization Exempt Under Section 501(c)(3),'' applicants must include with their application a copy of Page 1, Part 1, ''Compensation of the Five Highest Paid Employees Other Than Officers, Directors and Trustees,'' of their most recent Internal Revenue Service (IRS) Form—Schedule A (Form 990 or 990–EZ).

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 et seq.

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 et seq., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. For informational and planning purposes, we are informing all potential applicants that ECA is in the process of developing comprehensive approaches to alumni programming, web portal development supported through ECA assistance awards (grants/cooperative agreements) and the expansion of private/public partnerships to increase the reach of ECA's exchange programs. In the event your proposal is recommended for funding, you may receive additional guidance/information related to these topics during the negotiation stage of the approval process.

In addition, all recipients of ECA grants or cooperative agreements should be prepared to state in any announcement or publicity where it is not inappropriate, that activities are assisted financially by the Bureau of Educational and Cultural Affairs of the United States Department of State under the authority of the Fulbright-Hays Act of 1961, as amended. Award recipients are strongly encouraged to use the Department seal on all promotional and related materials for ECA funded programs which support the commemoration of special occasions or events, but only after first obtaining written permission from the ECA program office(r) assigned to the project.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

1. *Travel.* International and domestic airfare; airline baggage and seat fees; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge

for J–1 visas for participants in Bureau sponsored programs.

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/content View.do?programId=9704&channelId=-15943&ooid=16365&contentId=17943&pageTypeId=8203&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2Fgsa Basic.jsp&P=MTT.*

ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://aoprals.state.gov/web920/per_diem.asp.*

3. *Interpreters.* For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both ''lodging'' and ''M&IE'') and ''home-program-home'' transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

4. *Book and Cultural Allowances.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. *Room rental.* The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. *Materials.* Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. *Equipment.* Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

9. *Working meal.* Normally, no more than one working meal may be provided during the program. Per capita costs may not exceed $15–$25 for lunch and $20–$35 for dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered ''participants.''

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered during their participation in the program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. *In-country travel costs for visa processing purposes.* Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. Application Deadline and Methods of Submission

Application Deadline Date: February 20, 2009.

Reference Number: ECA/PE/C–09–01.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1—Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include

one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–09–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday—Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance award grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability To Achieve Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample schedules should be outlined. Responsibilities of proposed in-country partners should be clearly described. A discussion of how the applicant intends to address language issues should be included, if needed.

2. *Institutional Capacity:* Proposals should include (1) the institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards—U.S. government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive (see IV.3e.2 #14 for clarification on this). Applicants are

strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive on this criterion.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI) and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

5. *Post-Grant Activities:* Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities must not appear in the proposal budget, but should be outlined in the narrative.

6. *Program Monitoring and Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, and proposals should include draft data collection instruments (surveys, questionnaires, etc.) in Tab E. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant.

VI. Award Administration Information

VI.1a. Award Notices:

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. The following additional requirements apply to this project:

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Thomas Johnston, Tel. (202) 453–8162; e-mail: *JohnstonTJ@state.gov* for additional information.

VI.2. Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov*.

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one electronic copy of the following reports:

A final program and financial report no more than 90 days after the expiration of the award;

(1) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's *USAspending.gov* Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(2) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

(3) Quarterly program and financial reports for the duration of the program.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements:

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Brent Beemer, Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 453–8147, *BeemerBT@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–09–01.

Please read the complete announcement before sending inquiries

or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 25, 2008.

Goli Ameri,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–28737 Filed 12–3–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Personnel Parachute Assemblies TSO–C23e

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of cancellation.

SUMMARY: The minimum performance standard (MPS) for Personnel Parachute Assemblies and Components contained in Appendix 1 of technical standard order (TSO)–C23e is substantially different from the version submitted for public comment. As such, this notice announces the cancellation of TSO–C23e.

DATES: TSO–C23e is cancelled as of December 4, 2008.

ADDRESSES: Send all inquiries pertaining to the cancellation of TSO–23e to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: George Soteropoulos, AIR–120. You may deliver your inquiries to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Include in the subject line of your electronic message the following: Inquiries, FAA TSO–23e, Personnel Parachute Assemblies.

FOR FURTHER INFORMATION CONTACT: George Soteropoulos, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267–9796, FAX (202) 267–5340, or e-mail at: *george.soteropoulos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

It is believed that the minimum performance standard (MPS) prescribed in Appendix 1 of TSO–C23e for personnel parachute assemblies and components thereof, differs significantly from the version submitted for public comment. For that reason we are cancelling TSO–C23e to allow for further review and discussions with interested industry groups and associations to ensure safety through a coordinated agreed-upon MPS.

Issued in Washington, DC on November 19, 2008.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E8–28229 Filed 12–3–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–35]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before December 24, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0760 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 1, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0760.

Petitioner: Endless Mountain Pilots.

Section of 14 CFR Affected: 14 CFR 91.146, 91.147, and part 136, subpart A.

Description of Relief Sought: Endless Mountain Pilots requests an exemption from 14 CFR §§ 91.146, 91.147, and part 136, subpart A to allow the following: (1) An aircraft owner who is not piloting his/her own aircraft or the airport owner of Seamans Field Airport in Factoryville, PA (9N3) who rents aircraft in the normal course of business to

share with the pilot in command (PIC) the fuel, oil, and operating cost of such flight if such aircraft owner chooses; (2) an aircraft owner who is not piloting his/her own aircraft or the airport owner of 9N3 to allow the use of his/her aircraft at no expense to the PIC, if such aircraft owner so wishes; (3) an airport owner of 9N3 to offer fuel at a reasonable discount rate which would be no less than his actual cost of the fuel; and (4) Endless Mountain Pilots to share the cost of fuel, oil, and aircraft operation with the aircraft owner and/or PIC.

[FR Doc. E8–28718 Filed 12–3–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Downey Savings and Loan Association, F.A.; Newport Beach, CA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Downey Savings and Loan Association, F.A., Newport Beach, California (OTS No. 06189).

Dated: November 21, 2008.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E8–28624 Filed 12–3–08; 8:45 am]
BILLING CODE 6720–01–M

Federal Register

Thursday,
December 4, 2008

Part II

The President

Executive Order 13480—Exclusions From the Federal Labor-Management Relations Program

Federal Register
Vol. 73, No. 234
Thursday, December 4, 2008

Presidential Documents

Title 3—

The President

Executive Order 13480 of November 26, 2008

Exclusions From the Federal Labor-management Relations Program

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7103(b)(1) of title 5, United States Code, and in order to reflect the effects of the reorganization and restructuring of the Departments of Energy, Homeland Security, Justice, Transportation, and the Treasury on their subdivisions exempted from coverage under the Federal Labor-Management Relations Program, it is hereby ordered as follows:

Section 1. *Determinations.* The subdivisions of the Departments of Energy, Homeland Security, Justice, Transportation, and the Treasury set forth in sections 2 through 6 of this order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is further determined that chapter 71 of title 5, United States Code, cannot be applied to these subdivisions in a manner consistent with national security requirements and considerations.

Sec. 2. *Department of Energy.* Executive Order 12171 of November 19, 1979, as amended, is further amended by revising section 1–210 to read as follows:

''1–210. Agencies or subdivisions of the Department of Energy:

(a) The National Nuclear Security Administration.

(b) The Office of Intelligence.

(c) The Office of Counterintelligence.

(d) The Office of Intelligence and Counterintelligence.

(e) The Savannah River Operations Office.''

Sec. 3. *Department of Homeland Security.* Executive Order 12171 of November 19, 1979, as amended, is further amended by revising section 1–214 to read as follows:

''1–214. Agencies or subdivisions of the Department of Homeland Security:

(a) Office of the Military Advisor.

(b) The following office within the Management Directorate:

(1) Office of Security.

(c) Office of Operations Coordination.

(d) Office of Counternarcotics Enforcement.

(e) Office of Intelligence and Analysis.

(f) Domestic Nuclear Detection Office.

(g) The following offices and subdivisions within the United States Coast Guard:

(1) Maritime Intelligence Fusion Centers, Atlantic.

(2) Pacific Area Intelligence Division.

(3) Intelligence Coordination Center.

(4) Coast Guard Investigative Service.

(5) Coast Guard Security Center.

(h) The following offices and subdivisions within United States Immigration and Customs Enforcement:

(1) The Office of Investigations.

(2) The Office of International Affairs.

(3) The Office of Intelligence.

(4) The National Incident Response Unit.

(i) The following office within the Transportation Security Administration:

(1) The Office of Law Enforcement/Federal Air Marshal Service.

(j) The following office within United States Customs and Border Protection:

(1) The Office of Intelligence and Operations Coordination.

(k) The following offices and subdivisions within the Federal Emergency Management Agency:

(1) The following offices and subdivisions within the Office of National Continuity Programs:

(A) The Office of the Assistant Administrator.

(B) The Operations Division.

(C) The Continuity of Operations Division.

(D) The Readiness Division.

(E) The Integrated Public Alert and Warning Systems Division.

(2) The following subdivisions within the Disaster Operations Directorate:

(A) The Mobile Emergency Response Support Operations, including Mobile Emergency Response Support Detachments.

(B) The FEMA Operations Center.

(C) The Alternate FEMA Operations Center.''

Sec. 4. *Department of Justice.* Executive Order 12171 of November 19, 1979, as amended, is further amended by:

(a) revising subsection (g) of section 1–209 to read as follows:

''(g) National Security Division.''; and

(b) adding to the end of section 1–209 the following new subsection:

''(h) Bureau of Alcohol, Tobacco, Firearms, and Explosives.''

Sec. 5. *Department of Transportation.* Executive Order 12171 of November 19, 1979, as amended, is further amended by revising section 1–213 to read as follows:

''1–213. The following subdivision of the Federal Aviation Administration (FAA), Department of Transportation: National Security Coordination Division, Office of Emergency Operations and Investigations, FAA Office of Security and Hazardous Materials.''

Sec. 6. *Department of the Treasury.* Executive Order 12171 of November 19, 1979, as amended, is further amended by revising section 1–203 to read as follows:

''1–203. Agencies or subdivisions of the Department of the Treasury:

(a) The Office of Terrorism and Financial Intelligence.

(b) The Financial Crimes Enforcement Network.

(c) Criminal Investigation, Internal Revenue Service.

(d) The Trade Analysis and Enforcement Division, Alcohol and Tobacco Tax and Trade Bureau.''

Sec. 7. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
November 26, 2008.

[FR Doc. E8–28912
Filed 12–3–08; 11:15 am]
Billing code 3195–W9–P

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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AGRICULTURE DEPARTMENT

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McGovern Dole International Food for Education and Child Nutrition Program and Food for Progress Program; comments due by 12-8-08; published 10-24-08 [FR E8-25186]

DEFENSE DEPARTMENT

Defense Contract Management Agency (DCMA) Privacy Program; comments due by 12-8-08; published 10-9-08 [FR E8-23999]

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Pesticide Tolerance Nomenclature Changes; Technical Amendments; comments due by 12-9-08; published 10-10-08 [FR E8-24027]

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Proposed Flood Elevation Determinations; comments due by 12-8-08; published 9-9-08 [FR E8-20822]

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Waste Confidence Decision Update; comments due by 12-8-08; published 10-9-08 [FR E8-23381]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2040/P.L. 110–451

Civil Rights Act of 1964 Commemorative Coin Act (Dec. 2, 2008; 122 Stat. 5021)

S. 602/P.L. 110–452

Child Safe Viewing Act of 2007 (Dec. 2, 2008; 122 Stat. 5025)

S. 1193/P.L. 110–453

To direct the Secretary of the Interior to take into trust 2 parcels of Federal land for the benefit of certain Indian Pueblos in the State of New Mexico, and for other purposes. (Dec. 2, 2008; 122 Stat. 5027)

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