



# Federal Register

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210, 220, and 226

RIN 0584-AD26

#### Amendments to the Child Nutrition Infant Meal Pattern

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food and Nutrition Service is issuing final regulations amending the meal pattern for infants less than 12 months of age in the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program. These regulations finalize provisions of an interim rule, published on November 15, 1999, which eliminated the option of serving whole cow's milk to infants less than one year of age, allowed reimbursement for meals containing only breastmilk, and amended the Child and Adult Care Food Program's definition of infant formula.

This final rule also incorporates revisions to reflect the comments we received to the interim rule, clarifies when an optional food component is required under the infant meal pattern, and clarifies information in the meal pattern tables that have appeared in two previous rulemakings. We have made these changes to ensure that the infant meal pattern used in the Child Nutrition Programs conforms to current scientific evidence about infant feeding practices, and to ensure that all of the information about meal requirements is correct.

**EFFECTIVE DATE:** June 27, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rothstein, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302; or (703) 305-2590; or [CNDINTERNET@fns.usda.gov](mailto:CNDINTERNET@fns.usda.gov). A regulatory impact analysis was

completed for this rule. Single copies may be requested from Ms. Rothstein.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 15, 1999, the Food and Nutrition Service (FNS) published an interim rule for comment (64 FR 61770), to update the meal requirements for infants less than 12 months of age in the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program. The rule recognized well-established scientific evidence demonstrating that breastmilk is the optimal source of nutrition for infants during the entire first year of life, and that the only appropriate alternative to breastmilk is iron-fortified infant formula.

The interim rule eliminated the option of serving whole cow's milk to infants less than 12 months of age, so that reimbursable infant meals must include either breastmilk or iron-fortified infant formula. It allowed reimbursement for meals containing only breastmilk, and addressed those situations when some breastfed infants may consume less than the minimum serving of breastmilk for their age group. The rule also amended the Child and Adult Care Food Program's definition of "infant formula" so that it would conform to the definition used in the school meal programs' regulations. These amendments became effective on December 15, 1999.

Technical corrections to the infant meal pattern were published in a final rule on December 27, 1999 (64 FR 72257). FNS is now issuing a final regulation, based on the evidence described in the interim rule, a review of written comments submitted by the public in response to that rule, and our operational experience in implementing these changes. This final rule discusses the comments we received, and codifies the small number of revisions and corrections into 7 CFR 210.10 of the National School Lunch Program regulations, 7 CFR 220.8 of the School Breakfast Program regulations, and 7 CFR 226.20 of the regulations for the Child and Adult Care Food Program.

The infant meal pattern is used in schools, residential child care institutions, child care centers, family day care homes, and homeless shelters participating in the Child Nutrition Programs. Throughout this preamble,

the term "caregiver" refers to the different types of facilities that provide meal services to infants through these programs. The term "Child Nutrition Programs" refers collectively to the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program (CACFP).

This rule does not directly change the regulations for the Summer Food Service Program at 7 CFR part 225. However, § (section) 225.16(f)(2) of the regulations requires sponsors, approved by their State agencies to serve summer meals to infants, to follow the infant meal pattern requirements in CACFP regulations.

#### *What Did Commenters Have To Say About the Interim Rule?*

We received a total of 16 written comments, during the 180-day comment period which ended on May 15, 2000. The commenters included three registered dietitians, two CACFP State directors, two sponsoring organization representatives, one independent child care center director, and one day care home provider. The majority of them wrote that they agreed with the amendments and with the scientific evidence described in the interim rule about currently accepted infant feeding practices. Some of them raised questions related to eliminating whole cow's milk from the infant meal pattern, while others were concerned about the decisions we made on allowing reimbursement for breastmilk-only meals.

#### *What Did Commenters Say About Eliminating Whole Cow's Milk From the Infant Meal Pattern?*

The interim rule amended the regulations to eliminate the option of serving whole cow's milk to infants less than 12 months of age, so that all reimbursable infant meals must include either breastmilk or iron-fortified infant formula. Five commenters agreed that the rule was an appropriate response to studies demonstrating that consumption of cow's milk during the first year of life prevents optimal nutrient intake and could adversely affect an infant's health.

One commenter questioned how we could mandate breastmilk or infant formula for the entire first year of life, stating that eliminating cow's milk as an option interferes with the choices parents make about feeding their own infants. Again, the decision to require



breastmilk or formula is based on scientific evidence that shows that whole cow's milk does not provide the appropriate level of nutrients needed by very young children. The rule eliminated whole cow's milk from the infant meal pattern because it can be detrimental to an infant's health and development.

*Do We Allow Exceptions for Infants Who Are No Longer Receiving Breastmilk or Infant Formula?*

Two commenters wanted us to acknowledge the exceptions that exist when doctors recommend whole cow's milk for some infants. We recognize that infants have unique dietary needs, and that decisions concerning diet, during this first year of life, are for the infant's health care provider and parents or guardians to make together.

For those reasons, program regulations have traditionally allowed substitutions to accommodate disabilities and other special dietary needs. Thus, a meal containing whole fluid cow's milk and served to an infant less than 12 months of age is eligible for reimbursement if the substitution is authorized, in writing, by a recognized medical authority (physician, physician assistant, nurse practitioner, or other professionals specified by the State agency).

Similarly, if a doctor or other recognized medical authority prescribes a formula, such as low-iron formula, which is not currently listed as an acceptable formula for the Child Nutrition Programs, the meal is eligible for reimbursement. In all cases, a medical statement, which explains what substitution of foods is needed, must be completed and given to the caregiver to keep on file.

We also recognize the special circumstances that exist when a one year old child is weaning from breastmilk or from infant formula to whole cow's milk. When a child is weaned to cow's milk, it is a common practice to provide the infant with both foods at the same meal service, to gradually ease the infant to accept some of the new food.

Unlike breastmilk, infant formula is not an alternative type of milk which can be substituted to meet the fluid milk requirement for the meal pattern or the food-based menu planning alternative for children over the age of one year (source: FNS Instruction 783-7, Revision 1, "Milk Requirement-Child Nutrition Programs"). However, for a reasonable period of transition—of up to one month—meals that contain infant formula may be reimbursable. Thus, for a child older than 13 months, a

statement from a recognized medical authority is needed for a meal containing infant formula to be eligible for reimbursement.

The regulations at §§ 210.10(g)(1), 220.8(d)(1), and 226.20(h) specify requirements regarding individual substitutions and exceptions for medical or special dietary needs. Because an infant's dietary needs are more individualized than those of older children, we have added a sentence to the regulations to remind caregivers of the requirements when there are exceptions to the meal pattern. Accordingly, this final rule amends §§ 210.10(n)(3), 210.10(o)(2), 220.8(j)(1), and 226.20(b)(1) to refer caregivers to the procedures that must be followed whenever meal pattern exceptions or substitutions are needed.

*What Did Commenters Say About Allowing Reimbursement for Meals Containing Only Breastmilk?*

The interim rule amended the infant meal pattern to allow reimbursement for meals served to infants that contain breastmilk, even when breastmilk is the only required food component. Eight commenters praised FNS for making breastmilk an integral part of the infant meal pattern.

Because breastmilk is easier for infants to digest and is processed faster than infant formula, one commenter requested that the number of reimbursable meals served to breastfed infants be increased. Although we recognize that the number of feedings to expect for an exclusively breastfed infant may be more than for a formula-fed infant, we do not have statutory authority to change the maximum number of meals reimbursed in any of the Child Nutrition Programs.

Two commenters objected to reimbursing a caregiver for meals containing only breastmilk when the facility does not incur any food costs. While supporting our efforts to promote breastfeeding, and recognizing how breastfeeding improves the nutritional health of infants, they argued that a meal should not be reimbursable unless the caregiver also offers the infant an additional meal component.

We disagree. Although there may not be a food cost, a caregiver incurs allowable costs related to preparing each bottle of breastmilk for feeding, serving it to the infant, and cleaning up after the feeding. As long as the caregiver promotes the infant's consumption of breastmilk and provides a direct service to the infant during the meal service, the regulations allow reimbursement for meals containing only breastmilk.

*Why Don't We Offer Reimbursement for All Breastmilk Meals, Not Only Those Fed From a Bottle?*

The interim rule authorized reimbursement for meals containing breastmilk that is bottle-fed by the caregiver. Six of the commenters stated that the interim rule created a disincentive for caregivers to support mother-child breastfeeding, because it does not allow reimbursement for meals fed directly to an infant by the infant's nursing mother, unless the nursing mother is the caregiver.

Again, it is important to remember that the Child Nutrition Programs reimburse caregivers for the costs of serving nutritious meals—including the costs of preparation and clean up—to infants and children enrolled in the food service. We recognize that caregivers provide services when they accommodate mothers who come to their facilities to nurse their infants. However, we believe that the caregiver must not only promote the consumption of breastmilk by the infant, but also provide some type of service directly to the infant, in order to be reimbursed for the infant's meal.

When a mother comes to a facility to nurse her breastfed infant, the service is performed by the infant's mother. The meal is not eligible for reimbursement, because the infant has not received a meal component or any direct service from the caregiver. For this reason, reimbursable meals that include breastmilk fed directly to an infant by the infant's nursing mother must also include at least one component supplied by the caregiver. The caregiver must provide all of the food components in the meal pattern that are not provided by the parent, to receive reimbursement.

In CACFP, meals are also reimbursable when a family day care home provider, who is eligible to claim reimbursement for her own children's meals, nurses her own infant. In this example, the provider physically serves the meal to a child who receives care in her day care home.

Accordingly, this final rule amends §§ 210.10(n)(3), 210.10(o)(2), 220.8(j)(1), and 226.20(b)(1) regarding the reimbursement of meals containing breastmilk or iron-fortified infant formula. It clarifies that breastmilk fed directly by the infant's mother, during a visit to the facility, contributes to a reimbursable meal only when the caregiver supplies at least one component of the infant's meal. It also indicates conditions that affect whether or not a meal containing infant formula would qualify for reimbursement.

*Is the Meal Reimbursable When an Infant Receives Both Breastmilk and Formula at the Same Meal Service?*

Two commenters were concerned about reimbursement of meals that include both breastmilk and infant formula. One of the commenters recommended that if the parent or guardian supplies less than the minimum amount of breastmilk needed for one feeding, all of the breastmilk should be offered at the first meal service, and subsequent meals during the day would contain only infant formula. This final rule permits reimbursement for meals which contain a portion of breastmilk and a complementary feeding of formula, as long as the total number of ounces offered to the infant meets, or exceeds, the minimum amount for the milk component specified in the infant meal pattern.

Under the infant meal pattern, breastmilk and iron-fortified infant formula are interchangeable. We will continue to emphasize the desirability of feeding breastmilk in place of infant formula for the entire first year of life, in the regulations. However, we have amended the infant meal patterns to show that a meal containing both breastmilk and infant formula to fulfill the milk component requirement may qualify for reimbursement. Accordingly, the meal patterns in §§ 210.10(n), 210.10(o), 220.8(j), and 226.20(b) are amended in this final rule to clarify that a serving of the milk component may contain breastmilk or iron-fortified infant formula, or portions of both.

*Do We Need To Update the CACFP Definition of "Milk?"*

The definition of "milk" in § 226.2 of the CACFP regulations contains a list of acceptable types of fluid milk that may be served to children or adults who receive meals through the Child Nutrition Programs. One commenter believed that some varieties, such as flavored milk, skim milk, and buttermilk, would not be acceptable under the WIC program (Special Supplemental Nutrition Program for Women, Infants and Children) and should not be included.

Some of the varieties of fluid milk may be more appropriate for certain age groups, and less appropriate for others. However, our definition is consistent with the types of fluid milk currently approved as supplemental foods for WIC participants in 7 CFR 246.10, the Food and Drug Administration's standard of identity for milk in 21 CFR part 131, and food labeling guidelines in 21 CFR part 101, Subpart A. Therefore,

we do not believe any change in the list of fluid milk varieties, or in the terms used to describe them, is necessary.

*Do We Need To Make Changes in the Definition of "Infant Cereal?"*

In §§ 210.10(o)(1)(i), 220.2(k), and 226.2, we define "infant cereal" as an iron-fortified dry cereal that is "routinely mixed with breastmilk or iron-fortified infant formula prior to consumption." One commenter felt that caregivers may interpret this definition to mean that infant cereal is only reimbursable if it is mixed with breastmilk or iron-fortified infant formula.

The definition that appears in the regulations was not intended to limit caregivers to adding only breastmilk or infant formula to infant cereal. Fruit juice or water can also be added to give infant cereal an appropriate consistency. We are not making any changes in the definition of "infant cereal," because we believe it is flexible enough to accommodate those variations.

However, infant cereal mixed with fruit juice should not be served to infants until after the infant has tried the juice and has not had any reactions to it. Caregivers should be aware that the American Academy of Pediatrics recommends waiting until infants are 6 months of age before introducing fruit juice into their diet (source: Pediatrics, Vol. 107, No. 5, pp. 1210–1213).

*When Is an Optional Food Component Under the Infant Meal Pattern Required as Part of a Reimbursable Meal?*

An issue that generated questions from program participants concerned optional components in the infant meal pattern, and how we ensure that infants always receive reimbursable meals that are appropriate for their stage of development. The introductory text found in §§ 210.10(o)(2), 220.8(j), and 226.20(b) of the regulations advises that, " \* \* For infants 4 through 7 months of age, solid foods are optional and should be introduced only if the infant is developmentally ready \* \* \*."

An infant's development does not always match the infant's chronological age. By offering a range of portion sizes and optional foods, the infant meal pattern acknowledges that infants grow at different rates, and that some infants will be developmentally ready for solid foods earlier, or later, than others. Some food items, such as fruits, vegetables, and cereal, are listed as options in the infant meal pattern to take into account an infant's readiness to accept these foods. Optional components are included in the breakfast and lunch/supper meal patterns for infants 4

through 7 months of age, and for the supplement (snack) meal pattern for infants 8 through 11 months of age.

If an infant is developmentally ready for solid foods, and the parent or guardian requests that they be served, the solid food components must be served to provide the infant with a reimbursable meal. Because solid foods serve an important purpose in an infant's daily diet, they are required as part of a reimbursable meal for infants who are developmentally ready for them. The decision to feed specific foods should always be made in consultation with an infant's parent or guardian.

Accordingly, this final rule amends §§ 210.10(n), 210.10(o), 220.8(j), and 226.20(b), to clarify that a serving of a component is required when the infant is developmentally ready. References to "whenever possible" are removed from the text to emphasize the importance of consulting with the infant's parent or guardian on decisions to feed specific foods.

*What Else Did Commenters Have To Say?*

One commenter asked about the types of approved infant formulas which can be served without medical statements in the Child Nutrition Programs. FNS periodically updates a list of acceptable iron-fortified infant formulas. Caregivers can request copies of the list from their State administering agencies.

Although a medical statement is not required for iron-fortified infant formulas, caregivers should only provide an infant with the formula recommended to the infant's parent or guardian by the infant's health care provider. If the formula offered by the caregiver is not the same as the formula recommended by an infant's health care provider, the infant's parent or guardian may choose to decline that one and supply another formula.

Readers are reminded that a meal containing only infant formula supplied by a parent or a guardian, and no other component, is not reimbursable. We recognize that, as with breastmilk-only meals, the formula feeding is fed from a bottle and requires a direct service by the caregiver. However, breastmilk-only meals are eligible for reimbursement because the meal promotes the infant's consumption of breastmilk.

One commenter also wanted to know what we recommend regarding the use of powdered versus ready to feed formula, or of bottled versus tap water, or of table versus commercial baby foods, in the Child Nutrition Programs. In the near future, FNS intends to publish a new edition of Feeding

Infants' A Guide for Use in the Child Nutrition Programs. This handbook will provide guidance to caregivers, with recommendations about good infant feeding practices.

#### *What Technical Changes Does This Rule Make?*

The proposed rule entitled, "Reimbursement for Snacks in Afterschool Programs," published in the **Federal Register** on October 11, 2000 (65 FR 60502), proposed replacing the terms "supplement," "meal supplement," and "supplemental food" with more commonly used terms. An earlier rulemaking, the final rule entitled, "Additional Menu Planning Approaches," published on May 9, 2000 (65 FR 26904), had already incorporated the term "afterschool snack" into § 210.10(o).

A separate rulemaking will finalize provisions addressing afterschool snacks. However, as we revised §§ 210.10(n)(3) and 226.20(b), we adopted the new terminology to simplify and add clarity to the infant meal pattern. Accordingly, this final rule incorporates the term "afterschool snack" into § 210.10(n)(3), and incorporates the term "snack" into § 226.20(b).

We have also clarified information in the infant and child care meal patterns. In §§ 210.10(o)(2)(iii)(B) and 226.20(b)(3)(ii) the meal pattern for infants age 8 through 11 months includes 1 to 4 ounces of cottage cheese, cheese food, and cheese spread. This rule specifies that cottage cheese is measured by volume, and that cheese food and cheese spread are measured by weight. The rule also adds a footnote to the supplement meal pattern in § 226.20(c)(4) to make it clearer that one-half egg meets the required minimum amount of meat alternate, even when the minimum amount is less than one ounce.

Finally, we redesignated and reworded the paragraphs in §§ 210.10(n), 210.10(o), 220.8(j), and 226.20(b). The reader should keep in mind that we rewrote those paragraphs to conform our regulations to the plain language guidelines and the formatting requirements of the Office of the Federal Register. With the exception of the amendments described in this preamble, we did not intentionally revise the content of the interim rule or of existing regulations.

#### **Executive Order 12866**

This final rule was determined to be significant under Executive Order 12866 and was reviewed by the Office of Management and Budget.

#### **Public Law 104-4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have "federalism implications," agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in the three categories under section (6)(a)(B) of Executive Order 13132.

#### *Prior Consultation With State Officials*

Prior to drafting this final rule, we received input from State and local agencies at various times. Since the Child Nutrition Programs are State administered, federally funded programs, our regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions in this and other program rules. Additionally, the Food and Nutrition Service (FNS) published an interim rule on this rulemaking on November 15, 1999 (64 FR 61770) which solicited additional public comment.

#### *Nature of Concerns and the Need To Issue This Rule*

State and local agencies are generally supportive of the provisions in the interim rule. The majority of them agreed with the amendments and with the scientific evidence described in the interim rule about currently accepted infant feeding practices. Some of them raised questions related to eliminating whole cow's milk from the infant meal pattern, while others were concerned about the decisions we made on allowing reimbursement for breastmilk-only meals.

FNS is now issuing a final regulation, based on the evidence described in the interim rule, a review of written comments submitted by the public in response to that rule, and our operational experience in implementing these changes. This final rule discusses the comments we received, and codifies the small number of revisions and corrections into 7 CFR 210.10 of the National School Lunch Program regulations, 7 CFR 220.8 of the School Breakfast Program regulations, and 7 CFR 226.20 of the regulations for the Child and Adult Care Food Program.

#### *Extent To Which We Meet These Concerns*

We have considered all of the comments we received on the interim rule. Since commenters addressed numerous operational issues, we made every effort to address their concerns, within the constraints of statutory authority and concerns for program integrity.

#### **Regulatory Flexibility Act**

This final rule was reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Under Secretary for Food, Nutrition and Consumer Services, Eric M. Bost, has certified that this rule will not have a significant economic impact on a substantial number of small entities because the number of infants who would be affected constitutes a tiny portion of the total participation in these programs. The principal effect of this rule will be to enhance the nutritional benefit of meals served to infants under these programs.

#### *Overall Regulatory Impact*

This rule will improve nutrition for some older infants who formerly were served whole cow's milk. The rule also removes a previous disincentive to serving breastmilk and reduces the waste of breastmilk. The rule may also encourage exclusive breastfeeding and increased duration of breastfeeding, consistent with recommended

nutritional practice. Finally, this rule will help ensure that infants who are developmentally ready for solid foods will receive them at an appropriate age. Because this regulation largely reflects current policy from interim final rules published in November and December of 1999, it is not a major rule (economic impact of \$100 million or more in any one year.)

#### Executive Order 12372

The National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.553 and 10.558, respectively. Each is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR 3015, subpart V and final rule related notice at 48 FR 29112, June 24, 1983).

#### Executive Order 12988

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the Effective Date section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments and, for disputes involving procurements by State agencies and sponsors, any administrative appeal procedures to the extent required by 7 CFR part 3016.

In the National School Lunch Program and the School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established in § 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established in § 210.29(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (§ 235.11(b)) must follow the FNS Administrative Review process as established in § 235.11(f).

In the Child and Adult Care Food Program, the administrative procedures are set forth under the following

regulations: (1) Institution appeal procedures are established in § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by § 226.22 and 7 CFR part 3015.

#### Paperwork Reduction Act of 1995

The information collection burden for this rule is approved under OMB Numbers 0584-0006, 0584-0012, and 0584-0055. This final rule contains no new paperwork burdens or information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

#### List of Subjects

##### 7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

##### 7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

##### 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs-health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, the interim rule amending 7 CFR parts 210, 220, and 226 which was published at 64 FR 61770 on November 15, 1999, is adopted as a final rule with the following changes:

#### PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751-1760, 1779.

2. In § 210.10:

a. Paragraph (n)(3) and the Supplements for Infants chart in paragraph (n)(4) are revised; and

b. Paragraph (o)(2) is revised and paragraphs (o)(3) through (o)(6) are added.

The revisions and additions read as follows:

#### § 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?

\* \* \* \* \*

(n) \* \* \*

(3) Snacks served to infants ages birth through 11 months must meet the requirements described in paragraph (n)(3)(iv) of this section. Foods included in the snack must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (g)(1) of this section.

(i) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Snacks containing breastmilk and snacks containing iron-fortified infant formula supplied by the school are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the school, contribute to a reimbursable snack only when the school supplies at least one component of the infant's snack.

(ii) *Fruit juice.* Juice should not be offered to infants until they are 6 months of age and ready to drink from a cup. Feeding fruit juice only from a cup will help develop behaviors that may prevent early childhood caries. Fruit juice served as part of the meal pattern for infants 8 through 11 months must be full-strength.

(iii) *Solid foods.* Solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The school should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time, on a gradual basis, with the intent of ensuring the infant's health and nutritional well-being.

(iv) *Infant meal pattern.* Infant snacks must have, at a minimum, breastmilk or iron-fortified infant formula, or portions of both, in the appropriate amount indicated for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Some infants may be developmentally ready to accept

an additional food component. Snacks are reimbursable when schools provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) *Birth through 3 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is

required to meet the infant’s nutritional needs.

(B) *4 through 7 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant’s nutritional needs.

(C) *8 through 11 months.* 2 to 4 fluid ounces of breastmilk, iron-fortified

infant formula, or full strength fruit juice; and 0 to ½ slice of crusty bread (if developmentally ready) or 0 to 2 cracker type products (if developmentally ready), which are made from whole-grain or enriched meal or flour, and suitable as a finger food for an infant.

(4) \* \* \*

SNACK PATTERN FOR INFANTS

Birth through 3 months	4 through through 7 months	8 through 11 months
4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ..	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup>	2–4 fluid ounces of formula <sup>1</sup> , breastmilk <sup>2,3</sup> , or fruit juice <sup>4</sup> ; and 0–½ slice of bread <sup>5</sup> or 0–2 crackers <sup>5</sup> .

<sup>1</sup> Infant formula must be iron-fortified.

<sup>2</sup> Breastmilk or iron-fortified formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

<sup>3</sup> For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

<sup>4</sup> Fruit juice must be full-strength.

<sup>5</sup> A serving of this component must be made from whole-grain or enriched meal or flour. It is required only when the infant is developmentally ready to accept it.

(o) \* \* \*

(2) *Feeding lunches to infants.*

Lunches served to infants ages birth through 11 months must meet the requirements described in paragraph (o)(5) of this section. Foods included in the lunch must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant’s eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (g)(1) of this section.

(3) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Meals containing breastmilk and meals containing iron-fortified infant formula supplied by the school are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant’s mother, during a visit to the school, contribute to a reimbursable lunch only when the school supplies at least one component of the infant’s meal.

(4) *Solid foods.* For infants ages 4 through 7 months, solid foods of an appropriate texture and consistency are

required only when the infant is developmentally ready to accept them. The school should consult with the infant’s parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time, on a gradual basis, with the intent of ensuring the infant’s health and nutritional well-being.

(5) *Infant meal pattern.* Infant lunches must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant’s age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Lunches may include portions of breastmilk and iron-fortified infant formula as long as the total number of ounces meets, or exceeds, the minimum amount required of this food component. Similarly, to meet the component requirements for vegetables and fruit, portions of both may be served.

(i) *Birth through 3 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant’s nutritional needs.

(ii) *4 through 7 months.* Breastmilk or iron-fortified formula is required. Some infants may be developmentally ready for solid foods of an appropriate texture and consistency. Lunches are reimbursable when schools provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) 4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and  
(B) 0 to 3 tablespoons of iron-fortified dry infant cereal; and

(C) 0 to 3 tablespoons of fruit or vegetable.

(iii) *8 through 11 months.* Breastmilk or iron-fortified formula and solid foods of an appropriate texture and consistency are required.

(A) 6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal; and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas; or ½ to 2 ounces (weight) of cheese; or 1 to 4 ounces (volume) of cottage cheese; or 1 to 4 ounces (weight) of cheese food or cheese spread; and

(C) 1 to 4 tablespoons of fruit or vegetable.

(6) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (o)(5) of this section, are:

LUNCH PATTERN FOR INFANTS

Birth through 3 months	4 through 7 months	8 through 11 months
4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ...	4–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 0–3 tablespoons of infant cereal <sup>1,4</sup> ; and ..... 0–3 tablespoons of fruit or vegetable or both <sup>4</sup>	6–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 2–4 tablespoons of infant cereal <sup>1</sup> ; and/or 1–4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans or peas; or 1/2–2 ounces of cheese; or 1–4 ounces (volume) of cottage cheese; or 1–4 ounces (weight) of cheese food or cheese spread; and 1–4 tablespoons of fruit or vegetable or both.

<sup>1</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>2</sup> Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

<sup>3</sup> For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

<sup>4</sup> A serving of this component is required only when the infant is developmentally ready to accept it.

**PART 220—SCHOOL BREAKFAST PROGRAM**

1. The authority citation for 7 CFR part 220 continues to read as follows:

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.8, paragraph (j) is revised to read as follows:

**§ 220.8 What are the nutrition standards and menu planning approaches for breakfasts?**

\* \* \* \* \*

(j) *What are the requirements for the infant breakfast pattern?*

(1) *Feeding breakfasts to infants.*

Breakfasts served to infants ages birth through 11 months must meet the requirements described in paragraph (j)(4) of this section. Foods included in the breakfast must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (d)(1) of this section.

(2) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Meals containing breastmilk and

meals containing iron-fortified infant formula supplied by the school are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the school, contribute to a reimbursable breakfast only when the school supplies at least one component of the infant's meal.

(3) *Solid foods.* For infants ages 4 through 7 months, solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The school should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time, on a gradual basis, with the intent of ensuring the infant's health and nutritional well-being.

(4) *Infant meal pattern.* Infant breakfasts must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Breakfasts may include portions of breastmilk and iron-fortified infant formula as long as the total number of ounces meets, or exceeds, the

minimum amount required of this food component. Similarly, to meet the component requirement for vegetables and fruit, portions of both may be served.

(i) *Birth through 3 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(ii) *4 through 7 months.* Breastmilk or iron-fortified formula is required. Some infants may be developmentally ready for solid foods of an appropriate texture and consistency. Breakfasts are reimbursable when schools provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) 4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and

(B) 0 to 3 tablespoons of iron-fortified dry infant cereal.

(iii) *8 through 11 months.* Breastmilk or iron-fortified formula and solid foods of an appropriate texture and consistency are required.

(A) 6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal; and

(C) 1 to 4 tablespoons of fruit or vegetable.

(5) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (j)(4) of this section, are:

BREAKFAST PATTERN FOR INFANTS

Birth through 3 months	4 through 7 months	8 through 11 months
4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ...	4–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 0–3 tablespoons of infant cereal <sup>1,4</sup> .....	6–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 2–4 tablespoons of infant cereal <sup>1</sup> ; and 1–4 tablespoons of fruit or vegetable or both.

<sup>1</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>2</sup>Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

<sup>3</sup>For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

<sup>4</sup>A serving of this component is required only when the infant is developmentally ready to accept it.

\* \* \* \* \*

## PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 7 CFR part 226 continues to read as follows:

**Authority:** Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.20, paragraphs (b) and (c)(4) are revised to read as follows:

### § 226.20 Requirements for meals.

\* \* \* \* \*

(b) *What are the requirements for the infant meal pattern?*

(1) *Feeding meals to infants.* Meals served to infants ages birth through 11 months must meet the requirements described in paragraph (b)(6) of this section. Foods included in the infant meal must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (h) of this section.

(2) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Meals containing breastmilk and meals containing iron-fortified infant formula supplied by the facility are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the facility, contribute to a reimbursable meal only when the facility supplies at least one component of the infant's meal.

(3) *Fruit juice.* Juice should not be offered to infants until they are 6 months of age and ready to drink from a cup. Feeding fruit juice only from a cup will help develop behaviors that

may prevent early childhood caries.

Fruit juice served as part of the meal pattern for infants 8 through 11 months must be full-strength.

(4) *Solid foods.* Solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The facility should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring the infant's health and nutritional well-being.

(5) *Infant meal pattern.* Infant meals must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Meals may include portions of breastmilk and iron-fortified infant formula as long as the total number of ounces meets, or exceeds, the minimum amount required of this food component. Similarly, to meet the component requirements for vegetables and fruit, portions of both may be served.

(i) *Birth through 3 months.* Only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(A) Breakfast—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(B) Lunch or supper—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(C) Snack—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(ii) *4 through 7 months.* Breastmilk or iron-fortified formula is required. Some infants may be developmentally ready for solid foods of an appropriate texture and consistency. Meals are reimbursable when facilities provide all of the

components in the meal pattern that the infant is developmentally ready to accept.

(A) Breakfast—4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal.

(B) Lunch or supper—4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal; and 0 to 3 tablespoons of fruit or vegetable.

(C) Snack—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(iii) *8 through 11 months.* Breastmilk or iron-fortified formula and solid foods of an appropriate texture and consistency are required. Meals are reimbursable when facilities provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) Breakfast—6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable.

(B) Lunch or supper—6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; 2 to 4 tablespoons of iron-fortified dry infant cereal; and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas; or ½ to 2 ounces (weight) of cheese; or 1 to 4 ounces (volume) of cottage cheese; or 1 to 4 ounces (weight) of cheese food or cheese spread; and 1 to 4 tablespoons of fruit or vegetable.

(C) Snack—2 to 4 fluid ounces of breastmilk, iron-fortified infant formula, or full strength fruit juice; and 0 to ½ slice of crusty bread (if developmentally ready) or 0 to 2 cracker type products (if developmentally ready), which are made from whole-grain or enriched meal or flour, and suitable as a finger food for an infant.

(6) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (b)(5) of this section, are:

CHILD CARE INFANT MEAL PATTERN

Type of meal service	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast .....	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> .	4–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 0–3 tablespoons of infant cereal <sup>1,4</sup>	6–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 2–4 tablespoons of infant cereal <sup>1</sup> ; and 1–4 tablespoons of fruit or vegetable or both.
Lunch or Supper .....	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> .	4–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 0–3 tablespoons of infant cereal <sup>1,4</sup> ; and 0–3 tablespoons of fruit or vegetable or both <sup>4</sup> .	6–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 2–4 tablespoons of infant cereal <sup>1</sup> ; and/or 1–4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans or peas; or 1/2–2 ounces of cheese; or 1–4 ounces (volume) of cottage cheese; or 1–4 ounces (weight) of cheese food or cheese spread; and 1–4 tablespoons of fruit or vegetable or both.
Snack .....	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> .	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> .	2–4 fluid ounces of formula <sup>1</sup> , breastmilk <sup>2,3</sup> , or fruit juice <sup>5</sup> ; and 0–1/2 slice of bread <sup>4,6</sup> or 0–2 crackers <sup>4,6</sup> .

<sup>1</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>2</sup> Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

<sup>3</sup> For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

<sup>4</sup> A serving of this component is required only when the infant is developmentally ready to accept it.

<sup>5</sup> Fruit juice must be full-strength.

<sup>6</sup> A serving of this component must be made from whole-grain or enriched meal or flour.

\* \* \* \* \*

(c) \* \* \*

(4) *Snack*. The minimum amounts of food components to be served as snack

as set forth in paragraph (a)(4) of this section are as follow. Select two of the following four components. (For

children, juice may not be served when milk is served as the only other component.)

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 <sup>1</sup>	Adult participants <sup>1</sup>
<b>MILK</b>				
Milk, fluid .....	1/2 cup <sup>2</sup> .....	1/2 cup .....	1 cup .....	1 cup.
<b>VEGETABLES AND FRUIT</b>				
Vegetable(s) and/or fruit(s) or .....	1/2 cup .....	1/2 cup .....	3/4 cup .....	1/2 cup.
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	1/2 cup .....	1/2 cup .....	3/4 cup .....	1/2 cup.
<b>BREAD AND BREAD ALTERNATES<sup>3</sup></b>				
Bread or .....	1/2 slice .....	1/2 slice .....	1 slice .....	1 slice (serving).
Cornbread, biscuits, rolls, muffins, etc. <sup>4</sup> or .....	1/2 serving .....	1/2 serving .....	1 serving .....	1 serving.
Cold dry cereal <sup>5</sup> .....	1/4 cup or .....	1/3 cup or .....	3/4 cup or .....	3/4 cup or.
	1/3 ounce .....	1/2 ounce .....	1 ounce .....	1 ounce.
Cooked pasta or noodle products or .....	1/4 cup .....	1/4 cup .....	1/2 cup .....	1/2 cup.
Cooked cereal or grains or an equivalent quantity of any combination of bread/bread alternates.	1/4 cup .....	1/4 cup .....	1/2 cup .....	1/2 cup.
<b>MEAT AND MEAT ALTERNATES</b>				
Lean meat or poultry or fish <sup>6</sup> or .....	1/2 ounce .....	1/2 ounce .....	1 ounce .....	1 ounce.
Alternate protein products <sup>7</sup> or .....	1/2 ounce .....	1/2 ounce .....	1 ounce .....	1 ounce.
Cheese or .....	1/2 ounce .....	1/2 ounce .....	1 ounce .....	1ounce.
Egg (large) <sup>8</sup> or .....	1/2 egg .....	1/2 egg .....	1/2 egg .....	1/2 egg.
Cooked dry beans or peas or .....	1/8 cup .....	1/8 cup .....	1/4 cup .....	1/4 cup.
Peanut butter or soynut butter or other nut or seed butters or.	1 tablespoon .....	1 tablespoon .....	2 tablespoons .....	2 tablespoons.



Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 <sup>1</sup>	Adult participants <sup>1</sup>
Peanuts or soynuts or tree nuts or seeds <sup>9</sup> or ..... Yogurt, plain or flavored, unsweetened or sweetened, or an equivalent quantity of any combination of meat/meat alternates.	1/2 ounce ..... 2 ounces or 1/4 cup	1/2 ounce ..... 2 ounces or 1/4 cup	1 ounce ..... 4 ounces or 1/2 cup	1 ounce. 4 ounces or 1/2 cup.

<sup>1</sup> Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

<sup>2</sup> For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

<sup>3</sup> Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc. shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

<sup>4</sup> Serving size and equivalents to be published in guidance materials by FNS.

<sup>5</sup> Either volume (cup) or weight (ounce), whichever is less.

<sup>6</sup> Edible portion as served.

<sup>7</sup> Must meet the requirements in Appendix A of this part.

<sup>8</sup> One-half egg meets the required minimum amount (one ounce or less) of meat alternate.

<sup>9</sup> Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

\* \* \* \* \*

Dated: May 17, 2002.

**Eric M. Bost,**

*Under Secretary for Food, Nutrition and Consumer Services.*

[FR Doc. 02-13145 Filed 5-24-02; 8:45 am]

BILLING CODE 3410-30-U

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 945**

**[Docket No. FV01-945-610 REVIEW]**

**Idaho-Eastern Oregon Potato Marketing Order; Section 610 Review**

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

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results of an Agricultural Marketing Service (AMS) review of Marketing Order 945, which regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS has determined that the marketing order should be continued without change.

**DATES:** Effective: May 28, 2002.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938; or E-mail: *moab.docketclerk@usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326-

2724; Fax: (503) 326-7440; E-mail: *GaryD.Olson@usda.gov*; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-8938; E-mail: *George.Kelhart@usda.gov*.

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 945, as amended (7 CFR part 945), regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601-674).

Marketing Order 945, originally established in 1941, authorizes grade, size, quality, pack, and container regulations, as well as inspection. Under section 8e of the Act, the grade, size, quality, and maturity regulations are also applied to imported potatoes. The marketing order establishes the Idaho-Eastern Oregon Potato Committee (Committee), consisting of five producers and three handlers and their respective alternates. Members serve two-year terms and are nominated by the Idaho-Eastern Oregon potato industry, currently consisting of approximately 1,200 producers and 63 handlers.

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 945, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525). AMS published a notice of review and request for written comments on the Idaho-Eastern Oregon potato marketing order in the May 31, 2001, issue of the **Federal Register** (66 FR 24095). During the comment period, one written comment in support of the

marketing order was received. This comment, received from the Committee, supported continuation of the marketing order.

The AMS review was undertaken to determine whether the Idaho-Eastern Oregon potato marketing order should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

In its written comment, the Committee stated that the marketing order has contributed significantly to the name recognition the "Idaho Potato" currently enjoys nationally and internationally. The Committee believes that, since its inception, the marketing order has been a significant factor in the successful marketing of Idaho-Eastern Oregon potatoes and that it remains an important and viable tool for area producers.

Based on its review, AMS has determined that the marketing order should be continued without change. The marketing order was established to help the Idaho-Eastern Oregon potato industry work with AMS to solve marketing problems. The marketing order regulations on grade, size, quality, maturity, pack, container, and inspection requirements continue to be beneficial to producers, handlers, and consumers. Potatoes produced within this region are widely recognized by

consumers as having quality characteristics.

Neither AMS nor the Committee have received any complaints regarding Marketing Order 945 or the regulations issued thereunder. The marketing order is not unduly complex. Except for 8e regulations, AMS has not identified any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the Idaho-Eastern Oregon potato marketing order. In its comment, the Committee states that the order is not complex, but adds that it is available to assist both regulated handlers and inspection personnel if there are any questions or problems regarding interpretation of the handling regulations issued under the marketing order.

AMS provides federal oversight of the order and, along with the Committee, monitors marketing operations on a continuing basis. AMS works with the Committee to be responsive to an ever-changing market. Changes in regulations are implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of these evaluations is to assure that the marketing order and the regulations implemented under it fit the needs of the industry and are consistent with the Act. The Committee commented that it meets at least twice annually to discuss the marketing order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to recommend to AMS to reflect current industry practices. As a result, regulatory changes have been made by AMS numerous times over the years to address industry operation changes and to improve program administration.

AMS will continue to work with the Idaho-Eastern Oregon potato industry in maintaining an effective marketing order program.

Dated: May 20, 2002.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 02-13124 Filed 5-24-02; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV02-989-1 IFR]

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

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

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

**SUMMARY:** This rule adds a new varietal type of raisin under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (RAC). The order provides authority for volume and quality regulations that are imposed by varietal type. This action establishes and adds to the regulations a new varietal type (Other Seedless-Sulfured raisins), along with quality requirements for this varietal type. This is a new type of raisin being produced by some industry members.

**DATES:** Effective May 29, 2002. Comments received by July 29, 2002, 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 E-mail:

*moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/jv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400

Independence Avenue, SW Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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. It is not intended to have retroactive intent. Under the order provisions now in effect, varietal types and quality requirements may be established for raisins acquired by handlers during the crop year. This rule establishes a new varietal type and quality requirements for Other Seedless-Sulfured raisins. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule adds a new varietal type of raisin under the order. The order

regulates the handling of raisins produced from grapes grown in California and is administered locally by the RAC. The order provides authority for volume and quality regulations that are imposed by varietal type. This action establishes, and adds to the regulations a varietal type (Other Seedless-Sulfured raisins), along with quality requirements, which is a new type of raisin being produced by some industry members. This action was recommended by the RAC at a meeting in August 2001, and discussed further at RAC meetings in September and November 2001. The RAC recommended that this rule apply to such raisins acquired during the 2001-02 crop year and forward. Changes to the import regulation will be made in a separate rule.

#### **Varietal Type for Other Seedless-Sulfured Raisins**

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

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

Thus, the RAC recommended establishing, and adding to the regulations, a new varietal type—Other Seedless-Sulfured raisins. This will allow the RAC to consider Other Seedless-Sulfured raisins separate from other varietal types for the purpose of

volume and quality regulation, thereby recognizing distinct differences in supply and demand conditions, and raisin characteristics. Accordingly, a new paragraph (j) is added to § 989.110 to define Other Seedless-Sulfured as all raisins produced from Ruby Seedless, Kings Ruby Seedless, Flame Seedless and other seedless grapes not included in any of the varietal categories for Seedless raisins which have been artificially dehydrated and sulfured.

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

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

#### **Incoming Quality Requirements**

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

#### **Weight Dockage System**

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

outside the tolerances for substandard raisins and maturity, respectively, specified in § 989.701.

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

#### **Raisin Weight Conversion Table**

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

#### **Outgoing Quality Requirements**

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

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

## Reporting Requirements

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

## Initial Regulatory Flexibility Analysis

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

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have sales less than \$5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

The order provides authority for volume and quality regulations that are imposed by varietal type of raisin. This rule establishes, and adds to the

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

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

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

All raisin handlers are currently required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin.

These reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC-1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC-3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC-20); (4) Weekly Off-Grade Summary (RAC-30); (5) Inventory of Free Tonnage Standard Quality Raisins On Hand (RAC-50); and (6) Inventory of Off-Grade Raisins On Hand (RAC-51). This rule requires that an additional column be added to these six forms so that handlers can report Other Seedless-Sulfured raisins separately. The current total annual burden for these six forms is 660 hours. This rule will not change this burden on handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements referenced above have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

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

Comments are invited concerning this rule. A 60-day comment period is provided to allow interested persons to respond. All comments received will be

considered prior to finalization of this rule.

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

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) Other Seedless-Sulfured raisins are being produced by dehydrators and acquired by handlers during the 2001–02 crop year; (2) industry members are aware of this action which was recommended and discussed by the RAC at public meetings; (3) this rule provides appropriate quality standards for Other Seedless-Sulfured raisins which will facilitate the production and marketing of such raisins; and (4) this interim final rule provides a 60-day period for written comments, and all comments timely received will be considered prior to finalization of this rule.

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

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

For the reasons set forth in the preamble, 7 CFR part 989 is amended as followed:

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

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 989.110 is amended by adding a new paragraph (j) to read as follows:

**§ 989.110 Varietal types.**

\* \* \* \* \*

(j) Other Seedless-Sulfured includes all raisins produced from Ruby Seedless, Kings Ruby Seedless, Flame Seedless and other seedless grapes not included in any of the varietal categories for Seedless raisins defined in paragraphs (a), (b), (c), (d), (h), or (i) of this section which have been artificially dehydrated and sulfured.

3. In § 989.210, the first sentence in paragraph (a) is revised to read as follows:

**§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.**

(a) *General.* A handler may acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, Sultana, Zante Currant, Muscat (including other raisins with seeds), and Other Seedless-Sulfured raisins under the weight dockage provisions described in §§ 989.212 and 989.213. \* \* \*

\* \* \* \* \*

4. In § 989.212, paragraph (a), the paragraph heading in paragraph (b), the note to paragraph (b), and the note to paragraph (c) are revised to read as follows: § 989.212 Substandard dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins containing from 5.1 through 17.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system. A handler may also, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 through 20.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

(b) *Substandard dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins.* \* \* \*

**Note to paragraph (b):** Percentages in excess of the last percentage shown in the table shall be expressed in the same increment as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment. Deliveries in excess of 17.0 percent would be offgrade; therefore, the dockage factor does not apply.

(c) \* \* \*

**Note to paragraph (c):** Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each increment shall be .001 less

than the dockage factor for the preceding increment. Deliveries in excess of 20.0 percent would be offgrade; therefore, the dockage factor does not apply.

5. Section 989.213 is amended by revising paragraph (a) and the introductory text in paragraphs (b), (c), and (d), removing the last sentence in the note to paragraph (d) and removing the last sentence in the note to paragraph (e) to read as follows:

**§ 989.213 Maturity dockage.**

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins containing from 35.0 percent through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraphs (b), (c), and (d) of this section.

(b) Maturity dockage table applicable to lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins which contain 45.0 percent through 49.9 percent well-matured or reasonably well-matured raisins: \* \* \*

(c) Maturity dockage table applicable to lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins which contain 40.0 percent through 44.9 percent well-matured or reasonably well-matured raisins: \* \* \*

(d) Maturity dockage table applicable to lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins which contain 35.0 percent through 39.9 percent well-matured or reasonably well-matured raisins: \* \* \*

\* \* \* \* \*

6. In § 989.601, the table is revised to read as follows:

**§ 989.601 Conversion factors for raisin weight.**

\* \* \* \* \*

Varietal type	Conversion factor
Natural (sun-dried) Seedless ....	0.92
Golden Seedless, Dipped Seedless, Other Seedless, and Other Seedless-Sulfured Muscats (including raisins with seeds):	0.95
Seeded .....	0.80
Unseeded .....	0.92
Sultana .....	0.92
Zante Currant .....	0.91
Oleate and Related Seedless ..	0.92

7. In § 989.701, the paragraph heading and the first sentence in paragraph (b) are revised to read as follows:

**§ 989.701 Minimum grade and condition standards for natural condition raisins.**

\* \* \* \* \*

(b) *Dipped Seedless, Oleate and Related Seedless, and Other Seedless-Sulfured raisins.* Natural condition Dipped Seedless, Oleate and Related Seedless, and Other Seedless-Sulfured raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: \* \* \*

\* \* \* \* \*

8. In § 989.702, paragraph (a) is revised to read as follows:

**§ 989.702 Minimum grade standards for packed raisins.**

\* \* \* \* \*

(a) *Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, and Other Seedless-Sulfured raisins.* Packed Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, and Other Seedless-Sulfured raisins shall meet the requirements of U.S. Grade C as defined in the effective United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858 of this title): *Provided*, That at least 70.0 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized raisin lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem, and underdeveloped and substandard raisins, and small (midget)-sized raisins shall meet the U.S. Grade C tolerances for those factors.

\* \* \* \* \*

Dated: May 21, 2002.

**A.J. Yates,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-13229 Filed 5-24-02; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1205**

[Doc # CN-02-002]

**Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports, (2002 Amendments)**

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

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An adjustment is required on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

**EFFECTIVE DATE:** June 27, 2002.

**FOR FURTHER INFORMATION CONTACT:** Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW, Washington, DC 20250-0224, telephone (202) 720-2259, facsimile (202) 690-1718, or email at [whitney.rick@usda.gov](mailto:whitney.rick@usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

**Executive Order 12988**

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

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a

hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

**Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule will affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule will lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses. The current assessment on imported cotton is \$0.009965 per kilogram of imported cotton. The new assessment is \$0.00862, a decrease of \$0.001345 or a 13.5 percent decrease. From January through December 2001 approximately \$22 million was collected. Should the volume of cotton products imported into the U.S. remain at the same level in 2002, one could expect the decreased assessment to generate approximately \$19 million or a 13.5 percent decrease from 2001.

**Paperwork Reduction**

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581-0093.

**Background**

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that

authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments. An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This rule will decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of \$1 per bale of cotton which is equivalent to 500 pounds or \$1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic

is “Agricultural Prices”, a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (66 FR 58051) on November 20, 2001, for the purpose of calculating supplemental assessments on imported cotton is \$1.1111 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 2000 which was \$0.504 per pound and multiplying by the conversion factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 2001, which is \$0.382 per pound, the new value of imported cotton is \$0.8422 per kilogram. The amended value is \$.2689 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

- One bale is equal to 500 pounds.
- One kilogram equals 2.2046 pounds.
- One pound equals 0.453597 kilograms.

*One Dollar Per Bale Assessment Converted to Kilograms*

A 500 pound bale equals 226.8 kg. (500 × .453597).

\$1 per bale assessment equals \$0.002000 per pound (1/500) or \$0.004409 per kg. (1/226.8).

*Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms.*

The 2001 calendar year weighted average price received by producers for

Upland cotton is \$0.382 per pound or \$0.8422 per kg. (0.382 × 2.2046).

Five tenths of one percent of the average price in kg. equals \$0.004211 per kg. (0.8422 × .005).

*Total Assessment*

The total assessment per kilogram of raw cotton is obtained by adding the \$1 per bale equivalent assessment of \$0.004409 per kg. and the supplemental assessment \$0.004211 per kg. which equals \$0.00862 per kg.

The current assessment on imported cotton is \$0.009965 per kilogram of imported cotton. The amended assessment is \$0.00862, a decrease of \$0.001345 per kilogram. This decrease reflects the decrease in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 2001.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

A proposed rule with request for comments was published in the **Federal Register** (67 FR 15495) on April 2, 2002. No comments were received during the period (April 2 through May 2, 2002).

Several changes in the harmonized tariff schedule numbering have occurred. Modifications to the harmonized tariff schedule were published in the December 26, 2001, **Federal Register** at 66 FR 66549 (Proclamation 7515 of December 18, 2001, by the President of the United States of America). These changes are as follows: Numbers changed:

Old No.	New No(s).	Conversion factor	Assessment cents/kg
5607902000	5607909000	0.8889	0.7662
6002203000	6003203000	0.8681	0.7483
6002206000	6003306000	0.2894	0.2495
	6003406000		
600242000	6005210000	0.8681	0.7483
	6005220000		
	6005220000		
	6005230000		
	6005240000		

Old No.	New No(s).	Conversion factor	Assessment cents/kg
6002430010	6005310010	0.2894	0.2495
	6005320010		
	6005330010		
	6005340010		
	6005410010		
	6005420010		
	6005430010		
	6005440010		
	6005310080		
	6005320080		
6002430080	6005330080	0.2894	0.2495
	6005340080		
	6005410080		
	6005420080		
	6005430080		
	6005440080		
	6006211000		
	6006221000		
	6006231000		
	6006241000		
6002921000	6006310040	1.1574	0.9977
6002930040	6006320040	0.1157	0.0997
	6006330040		
	6006340040		
	6006310080		
6002930080	6006320080	0.1157	0.0997
	6006330080		
	6006340080		
	6006410085		
	6006420085		
	6006430085		
	6006440085		
	6006440085		

**List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is amended as follows:

**PART 1205—COTTON RESEARCH AND PROMOTION**

1. The authority citation for Part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

**§ 1205.510 Levy of assessments.**

\* \* \* \* \*

(b) \* \* \*

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is \$0.862 per kilogram.

(3) \* \* \*

(ii) \* \* \*

**IMPORT ASSESSMENT TABLE**  
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	0.8620
5201001200	0	0.8620
5201001400	0	0.8620
5201001800	0	0.8620
5201002200	0	0.8620
5201002400	0	0.8620
5201002800	0	0.8620
5201003400	0	0.8620
5201003800	0	0.8620
5204110000	1.1111	0.9578
5204200000	1.1111	0.9578
5205111000	1.1111	0.9578
5205112000	1.1111	0.9578
5205121000	1.1111	0.9578
5205122000	1.1111	0.9578
5205131000	1.1111	0.9578
5205132000	1.1111	0.9578
5205141000	1.1111	0.9578
5205210020	1.1111	0.9578
5205210090	1.1111	0.9578
5205220020	1.1111	0.9578
5205220090	1.1111	0.9578
5205230020	1.1111	0.9578
5205230090	1.1111	0.9578
5205240020	1.1111	0.9578
5205240090	1.1111	0.9578
5205310000	1.1111	0.9578
5205320000	1.1111	0.9578
5205330000	1.1111	0.9578
5205340000	1.1111	0.9578
5205410020	1.1111	0.9578
5205410090	1.1111	0.9578
5205420020	1.1111	0.9578
5205420090	1.1111	0.9578

**IMPORT ASSESSMENT TABLE—**  
**Continued**  
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5205440020	1.1111	0.9578
5205440090	1.1111	0.9578
5206120000	0.5556	0.4789
5206130000	0.5556	0.4789
5206140000	0.5556	0.4789
5206220000	0.5556	0.4789
5206230000	0.5556	0.4789
5206240000	0.5556	0.4789
5206310000	0.5556	0.4789
5207100000	1.1111	0.9578
5207900000	0.5556	0.4789
5208112020	1.1455	0.9874
5208112040	1.1455	0.9874
5208112090	1.1455	0.9874
5208114020	1.1455	0.9874
5208114060	1.1455	0.9874
5208114090	1.1455	0.9874
5208118090	1.1455	0.9874
5208124020	1.1455	0.9874
5208124040	1.1455	0.9874
5208124090	1.1455	0.9874
5208126020	1.1455	0.9874
5208126040	1.1455	0.9874
5208126060	1.1455	0.9874
5208126090	1.1455	0.9874
5208128020	1.1455	0.9874
5208128090	1.1455	0.9874
5208130000	1.1455	0.9874
5208192020	1.1455	0.9874
5208192090	1.1455	0.9874
5208194020	1.1455	0.9874
5208194090	1.1455	0.9874



IMPORT ASSESSMENT TABLE— Continued [Raw Cotton Fiber]			IMPORT ASSESSMENT TABLE— Continued [Raw Cotton Fiber]			IMPORT ASSESSMENT TABLE— Continued [Raw Cotton Fiber]		
HTS No.	Conv. fact.	Cents/kg.	HTS No.	Conv. fact.	Cents/kg.	HTS No.	Conv. fact.	Cents/kg.
5208196020	1.1455	0.9874	5209290090	1.1455	0.9874	5509530030	0.5556	0.4789
5208196090	1.1455	0.9874	5209313000	1.1455	0.9874	5509530060	0.5556	0.4789
5208224040	1.1455	0.9874	5209316020	1.1455	0.9874	5513110020	0.4009	0.3456
5208224090	1.1455	0.9874	5209316035	1.1455	0.9874	5513110040	0.4009	0.3456
5208226020	1.1455	0.9874	5209316050	1.1455	0.9874	5513110060	0.4009	0.3456
5208226060	1.1455	0.9874	5209316090	1.1455	0.9874	5513110090	0.4009	0.3456
5208228020	1.1455	0.9874	5209320020	1.1455	0.9874	5513120000	0.4009	0.3456
5208230000	1.1455	0.9874	5209320040	1.1455	0.9874	5513130020	0.4009	0.3456
5208292020	1.1455	0.9874	5209390020	1.1455	0.9874	5513210020	0.4009	0.3456
5208292090	1.1455	0.9874	5209390040	1.1455	0.9874	5513310000	0.4009	0.3456
5208294090	1.1455	0.9874	5209390060	1.1455	0.9874	5514120020	0.4009	0.3456
5208296090	1.1455	0.9874	5209390080	1.1455	0.9874	5516420060	0.4009	0.3456
5208298020	1.1455	0.9874	5209390090	1.1455	0.9874	5516910060	0.4009	0.3456
5208312000	1.1455	0.9874	5209413000	1.1455	0.9874	5516930090	0.4009	0.3456
5208321000	1.1455	0.9874	5209416020	1.1455	0.9874	5601210010	1.1455	0.9874
5208323020	1.1455	0.9874	5209416040	1.1455	0.9874	5601210090	1.1455	0.9874
5208323040	1.1455	0.9874	5209420020	1.0309	0.8886	5601300000	1.1455	0.9874
5208323090	1.1455	0.9874	5209420040	1.0309	0.8886	5602109090	0.5727	0.4937
5208324020	1.1455	0.9874	5209430030	1.1455	0.9874	5602290000	1.1455	0.9874
5208324040	1.1455	0.9874	5209430050	1.1455	0.9874	5602906000	0.526	0.4534
5208325020	1.1455	0.9874	5209490020	1.1455	0.9874	5604900000	0.5556	0.4789
5208330000	1.1455	0.9874	5209490090	1.1455	0.9874	5607909000	0.8889	0.7662
5208392020	1.1455	0.9874	5209516035	1.1455	0.9874	5608901000	1.1111	0.9578
5208392090	1.1455	0.9874	5209516050	1.1455	0.9874	5608902300	1.1111	0.9578
5208394090	1.1455	0.9874	5209520020	1.1455	0.9874	5609001000	1.1111	0.9578
5208396090	1.1455	0.9874	5209590025	1.1455	0.9874	5609004000	0.5556	0.4789
5208398020	1.1455	0.9874	5209590040	1.1455	0.9874	5701104000	0.0556	0.0479
5208412000	1.1455	0.9874	5209590090	1.1455	0.9874	5701109000	0.1111	0.0958
5208416000	1.1455	0.9874	5210114020	0.6873	0.5925	5701901010	1.0444	0.9003
5208418000	1.1455	0.9874	5210114040	0.6873	0.5925	5702109020	1.1	0.9482
5208421000	1.1455	0.9874	5210116020	0.6873	0.5925	5702312000	0.0778	0.0671
5208423000	1.1455	0.9874	5210116040	0.6873	0.5925	5702411000	0.0722	0.0622
5208424000	1.1455	0.9874	5210116060	0.6873	0.5925	5702412000	0.0778	0.0671
5208425000	1.1455	0.9874	5210118020	0.6873	0.5925	5702421000	0.0778	0.0671
5208430000	1.1455	0.9874	5210120000	0.6873	0.5925	5702913000	0.0889	0.0766
5208492000	1.1455	0.9874	5210192090	0.6873	0.5925	5702991010	1.1111	0.9578
5208494020	1.1455	0.9874	5210214040	0.6873	0.5925	5702991090	1.1111	0.9578
5208494090	1.1455	0.9874	5210216020	0.6873	0.5925	5703900000	0.4489	0.3870
5208496010	1.1455	0.9874	5210216060	0.6873	0.5925	5801210000	1.1455	0.9874
5208496090	1.1455	0.9874	5210218020	0.6873	0.5925	5801230000	1.1455	0.9874
5208498090	1.1455	0.9874	5210314020	0.6873	0.5925	5801250010	1.1455	0.9874
5208512000	1.1455	0.9874	5210314040	0.6873	0.5925	5801250020	1.1455	0.9874
5208516060	1.1455	0.9874	5210316020	0.6873	0.5925	5801260020	1.1455	0.9874
5208518090	1.1455	0.9874	5210318020	0.6873	0.5925	5802190000	1.1455	0.9874
5208523020	1.1455	0.9874	5210414000	0.6873	0.5925	5802300030	0.5727	0.4937
5208523045	1.1455	0.9874	5210416000	0.6873	0.5925	5804291000	1.1455	0.9874
5208523090	1.1455	0.9874	5210418000	0.6873	0.5925	5806200010	0.3534	0.3046
5208524020	1.1455	0.9874	5210498090	0.6873	0.5925	5806200090	0.3534	0.3046
5208524045	1.1455	0.9874	5210514040	0.6873	0.5925	5806310000	1.1455	0.9874
5208524065	1.1455	0.9874	5210516020	0.6873	0.5925	5806400000	0.4296	0.3703
5208525020	1.1455	0.9874	5210516040	0.6873	0.5925	5808107000	0.5727	0.4937
5208530000	1.1455	0.9874	5210516060	0.6873	0.5925	5808900010	0.5727	0.4937
5208592025	1.1455	0.9874	5211110090	0.6873	0.5925	5811002000	1.1455	0.9874
5208592095	1.1455	0.9874	5211120020	0.6873	0.5925	6001106000	1.1455	0.9874
5208594090	1.1455	0.9874	5211190020	0.6873	0.5925	6001210000	0.8591	0.7405
5208596090	1.1455	0.9874	5211190060	0.6873	0.5925	6001220000	0.2864	0.2469
5209110020	1.1455	0.9874	5211210025	0.6873	0.5925	6001910010	0.8591	0.7405
5209110035	1.1455	0.9874	5211210035	0.4165	0.3590	6001910020	0.8591	0.7405
5209110090	1.1455	0.9874	5211210050	0.6873	0.5925	6001920020	0.2864	0.2469
5209120020	1.1455	0.9874	5211290090	0.6873	0.5925	6001920030	0.2864	0.2469
5209120040	1.1455	0.9874	5211320020	0.6873	0.5925	6001920040	0.2864	0.2469
5209190020	1.1455	0.9874	5211390040	0.6873	0.5925	6003203000	0.8681	0.7483
5209190040	1.1455	0.9874	5211390060	0.6873	0.5925	6003306000	0.2894	0.2495
5209190060	1.1455	0.9874	5211490020	0.6873	0.5925	6003406000	0.2894	0.2495
5209190090	1.1455	0.9874	5211490090	0.6873	0.5925	6005210000	0.8681	0.7483
5209210090	1.1455	0.9874	5211590025	0.6873	0.5925	6005220000	0.8681	0.7483
5209220020	1.1455	0.9874	5212146090	0.9164	0.7899	6005230000	0.8681	0.7483
5209220040	1.1455	0.9874	5212156020	0.9164	0.7899	6005240000	0.8681	0.7483
5209290040	1.1455	0.9874	5212216090	0.9164	0.7899	6005310010	0.2894	0.2495

IMPORT ASSESSMENT TABLE—  
Continued  
[Raw Cotton Fiber]IMPORT ASSESSMENT TABLE—  
Continued  
[Raw Cotton Fiber]IMPORT ASSESSMENT TABLE—  
Continued  
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.	HTS No.	Conv. fact.	Cents/kg.	HTS No.	Conv. fact.	Cents/kg.
6005320010	0.2894	0.2495	6105202030	0.3078	0.2653	6111206040	1.0064	0.8675
6005330010	0.2894	0.2495	6106100010	0.985	0.8491	6111305020	0.2516	0.2169
6005340010	0.2894	0.2495	6106100020	0.985	0.8491	6111305040	0.2516	0.2169
6005410010	0.2894	0.2495	6106100030	0.985	0.8491	6112110050	0.7548	0.6506
6005420010	0.2894	0.2495	6106202010	0.3078	0.2653	6112120010	0.2516	0.2169
6005430010	0.2894	0.2495	6106202030	0.3078	0.2653	6112120030	0.2516	0.2169
6005440010	0.2894	0.2495	6107110010	1.1322	0.9760	6112120040	0.2516	0.2169
6005310080	0.2894	0.2495	6107110020	1.1322	0.9760	6112120050	0.2516	0.2169
6005320080	0.2894	0.2495	6107120010	0.5032	0.4338	6112120060	0.2516	0.2169
6005330080	0.2894	0.2495	6107210010	0.8806	0.7591	6112390010	1.1322	0.9760
6005340080	0.2894	0.2495	6107220015	0.3774	0.3253	6112490010	0.9435	0.8133
6005410080	0.2894	0.2495	6107220025	0.3774	0.3253	6114200005	0.9002	0.7760
6005420080	0.2894	0.2495	6107910040	1.2581	1.0845	6114200010	0.9002	0.7760
6005430080	0.2894	0.2495	6108210010	1.2445	1.0728	6114200015	0.9002	0.7760
6005440080	0.2894	0.2495	6108210020	1.2445	1.0728	6114200020	1.286	1.1085
6006211000	1.1574	0.9977	6108310010	1.1201	0.9655	6114200040	0.9002	0.7760
6006221000	1.1574	0.9977	6108310020	1.1201	0.9655	6114200046	0.9002	0.7760
6006231000	1.1574	0.9977	6108320010	0.2489	0.2146	6114200052	0.9002	0.7760
6006241000	1.1574	0.9977	6108320015	0.2489	0.2146	6114200060	0.9002	0.7760
6006310040	0.1157	0.0997	6108320025	0.2489	0.2146	6114301010	0.2572	0.2217
6006320040	0.1157	0.0997	6108910005	1.2445	1.0728	6114301020	0.2572	0.2217
6006330040	0.1157	0.0997	6108910015	1.2445	1.0728	6114303030	0.2572	0.2217
6006340040	0.1157	0.0997	6108910025	1.2445	1.0728	6115198010	1.0417	0.8979
6006310080	0.1157	0.0997	6108910030	1.2445	1.0728	6115929000	1.0417	0.8979
6006320080	0.1157	0.0997	6108920030	0.2489	0.2146	6115936020	0.2315	0.1996
6006330080	0.1157	0.0997	6109100005	0.9956	0.8582	6116101300	0.3655	0.3151
6006340080	0.1157	0.0997	6109100007	0.9956	0.8582	6116101720	0.8528	0.7351
6006410085	0.1157	0.0997	6109100009	0.9956	0.8582	6116926420	1.0965	0.9452
6006420085	0.1157	0.0997	6109100012	0.9956	0.8582	6116926430	1.2183	1.0502
6006430085	0.1157	0.0997	6109100014	0.9956	0.8582	6116926440	1.0965	0.9452
6006440085	0.1157	0.0997	6109100018	0.9956	0.8582	6116928800	1.0965	0.9452
6101200010	1.0094	0.8701	6109100023	0.9956	0.8582	6117809510	0.9747	0.8402
6101200020	1.0094	0.8701	6109100027	0.9956	0.8582	6117809540	0.3655	0.3151
6102200010	1.0094	0.8701	6109100037	0.9956	0.8582	6201121000	0.948	0.8172
6102200020	1.0094	0.8701	6109100040	0.9956	0.8582	6201122010	0.8953	0.7717
6103421020	0.8806	0.7591	6109100045	0.9956	0.8582	6201122050	0.6847	0.5902
6103421040	0.8806	0.7591	6109100060	0.9956	0.8582	6201122060	0.6847	0.5902
6103421050	0.8806	0.7591	6109100065	0.9956	0.8582	6201134030	0.2633	0.2270
6103421070	0.8806	0.7591	6109100070	0.9956	0.8582	6201921000	0.9267	0.7988
6103431520	0.2516	0.2169	6109901007	0.3111	0.2682	6201921500	1.1583	0.9985
6103431540	0.2516	0.2169	6109901009	0.3111	0.2682	6201922010	1.0296	0.8875
6103431550	0.2516	0.2169	6109901049	0.3111	0.2682	6201922021	1.2871	1.1095
6103431570	0.2516	0.2169	6109901050	0.3111	0.2682	6201922031	1.2871	1.1095
6104220040	0.9002	0.7760	6109901060	0.3111	0.2682	6201922041	1.2871	1.1095
6104220060	0.9002	0.7760	6109901065	0.3111	0.2682	6201922051	1.0296	0.8875
6104320000	0.9207	0.7936	6109901090	0.3111	0.2682	6201922061	1.0296	0.8875
6104420010	0.9002	0.7760	6110202005	1.1837	1.0203	6201931000	0.3089	0.2663
6104420020	0.9002	0.7760	6110202010	1.1837	1.0203	6201933511	0.2574	0.2219
6104520010	0.9312	0.8027	6110202015	1.1837	1.0203	6201933521	0.2574	0.2219
6104520020	0.9312	0.8027	6110202020	1.1837	1.0203	6201999060	0.2574	0.2219
6104622006	0.8806	0.7591	6110202025	1.1837	1.0203	6202121000	0.9372	0.8079
6104622011	0.8806	0.7591	6110202030	1.1837	1.0203	6202122010	1.1064	0.9537
6104622016	0.8806	0.7591	6110202035	1.1837	1.0203	6202122025	1.3017	1.1221
6104622021	0.8806	0.7591	6110202040	1.1574	0.9977	6202122050	0.8461	0.7293
6104622026	0.8806	0.7591	6110202045	1.1574	0.9977	6202122060	0.8461	0.7293
6104622028	0.8806	0.7591	6110202065	1.1574	0.9977	6202134005	0.2664	0.2296
6104622030	0.8806	0.7591	6110202075	1.1574	0.9977	6202134020	0.333	0.2870
6104622060	0.8806	0.7591	6110909022	0.263	0.2267	6202921000	1.0413	0.8976
6104632006	0.3774	0.3253	6110909024	0.263	0.2267	6202921500	1.0413	0.8976
6104632011	0.3774	0.3253	6110909030	0.3946	0.3401	6202922026	1.3017	1.1221
6104632026	0.3774	0.3253	6110909040	0.263	0.2267	6202922061	1.0413	0.8976
6104632028	0.3774	0.3253	6110909042	0.263	0.2267	6202922071	1.0413	0.8976
6104632030	0.3774	0.3253	6111201000	1.2581	1.0845	6202931000	0.3124	0.2693
6104632060	0.3774	0.3253	6111202000	1.2581	1.0845	6202935011	0.2603	0.2244
6104692030	0.3858	0.3326	6111203000	1.0064	0.8675	6202935021	0.2603	0.2244
6105100010	0.985	0.8491	6111205000	1.0064	0.8675	6203122010	0.1302	0.1122
6105100020	0.985	0.8491	6111206010	1.0064	0.8675	6203221000	1.3017	1.1221
6105100030	0.985	0.8491	6111206020	1.0064	0.8675	6203322010	1.2366	1.0659
6105202010	0.3078	0.2653	6111206030	1.0064	0.8675	6203322040	1.2366	1.0659

IMPORT ASSESSMENT TABLE— Continued [Raw Cotton Fiber]			IMPORT ASSESSMENT TABLE— Continued [Raw Cotton Fiber]			IMPORT ASSESSMENT TABLE— Continued [Raw Cotton Fiber]		
HTS No.	Conv. fact.	Cents/kg.	HTS No.	Conv. fact.	Cents/kg.	HTS No.	Conv. fact.	Cents/kg.
6203332010	0.1302	0.1122	6204692510	0.249	0.2146	6211330035	0.3905	0.3366
62033392010	1.1715	1.0098	6204692540	0.2437	0.2101	6211330040	0.3905	0.3366
6203399060	0.2603	0.2244	6204699044	0.249	0.2146	6211420010	1.0413	0.8976
6203422010	0.9961	0.8586	6204699046	0.249	0.2146	6211420020	1.0413	0.8976
6203422025	0.9961	0.8586	6204699050	0.249	0.2146	6211420025	1.1715	1.0098
6203422050	0.9961	0.8586	6205202015	0.9961	0.8586	6211420060	1.0413	0.8976
6203422090	0.9961	0.8586	6205202020	0.9961	0.8586	6211420070	1.1715	1.0098
6203424005	1.2451	1.0733	6205202025	0.9961	0.8586	6211430010	0.2603	0.2244
6203424010	1.2451	1.0733	6205202030	0.9961	0.8586	6211430030	0.2603	0.2244
6203424015	0.9961	0.8586	6205202035	1.1206	0.9660	6211430040	0.2603	0.2244
6203424020	1.2451	1.0733	6205202046	0.9961	0.8586	6211430050	0.2603	0.2244
6203424025	1.2451	1.0733	6205202050	0.9961	0.8586	6211430060	0.2603	0.2244
6203424030	1.2451	1.0733	6205202060	0.9961	0.8586	6211430066	0.2603	0.2244
6203424035	1.2451	1.0733	6205202065	0.9961	0.8586	6212105020	0.2412	0.2079
6203424040	0.9961	0.8586	6205202070	0.9961	0.8586	6212109010	0.9646	0.8315
6203424045	0.9961	0.8586	6205202075	0.9961	0.8586	6212109020	0.2412	0.2079
6203424050	0.9238	0.7963	6205302010	0.3113	0.2683	6212200020	0.3014	0.2598
6203424055	0.9238	0.7963	6205302030	0.3113	0.2683	6212900030	0.1929	0.1663
6203424060	0.9238	0.7963	6205302040	0.3113	0.2683	6213201000	1.1809	1.0179
6203431500	0.1245	0.1073	6205302050	0.3113	0.2683	6213202000	1.0628	0.9161
6203434010	0.1232	0.1062	6505302070	0.3113	0.2683	6213901000	0.4724	0.4072
6203434020	0.1232	0.1062	6205302080	0.3113	0.2683	6214900010	0.9043	0.7795
6203434030	0.1232	0.1062	6206100040	0.1245	0.1073	6216000800	0.2351	0.2027
6203434040	0.1232	0.1062	6206303010	0.9961	0.8586	6216001720	0.6752	0.5820
6203498045	0.249	0.2146	6206303020	0.9961	0.8586	6216003800	1.2058	1.0394
6204132010	0.1302	0.1122	6206303030	0.9961	0.8586	6216004100	1.2058	1.0394
6204192000	0.1302	0.1122	6206303040	0.9961	0.8586	6217109510	1.0182	0.8777
6204198090	0.2603	0.2244	6206303050	0.9961	0.8586	6217109530	0.2546	0.2195
6204221000	1.3017	1.1221	6206303060	0.9961	0.8586	6301300010	0.8766	0.7556
6204223030	1.0413	0.8976	6206403010	0.3113	0.2683	6301300020	0.8766	0.7556
6204223040	1.0413	0.8976	6206403030	0.3113	0.2683	6302100005	1.1689	1.0076
6204223050	1.0413	0.8976	6206900040	0.249	0.2146	6302100008	1.1689	1.0076
6204223060	1.0413	0.8976	6207110000	1.0852	0.9354	6302100015	1.1689	1.0076
6204223065	1.0413	0.8976	6207199010	0.3617	0.3118	6302215010	0.8182	0.7053
6204292040	0.3254	0.2805	6207210030	1.1085	0.9555	6302215020	0.8182	0.7053
6204322010	1.2366	1.0659	6207220000	0.3695	0.3185	6302217010	1.1689	1.0076
6204322030	1.0413	0.8976	6207911000	1.1455	0.9874	6302217020	1.1689	1.0076
6204322040	1.0413	0.8976	6207913010	1.1455	0.9874	6302217050	1.1689	1.0076
6204423010	1.2728	1.0972	6207913020	1.1455	0.9874	6302219010	0.8182	0.7053
6204423030	0.9546	0.8229	6208210010	1.0583	0.9123	6302219020	0.8182	0.7053
6204423040	0.9546	0.8229	6208210020	1.0583	0.9123	6302219050	0.8182	0.7053
6204423050	0.9546	0.8229	6208220000	0.1245	0.1073	6302222010	0.4091	0.3526
6204423060	0.9546	0.8229	6208911010	1.1455	0.9874	6302222020	0.4091	0.3526
6204522010	1.2654	1.0908	6208911020	1.1455	0.9874	6302313010	0.8182	0.7053
6204522030	1.2654	1.0908	6208913010	1.1455	0.9874	6302313050	1.1689	1.0076
6204522040	1.2654	1.0908	6209201000	1.1577	0.9979	6302315050	0.8182	0.7053
6204522070	1.0656	0.9185	6209203000	0.9749	0.8404	6302317010	1.1689	1.0076
6204522080	1.0656	0.9185	6209205030	0.9749	0.8404	6302317020	1.1689	1.0076
6204533010	0.2664	0.2296	6209205035	0.9749	0.8404	6302317040	1.1689	1.0076
6204594060	0.2664	0.2296	6209205040	1.2186	1.0504	6302317050	1.1689	1.0076
6204622010	0.9961	0.8586	6209205045	0.9749	0.8404	6302319010	0.8182	0.7053
6204622025	0.9961	0.8586	6209205050	0.9749	0.8404	6302319040	0.8182	0.7053
6204622050	0.9961	0.8586	6209303020	0.2463	0.2123	6302319050	0.8182	0.7053
6204624005	1.2451	1.0733	6209303040	0.2463	0.2123	6302322020	0.4091	0.3526
6204624010	1.2451	1.0733	6210109010	0.2291	0.1975	6302322040	0.4091	0.3526
6204624020	0.9961	0.8586	6210403000	0.0391	0.0337	6302402010	0.9935	0.8564
6204624025	1.2451	1.0733	6210405020	0.4556	0.3927	6302511000	0.5844	0.5038
6204624030	1.2451	1.0733	6211111010	0.1273	0.1097	6302512000	0.8766	0.7556
6204624035	1.2451	1.0733	6211111020	0.1273	0.1097	6302513000	0.5844	0.5038
6204624040	1.2451	1.0733	6211118010	1.1455	0.9874	6302514000	0.8182	0.7053
6204624045	0.9961	0.8586	6211118020	1.1455	0.9874	6302600010	1.1689	1.0076
6204624050	0.9961	0.8586	6211320007	0.8461	0.7293	6302600020	1.052	0.9068
6204624055	0.9854	0.8494	6211320010	1.0413	0.8976	6302600030	1.052	0.9068
6204624060	0.9854	0.8494	6211320015	1.0413	0.8976	6302910005	1.052	0.9068
6204624065	0.9854	0.8494	6211320030	0.9763	0.8416	6302910015	1.1689	1.0076
6204633510	0.2546	0.2195	6211320060	0.9763	0.8416	6302910025	1.052	0.9068
6204633530	0.2546	0.2195	6211320070	0.9763	0.8416	6302910035	1.052	0.9068
6204633532	0.2437	0.2101	6211330010	0.3254	0.2805	6302910045	1.052	0.9068
6204633540	0.2437	0.2101	6211330030	0.3905	0.3366	6302910050	1.052	0.9068

IMPORT ASSESSMENT TABLE—  
Continued  
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6302910060	1.052	0.9068
6303110000	0.9448	0.8144
6303910010	0.6429	0.5542
6303910020	0.6429	0.5542
6304111000	1.0629	0.9162
6304190500	1.052	0.9068
6304191000	1.1689	1.0076
6304191500	0.4091	0.3526
6304192000	0.4091	0.3526
6304910020	0.9351	0.8061
6304920000	0.9351	0.8061
6505901540	0.181	0.1560
6505902060	0.9935	0.8564
6505902545	0.5844	0.5038

\* \* \* \* \*

Dated: May 21, 2002.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 02–13228 Filed 5–24–02; 8:45am]

BILLING CODE 3410–02–P

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

#### 8 CFR Part 3

[EOIR 133; AG Order No. 2585–2002]

RIN 1125–AA38

#### Protective Orders in Immigration Administrative Proceedings

**AGENCY:** Executive Office for Immigration Review, Justice.

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

**SUMMARY:** This interim rule amends regulations governing the Executive Office for Immigration Review (“EOIR”) by authorizing immigration judges to issue protective orders and seal records relating to law enforcement or national security information. The rule will apply in all immigration proceedings before EOIR. This rule is necessary to ensure that sensitive information can be protected from general disclosure while affording use of that information by the respondent, the immigration judges, the Board of Immigration Appeals, and reviewing courts.

**DATES:** Effective date: This rule is effective May 21, 2002.

**Comment date:** Written comments must be submitted on or before July 29, 2002.

**ADDRESSES:** Please submit written comments to Charles Adkins-Blanch,

General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

#### FOR FURTHER INFORMATION CONTACT:

Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

#### SUPPLEMENTARY INFORMATION:

#### Immigration Judge Authority to Issue Protective Orders and Seal Records

This interim rule amends 8 CFR 3.27 and 3.31, and adds 8 CFR 3.46 to authorize immigration judges to issue protective orders and accept documents under seal. This authority will ensure that sensitive law enforcement or national security information can be protected against general disclosure, while still affording full use of the information by the immigration judges, Board of Immigration Appeals, the respondent, and the courts.

The Immigration and Naturalization Service (“Service”) may need to introduce in immigration proceedings sensitive law enforcement or national security information. For example, the Service may need to introduce grand jury information or information that reveals the identity of confidential informants, witnesses, or sources to establish that release from custody of a particular respondent poses a danger to the safety of other persons under section 236 of the Immigration and Nationality Act (“Act”), 8 U.S.C. 1226. Similarly, the Service may need to introduce sensitive evidence of organized criminal activity, either in the United States or in a foreign country, to establish the basis on which the Service believes that the respondent “is or has been an illicit trafficker in any controlled substance” under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. 1182(a)(2)(C)(i), and is inadmissible. The disclosure of such information could clearly jeopardize ongoing criminal investigations and the safety of any sources and law enforcement officers. This rule is necessary to ensure that a respondent in proceedings will not disclose that information to individuals not authorized to possess the information.

This rule is also necessary because apparently innocuous law enforcement or national security information may be valuable to persons with a broader view of a subject. See generally, *McGehee v. Casey*, 718 F.2d 1137, 1149 (D.C. Cir. 1983) (“[d]ue to the mosaic-like nature of intelligence gathering, for example, [w]hat may seem trivial to the uninformed may appear of great

moment to one who has a broad view of the scene and may put the questioned item of information in context”) (internal quotations omitted). Certain circumstances may therefore require that access to information submitted to an immigration judge be restricted. This regulation provides immigration judges and the Service with the flexibility to protect this information where necessary.

In this post-September 11, 2001, era, the highest priority of the Department of Justice (“Department”) is to prevent, detect, disrupt, and dismantle terrorism while preserving constitutional liberties. The intelligence and law enforcement communities’ ability to collect and protect information relating to terrorist organizations is vital to the success of the United States’ mission against terrorism. Failure to protect sensitive information may impede future collection efforts or aid terrorists who seek to harm Americans by revealing the thrust, sources, and methods of the Government’s investigations. Disclosures of such sensitive information could allow terrorists to discern patterns in an investigation, enabling them to evade detection in the future. Disclosure of sensitive information could also reveal the identity of witnesses, allowing terrorists to threaten those witnesses or their families, and to make all witnesses less likely to cooperate. Such disclosures could also give terrorists clues as to what the Government knows and, sometimes more importantly, what the Government does not know. Such information could enable terrorists to adjust their plans in ways that avoid Government detection and that further endanger American lives. The Third Circuit recently recognized this principle:

“We are not inclined to impede investigators in their efforts to cast out, root and branch, all vestiges of terrorism both in our homeland and in far off lands. As the [Supreme] Court has stated:

‘Few interests can be more compelling than a nation’s need to ensure its own security. It is well to remember that freedom as we know it has been suppressed in many countries. Unless a society has the capability and will to defend itself from the aggressions of others, constitutional protections of any sort have little meaning.’

*Wayte v. United States*, 470 U.S. 598, 611–612 (1985).”

*Kiarelddeen v. Ashcroft*, 273 F.3d 542, 555–56 (3d Cir. 2001). The premise of this interim rule is that ongoing investigations require that sensitive information be protected from general disclosure in immigration proceedings

and that regulatory authority for such protection is appropriate.

These regulations are a prudent and balanced acknowledgment of the reality that the Government's efforts against terrorism require the Department to treat information collected by the law enforcement and intelligence communities as vital national assets.

### **The Attorney General's Authority to Issue These Regulations**

Congress has plenary authority over immigration matters. U.S. Const. Art I, sec. 8, cl. 4.

Congress has delegated to the Attorney General broad authority to administer the Act, to manage the Service, and to effectuate the administrative adjudication functions related to immigration. 8 U.S.C. 1103(a). Moreover, the Attorney General has an active role in the administration of the intelligence and law enforcement communities, both of which implicate the President's plenary authority over foreign relations. *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) ("In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation").

Indeed, the courts have viewed the President's inherent powers as a justification for permitting Congress to make remarkably broad delegations of its authority in the immigration field. *Knauff*, 338 U.S. at 543; *Curtiss-Wright Export Corp.*, 299 U.S. at 319-20 (when dealing with foreign affairs Congress may delegate a degree of discretion that would not be permissible if domestic policy alone were involved); see also *Jean v. Nelson*, 472 U.S. 846, 879 (1985) (Marshall, J., dissenting) (a lesser degree of procedural due process has been accorded to respondents in cases involving national security).

The Attorney General here is exercising the confluence of the authority granted by Congress under the Act and his authority inherent from his position as Attorney General concerning immigration policy, with regard to all such matters that are not subject to either a statutory mandate or an express prohibition. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 636-37 (1952) (Jackson, J. concurring).

This rule complements several other authorities to retain information. A directive by Chief Immigration Judge Creppy on September 21, 2001, that certain "special interest" cases should be closed to the public under 8 CFR 3.27, has generally limited the

disclosure of information during hearings by limiting the attendees to those hearings. This rule is designed to work in tandem with that authority, and in a limited sense, codify a portion of that authority, by limiting what the respondent and his or her representatives may disclose about sensitive law enforcement and national security information outside the context of those hearings. The rule does not, however, replace or diminish the authority of the Chief Immigration Judge to manage the Immigration Courts and close hearings. The Chief Immigration Judge will continue to use 8 CFR 3.9 and 3.27 to ensure that testimony before an Immigration judge does not disclose sensitive law enforcement and national security information.

### **Process for Protective Orders**

This rule utilizes several elements of protective orders in federal courts in the immigration administrative adjudication process. The Service may file a motion, with or without sealed information, to acquire a protective order for that information. The motion will be served on the respondent, who may respond within a short time. The information will not be made available to the respondent. The Immigration judge may review the information in camera only to determine whether to grant or deny the motion.

If a motion is denied, the information must be returned to the Service. The Service may appeal that decision immediately and any appeal must be decided expeditiously. This process maintains the *status quo* to the greatest extent possible while the protective order is considered.

If the motion is granted, an appropriate protective order is issued and the respondent will be provided with the information under the protective order. The respondent may challenge the admissibility of the information as evidence. The respondent may appeal the determination at the conclusion of proceedings.

### **Standards for Issuance of a Protective Order**

The Department recognizes that the issuance of a protective order raises First Amendment free speech issues. In this rule, the protective orders are limited to an important and substantial governmental interest in safeguarding the public, and national security and law enforcement concerns. The rule no more limits a respondent's, or the respondent's representatives, rights than is necessary or essential to protect the particular governmental interests

involved. Like the protective orders under Federal Rule of Civil Procedure 26(c), the Department seeks only to limit a respondent's ability to disclose or disseminate information discovered in the removal process and subject to the protective order. The Department believes that this rule is sufficiently narrow to meet the requirements of the Supreme Court in *Seattle Times Company v. Rhinehart*, 467 U.S. 20 (1984) (interpreting Rule 26(c) and a district court protective order issued in discovery) and *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991) (public statements of attorney and application of bar disciplinary process). To do so, the rule utilizes a requirement that there be a substantial likelihood that disclosure or dissemination will harm the law enforcement or national security interests of the United States.

Moreover, the rule must be construed to comply with constitutional requirements. For example, the rule could not be applied to preclude a respondent from publicly stating the content of his own testimony before the immigration judge. See *Butterworth v. Smith*, 494 U.S. 624 (1990). A respondent could, however, be ordered not to disclose what he or she has learned from the protected information that comes into his or her knowledge during the proceedings, including, for example, the significance of information that the respondent already knows. *Id.*, at 632 ("right to divulge information of which he was in possession before he testified before the grand jury, and not information which he may have obtained as a result of his participation in the proceedings of the grand jury").

### **Protective Orders in Other Administrative Contexts**

The issuance of protective orders in administrative proceedings is not a new concept. On the contrary, a number of agencies have exercised this type of authority in the past, in situations that do not pose the same degree of danger to the interests of the United States. See, e.g., 4 CFR 21.4 (General Accounting Office; protection of proprietary, confidential, or source-selection sensitive material in bid protests); 14 CFR 13.220 (Federal Aviation Administration; discovery in civil penalty actions); 17 CFR 201.322 (Securities and Exchange Commission; rules of practice and procedure).

### **Consequences of not Complying With the Protective Order**

The administrative enforcement provision of this interim rule sets out various consequences that violators of a protective order may face. A respondent

who violates a protective order, or whose attorney or accredited representative violates a protective order, will not be granted any form of discretionary relief from removal. The Supreme Court has upheld an agency's ability to exercise discretionary authority through regulations. See *Lopez v. Davis*, 531 U.S. 230 (2001). Discretionary relief is an "an act of grace." *Jay v. Boyd*, 351 U.S. 345, 354 (1956). Where a respondent has violated a protective order and thereby possibly compromised sensitive information, such grace ought not be afforded readily—particularly where the respondent has already shown a disregard for this Nation's laws by violating the terms of his or her visa or otherwise violating the Act. Thus, as an exercise of the Attorney General's discretion, these regulations provide that a respondent who violates a protective order, or whose attorney or accredited representative violates a protective order, should generally not be granted discretionary relief.

Attorneys and accredited representatives may also be barred from appearing in further proceedings before EOIR or the Service. See 8 CFR 3.102(g) (contumelious conduct amounting to contempt). An attorney's or accredited representative's failure to comply with the protective order may be charged to the client and may impair the client's ability to obtain discretionary relief.

The possibility that a respondent might violate the order and disclose protected information presented does not eliminate the importance of attempting to restrict access to the information. The Department believes that most respondents will comply with the protective orders because disclosure of some sensitive information may imperil them directly.

#### **The Respondents' Protection Against Unwarranted Disclosures**

The Department also recognizes that a respondent may possess information that is of such a sensitivity to the respondent that it warrants protection from general disclosure and existing regulations provide sufficient protection for the respondent. For example, a respondent who has applied for asylum under section 208 of the Act will naturally be testifying about events that he or she believes have had or will have horrific consequences. The application for asylum and related documents are already the subject of non-disclosure requirements. 8 CFR 208.6. Similarly, an immigration judge may close proceedings in the public interest, including for the protection of the respondent. 8 CFR 3.27(b). A lawful

permanent resident is protected from disclosure of personal information by government officials under the Privacy Act of 1974, 8 U.S.C. 552a. Respondents arriving at a port of entry who are denied admission also routinely receive closed hearings. 8 CFR 3.27. Moreover, the Department has a long-standing policy against releasing information about any individual who is involved in civil proceedings in order to protect their privacy and the integrity of the adjudicatory process. 28 CFR 50.2(c). Accordingly, the Department feels that individual respondents in proceedings do not require further privacy protections for sensitive information.

#### **Good Cause Exception**

The Department's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for the immediate promulgation of this rule are as follows: Sensitive information developed by, or provided to, the Federal Bureau of Investigation or the Service in the course of national security and law enforcement investigations sometimes must be presented to Immigration judges in instances where disclosure of that information would jeopardize or compromise the national security or law enforcement operations of the Government as explained in the Supplementary Information. Disclosure could, for example, reveal important information about the direction, progress, focus and scope of investigations arising out of the attack on September 11, 2001, and thereby assist terrorist organizations in counteracting investigative efforts of the United States.

In order to safeguard these important interests, the immigration judge must be given authority to issue protective orders to safeguard such sensitive information from disclosure. In light of the national emergency declared by the President on September 14, 2001, in Proclamation 7453, with respect to the terrorist attacks of September 11, 2001, and the continuing threat by terrorists to the security of the United States, and the need immediately to control such information pertaining to respondents in immigration proceedings, there is good cause under 5 U.S.C. 553(b) and (d) for dispensing with the requirements of prior notice and to make this rule effective upon signature.

#### **Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5

U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to release of sensitive information in immigration proceedings. It does not have any impact on small entities as that term is defined in 5 U.S.C. 601(6).

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Executive Order 12866**

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

#### **Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule merely pertains to the disclosure of sensitive information filed under seal in immigration proceedings. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

### List of Subjects

#### 8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

### PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

**Authority:** 5 U.S.C. 301, 8 U.S.C. 1101 note, 1103, 1231, 1252 note, 1252b, 1324b, 1253, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR 1949-1953 Comp., p. 1002; section 203 of Pub. L. 105-100, 111 Stat. 2196-200; sections 1506 and 1510 of Pub. L. 106-386, 114 Stat. 1527-29, 1531-32; section 1505 of Pub. L. 106-554, 114 Stat. 2763A-326 to -328.

2. Section 3.27 is amended by adding paragraph (d) to read as follows:

#### § 3.27 Public access to hearings.

\* \* \* \* \*

(d) Proceedings before an Immigration Judge shall be closed to the public if information subject to a protective order under § 3.46, which has been filed under seal pursuant to § 3.31(d), may be considered.

3. Section 3.31 is amended by adding paragraph (d) to read as follows:

#### § 3.31 Filing documents and applications.

\* \* \* \* \*

(d) The Service may file documents under seal by including a cover sheet identifying the contents of the submission as containing information which is being filed under seal. Documents filed under seal shall not be examined by any person except pursuant to authorized access to the administrative record.

4. Section 3.46 is added to read as follows:

### § 3.46 Protective orders, sealed submissions in Immigration Courts.

(a) *Authority.* In any immigration or bond proceeding, Immigration Judges may, upon a showing by the Service of a substantial likelihood that specific information submitted under seal or to be submitted under seal will, if disclosed, harm the national security (as defined in section 219(c)(2) of the Act) or law enforcement interests of the United States, issue a protective order barring disclosure of such information.

(b) *Motion by the service.* The Service may at any time after filing a Notice to Appear, or other charging document, file with the Immigration Judge, and serve upon the respondent, a motion for an order to protect specific information it intends to submit or is submitting under seal. The motion shall describe, to the extent practical, the information that the Service seeks to protect from disclosure. The motion shall specify the relief requested in the protective order. The respondent may file a response to the motion within ten days after the motion is served.

(c) *Sealed annex to motion.* In the Service's discretion, the Service may file the specific information as a sealed annex to the motion, which shall not be served upon the respondent. If the Service files a sealed annex, or the Immigration Judge, in his or her discretion, instructs that the information be filed as a sealed annex in order to determine whether to grant or deny the motion, the Immigration Judge shall consider the information only for the purpose of determining whether to grant or deny the motion.

(d) *Due deference.* The Immigration Judge shall give appropriate deference to the expertise of senior officials in law enforcement and national security agencies in any averments in any submitted affidavit in determining whether the disclosure of information will harm the national security or law enforcement interests of the United States.

(e) *Denied motions.* If the motion is denied, any sealed annex shall be returned to the Service, and the Immigration Judge shall give no weight to such information. The Service may immediately appeal denial of the motion to the Board, which shall have jurisdiction to hear the appeal, by filing a Notice of Appeal and the sealed annex with the Board. The Immigration Judge shall hold any further proceedings in abeyance pending resolution of the appeal by the Board.

(f) *Granted motions.* If the motion is granted, the Immigration Judge shall issue an appropriate protective order.

(1) The Immigration Judge shall ensure that the protective order encompasses such witnesses as the respondent demonstrates are reasonably necessary to the presentation of his case. If necessary, the Immigration Judge may impose the requirements of the protective order on any witness before the Immigration Judge to whom such information may be disclosed.

(2) The protective order may require that the respondent, and his or her attorney or accredited representative, if any:

(i) Not divulge any of the information submitted under the protective order, or any information derived therefrom, to any person or entity, other than authorized personnel of the Executive Office for Immigration Review, the Service, or such other persons approved by the Service or the Immigration Judge;

(ii) When transmitting any information under a protective order, or any information derived therefrom, to the Executive Office for Immigration Review or the Service, include a cover sheet identifying the contents of the submission as containing information subject to a protective order under this section;

(iii) Store any information under a protective order, or any information derived therefrom, in a reasonably secure manner, and return all copies of such information to the Service upon completion of proceedings, including judicial review; and

(iv) Such other requirements as the Immigration Judge finds necessary to protect the information from disclosure.

(3) Upon issuance of such protective order, the Service shall serve the respondent with the protective order and the sealed information. A protective order issued under this section shall remain in effect until vacated by the Immigration Judge.

(4) Further review of the protective order before the Board shall only be had pursuant to review of an order of the Immigration Judge resolving all issues of removability and any applications for relief pending in the matter pursuant to 8 CFR 3.1(b). Notwithstanding any other provision of this section, the Immigration Judge shall retain jurisdiction to modify or vacate a protective order upon motion of the Service or the respondent. An Immigration Judge may not grant a motion by the respondent to modify or vacate a protective order until either: the Service files a response to such motion or 10 days after service of such motion on the Service.

(g) *Admissibility as Evidence.* The issuance of a protective order shall not prejudice the respondent's right to

challenge the admissibility of the information subject to a protective order. The Immigration Judge may not find the information inadmissible solely because it is subject to a protective order.

(h) *Seal.* Any submission to the Immigration Judge, including any briefs, referring to information subject to a protective order shall be filed under seal. Any information submitted subject to a protective order under this paragraph shall remain under seal as part of the administrative record.

(i) *Administrative enforcement.* If the Service establishes that a respondent, or the respondent's attorney or accredited representative, has disclosed information subject to a protective order, the Immigration Judge shall deny all forms of discretionary relief, except bond, unless the respondent fully cooperates with the Service or other law enforcement agencies in any investigation relating to the noncompliance with the protective order and disclosure of the information; and establishes by clear and convincing evidence either that extraordinary and extremely unusual circumstances exist or that failure to comply with the protective order was beyond the control of the respondent and his or her attorney or accredited representative. Failure to comply with a protective order may also result in the suspension of an attorney's or an accredited representative's privilege of appearing before the Executive Office for Immigration Review or before the Service pursuant to 8 CFR part 3, subpart G.

Dated: May 21, 2002.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 02-13264 Filed 5-24-02; 8:45 am]

BILLING CODE 4410-30-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NE-12-AD; Amendment 39-12761; AD 2002-10-15]

RIN 2120-AA64

#### **Airworthiness Directives; Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 Series Turbofan Engines**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), that is applicable to Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. This amendment requires reapplication of dry film lubricant to low pressure compressor (LPC) fan blade roots. This amendment is prompted by an aborted take-off resulting from LPC fan blade loss. Since this event, four additional cracked LPC fan blade roots have been reported. The actions specified by this AD are intended to prevent LPC fan blade loss, which could result in an uncontained engine failure and possible aircraft damage.

**DATES:** Effective date July 2, 2002.

**ADDRESSES:** Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (781) 238-7744, fax: (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines was published in the **Federal Register** on December 6, 2001 (66 FR 63341). That action proposed to require reapplication of dry film lubricant to low pressure compressor (LPC) fan blade roots.

#### **Comments**

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

#### **Wording Clarification**

One commenter suggests that the word "installation" in Table 1 of the compliance section, be replaced with the words "new or last lubrication." The commenter is concerned that the word "installation" does not ensure AD compliance at installation.

The FAA agrees. The wording in Table 1 has been changed because the suggested wording ensures that lubrication of the blade root is the proper criteria to use.

#### **Typographical Errors**

One commenter requests "LPT" be changed to correctly read "LPC" in Table 1, and "Dow Corning 321R (Rolls-Royce (RR) Omat item 4/52)" be changed to correctly read "Dow Corning 321R (Rolls-Royce (RR) Omat item 4/51)" in paragraph (a).

The FAA agrees and has made these corrections in the final rule.

#### **Update Terminology**

One commenter suggests that the word "inspect" is not applicable in paragraph (b), and should be replaced with the word "lubricate." The AD is applicable to blade root lubrication.

The FAA agrees and has changed paragraph (b) in the final rule to state that on the effective date of the AD, blades with more cycles than the initial compliance criteria listed in Table 1 of this AD must be lubricated within 100 cycles-in-service after the effective date of this AD.

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

#### **Economic Analysis**

The FAA estimates that 100 engines installed on aircraft of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 6 work hours per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total labor cost of the AD on U.S. operators is estimated to be \$36,000 to accomplish each application of lubricant. The FAA estimates that operators will apply lubricant an average of 1.5 times per year, making the total annual cost of compliance with this AD \$54,000.

#### **Regulatory Analysis**

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a



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

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2002–10–15 Rolls-Royce plc:** Amendment 39–12761. Docket No. 2001–NE–12–AD.

**Applicability**

This airworthiness directive (AD) is applicable to Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines with low pressure compressor (LPC) fan blade part numbers: FK 30838, FK30840, FK30842, FW12960, FW12961, FW12962, FW13175, or FW18548.

These engines are installed on, but not limited to Boeing 777 airplanes.

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

**Compliance**

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

To prevent LPC fan blade loss, which could result in an uncontained engine failure and possible aircraft damage, do the following:

TABLE 1.7—INITIAL AND REPETITIVE APPLICATION THRESHOLDS

LPC fan blade part Nos.	Initial compliance criteria	Repetitive compliance criteria
FK30842, FK30840, and FK30838 .....	Before achieving 600 cycles-since-new or -last application.	Repeat at intervals not exceeding 600 cycles-since-last compliance
FW12961, FW12960, FW12962, FW13175, and FW18548.	Before achieving 1,200 cycles-since-new or -last application.	Repeat at intervals not exceeding 1,200 cycles-since-last compliance.

(a) Apply an approved dry film lubricant to LPC fan blade roots as specified in Table 1 above. Aircraft Maintenance Manual task 72–31–11–300–801–R00 (Repair Scheme FRS A031 by air spray method only) or Engine Manual task 72–31–11–R001 (Repair Scheme FRS A028) contain procedures for renewing the dry film lubricant on the blade roots. For purposes of this AD, approved lubricants are Dow Corning 321R (Rolls-Royce (RR) Omat item 4/51), Rocol Dry Moly Spray (RR Omat item 4/52), Molydag 709 (RR Omat item 444), or PL.237/R1 (RR Omat item 4/43).

**Fan Blades Exceeding Initial Application Thresholds**

(b) On the effective date of the AD, blades with more cycles than the initial compliance criteria listed in Table 1 of this AD must be lubricated within 100 cycles-in-service after the effective date of this AD.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

**Note 3:** The subject of this AD is addressed in Civil Aviation Authority Airworthiness Directive 001–03–2001, dated March 2, 2001.

**Effective Date**

(e) This amendment becomes effective on July 2, 2002.

Issued in Burlington, Massachusetts, on May 16, 2002.

**Peter A. White,**

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

[FR Doc. 02–13185 Filed 5–24–02; 8:45 am]

**BILLING CODE 4910–13–U**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2002–NE–07–AD; Amendment 39–12760; AD 2002–10–14]

**RIN 2120–AA64**

**Airworthiness Directives; Bombardier-Rotax GmbH 914 F Series Reciprocating Engines**

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Bombardier-Rotax GmbH 914 F series reciprocating engines. This action requires initial and repetitive inspections of certain exhaust bend assemblies, which are located between the cylinder heads and exhaust manifold assembly. This amendment is prompted by reports of cracks found in exhaust bend assemblies. The actions specified in this AD are intended to prevent carbon monoxide from entering the cabin and also to prevent the possibility of an engine fire.

**DATES:** Effective June 12, 2002.

Comments for inclusion in the Rules Docket must be received on or before July 29, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-NE-07-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299.

**SUPPLEMENTARY INFORMATION:** Austro Control, which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on Bombardier-Rotax GmbH 914 F series reciprocating engines. Austro Control advises that cracks found in exhaust bend assemblies, which are located between the cylinder heads and exhaust manifold assembly have been detected in service. Bombardier-Rotax GmbH is continuing to evaluate the unsafe condition and may implement a design change as terminating action.

#### **Bilateral Airworthiness Agreement**

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

#### **FAA's Determination of an Unsafe Condition and Required Actions**

Since an unsafe condition has been identified that is likely to exist or

develop on other Bombardier-Rotax GmbH 914 F series reciprocating engines of the same type design, this AD is being issued to prevent carbon monoxide from entering the cabin, and also to prevent the possibility of an engine fire. This AD requires initial and repetitive inspections of exhaust bend assemblies part numbers (P/N's) 979422, 979432, 979442, and 979452, which are located between the cylinder heads and exhaust manifold assembly, for exterior traces of smoke, cracks, and damage.

#### **Immediate Adoption of This AD**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### **Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NE-07-AD." The postcard will be date stamped and returned to the commenter.

#### **Regulatory Analysis**

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### **Adoption of the Amendment**

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

#### **PART 39—AIRWORTHINESS DIRECTIVES**

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

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

#### **§ 39.13 [Amended]**

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

**2002-10-14 Bombardier-Rotax GmbH:**  
Amendment 39-12760. Docket No. 2002-NE-07-AD.

#### **Applicability**

This airworthiness directive (AD) is applicable to Bombardier-Rotax GmbH 914 F series reciprocating engines with exhaust bend assemblies part numbers (P/N's) 979422, 979432, 979442, and 979452 installed. These engines are installed on, but not limited to, Aeromot-Industria Mecanico Metalurgica, AMT-300 (Turbo Ximango Shark), Diamond Aircraft Industries, HK 36

TTS, HK 36 TTC, HK 36 TTC-ECO, and Stemme GmbH & Co. KG, S10—VT, Series Powered Sailplanes.

**Note 1:** This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

#### Compliance

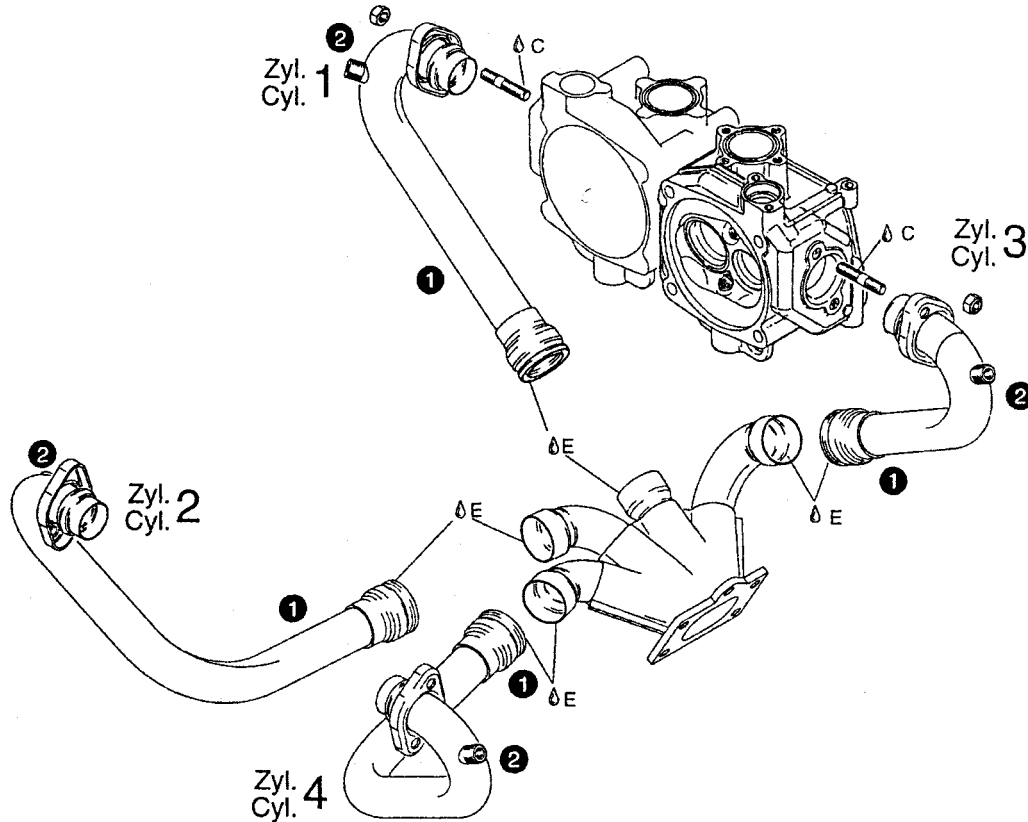
Compliance with this AD is required as indicated, unless already done.

To prevent carbon monoxide from entering the cabin, and also to prevent the possibility of an engine fire, do the following:

#### Initial Inspection

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, visually inspect the exhaust bend assemblies (item 1, Figure 1, of this AD), located between the cylinder heads and exhaust manifold assembly, for exterior traces of smoke, cracks, and damage, especially around the exhaust gas temperature (EGT) bosses (item 2). Replace any exhaust bend assembly found cracked. Figure 1 follows:

**BILLING CODE 4910-13-P**



- 1) Exhaust Bend Assembly
- 2) EGT Boss

**Figure 1**

**Note 2:** Information concerning this inspection can be found in Bombardier-Rotax service bulletin No. SB-914-017, dated May 2001.

#### Repetitive Inspections

(b) Thereafter, inspect the exhaust bend assemblies every additional 50 hours TIS. Replace any exhaust manifold assembly found cracked.

(c) If any exhaust bend assembly is replaced, perform a ground test run and exhaust leakage test.

#### Alternative Methods of Compliance

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

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

#### Special Flight Permits

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

**Note 4:** The subject of this AD is addressed in Austro Control airworthiness directive No. 106, dated April 25, 2001.

#### Effective Date

(f) This amendment becomes effective on June 12, 2002.

Issued in Burlington, Massachusetts, on May 16, 2002.

**Peter A. White,**

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

[FR Doc. 02-13186 Filed 5-24-02; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

#### [Airspace Docket No. 01-AGL-17]

#### Modification of Class E Airspace; Athens, OH

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

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This document modifies Class E airspace at Athens, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 129° helicopter point in space approach,

has been developed for O'Bleness Memorial Hospital, Athens, OH. Controlled airspace extending upward from 700 feet above the surface is need to contain aircraft executing the approach. This action modifies existing controlled airspace for Athens, OH, in order to include the point in space approach serving O'Bleness Memorial Hospital.

**DATES:** Effective 0901 UTC, October 03, 2002. Comments must be received on or before July 8, 2002.

**ADDRESSES:** Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL-7, Rule Docket No. 01-AGL-17, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Airspace Branch, AGL-520, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 modifies class E airspace at Athens, Ohio, to Accommodate Aircraft executing the proposed GPS SIAP 129° helicopter point in space approach for O'Bleness Memorial Hospital by modifying existing controlled airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 200, and effective September 16, 2001, which is incorporated by reference in 14 CFR Sec. 71.1 The Class E airspace designation listed in this document will be published subsequently in the order.

#### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments on objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period,

the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

#### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-AGL-17." The postcard will be date stamped and returned to the commenter.

#### Agency Findings

The regulations adopted herein will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

\* \* \* \* \*

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

\* \* \* \* \*

**AGL OH E5 Athens, OH [Revised]**

Athens, Athens-Albany, Ohio University, OH (Lat. 39°12'39" N., long. 82°13'53" W.) Athens, O'Brien Memorial Hospital, OH Point in Space Coordinates (Lat. 39°20'3" N., long. 82°07'48" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Ohio University Airport and within 4.6 miles either side of the 061° bearing from the Ohio University Airport, extending from the 6.4-mile radius to 12.3 miles northeast of the airport, and within a 6-mile radius of the Point in Space serving Obliness Memorial Hospital.

\* \* \* \* \*

Issued in Des Plaines, Illinois on April 25, 2002.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–13214 Filed 5–24–02; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD01–02–053]**

**RIN 2115–AE47**

**Drawbridge Operation Regulations: Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary final rule governing the operation of the Meadowbrook State Parkway Bridge, at mile 12.8, across Sloop Channel, New York. This temporary final rule allows the bridge to remain in the closed position to navigation from 9 p.m. to midnight, on July 4, 2002. This action is necessary to facilitate the annual Fourth of July Jones Beach State Park fireworks display.

**DATES:** This temporary final rule is effective from 9 p.m. to midnight on July 4, 2002.

**ADDRESSES:** The public docket and all documents referred to in this notice are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM in the **Federal Register**. As a result of coordination with the local harbormaster, marine facilities, and operators regarding the closure of the bridge and the fact that the bridge has been closed during past years for this event with no impact on navigation, we believe that it is not necessary to draft or publish a NPRM in advance of the requested start date for this bridge closure. This bridge closure is a necessary measure to facilitate public safety by allowing the orderly flow of vehicular traffic before and after this annual fireworks event.

**Background**

The Meadowbrook State Parkway Bridge has a vertical clearance of 22 feet at mean high water and 25 feet at mean low water in the closed position, unlimited vertical clearance in the full open position. The existing regulations are listed at 33 CFR 117.799(h).

The bridge owner, the New York State Office of Parks, Recreation and Historic Preservation, requested that the bridge be allowed to remain closed from 9 p.m. to midnight, during the annual Fourth of July fireworks event at the Jones Beach State Park. The Coast Guard coordinated this closure with the local facilities and operators and no objections were received. The bridge has been closed for the past several years to facilitate this annual event.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the mariners that normally use this waterway have no objections to the bridge closure to facilitate this annual event.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the mariners that normally use this waterway have no objections to the bridge closure to facilitate this annual event.

#### Collection of Information

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

#### Federalism

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

#### Unfunded Mandates Reform Act

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

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

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

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1,

paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this rule.

#### Indian Tribal Governments

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

#### Energy Effects

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

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

Bridges.

#### Regulations

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

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.799 is temporarily amended from 9 p.m. to midnight, on July 4, 2002, by suspending paragraph (h) and adding a new paragraph (k) to read as follows:

**§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.**

\* \* \* \* \*

(k) From 9 p.m. to midnight, on July 4, 2002, the Meadowbrook State Parkway Bridge, mile 12.8, across Sloop Channel, may remain closed to navigation.

Dated: May 13, 2002.

V.S. Crea,

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

[FR Doc. 02–13220 Filed 5–24–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

#### RIN 1018–AH77

### Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002 Subsistence Taking of Fish and Shellfish Regulations; Correction

**AGENCY:** Forest Service, USDA; Fish and Wildlife Service, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** This correction amends the Subsistence Management Regulations for Public Lands in Alaska, published in the *Federal Register* on February 7, 2002 (67 FR 5890), implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980. The February 7, 2002, final rule established regulations for seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2002–03 regulatory year. This document corrects an inadvertent omission of a permit requirement for freshwater fish in the Prince William Sound Fishery Management Area.

**DATES:** This correction to § \_\_\_\_\_.27 is effective March 1, 2002, through February 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA–Forest Service, Alaska Region, telephone (907) 786–3592.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 7, 2002, the Secretaries published a final rule (67 FR 5890) to establish regulations for seasons, harvest limits, and methods and means related to taking of fish and shellfish for subsistence uses during the 2002 regulatory year. These regulations are subject to an annual review cycle, so the regulations set forth in the February 7, 2002, final rule are effective March 1, 2002, through February 28, 2003. Among many other changes, the February 7, 2002, final rule included changes to the regulations governing subsistence fishing and shellfishing in the Prince William Sound Fishery Management Area. In making revisions to the Prince William Sound regulations, we inadvertently omitted a previously established requirement.

Prior to publication of the February 7, 2002, final rule (67 FR 5890, 5903), the text in 36 CFR 242 (i)(11)(xii) and (xiii) and 50 CFR 100 (i)(11)(xii) and (xiii) read as follows:

(xii) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xiii) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

In publishing the February 7, 2002, final rule, the words "and freshwater fish species" were inadvertently removed from the subparagraphs stated above. Through this final rule correction, we are simply correcting the text in 36 CFR 242 (i)(11)(xii) and (xiii) and 50 CFR 100 (i)(11)(xii) and (xiii) to read as it did prior to publication of the February 7, 2002, final rule. Therefore, we are reinstating the permit requirement for freshwater fish in the Prince William Sound Fishery Management Area that was removed in error by the February 7, 2002, final rule.

We are making no further changes to the February 7, 2002, final rule. The basis and required determinations for that rule are the same as for this final rule, which simply corrects an error in the February 7, 2002, rule.

Accordingly, make the following corrections to FR Doc. 02-1919 published at 67 FR 5890 on February 7, 2002:

**PART \_\_\_\_\_—SUBSISTENCE  
MANAGEMENT REGULATIONS FOR  
PUBLIC LANDS IN ALASKA—  
[CORRECTED]**

**§ \_\_\_\_\_.27 [Corrected]**

1. On page 5903, in column 1, in 36 CFR part 242 and 50 CFR part 100,

§ \_\_\_\_\_.27(i)(11)(xii) and (i)(11)(xiii) are corrected to read as follows:

**§ \_\_\_\_\_.27 Subsistence taking of fish.**

\* \* \* \* \*

(i) \* \* \*

(11) \* \* \*

(xii) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xiii) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

\* \* \* \* \*

Dated: May 3, 2002.

**Kenneth E. Thompson,**

*Subsistence Program Coordinator, USDA—  
Forest Service.*

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

[FR Doc. 02-13153 Filed 5-24-02; 8:45 am]

**BILLING CODE 3410-11-P; 4310-55-P**

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 52**

**[MD132 & 133-3087a; FRL-7210-1]**

**Approval and Promulgation of Air  
Quality Implementation Plans; State of  
Maryland; Revised Definitions and  
Recordkeeping Provisions**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of Environment (MDE). The revisions adopt by reference the EPA definition of volatile organic compounds (VOC), update the Federal citation of the prevention of significant deterioration (PSD) requirements references in Maryland's definitions and general emission standards provisions, and revise the general records and information requirements for installations and sources. EPA is approving these revisions to the State of Maryland's SIP in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on July 29, 2002 without further notice, unless EPA receives adverse written comment by June 27, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford at (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Summary of SIP Revisions**

On December 11, 2001, the State of Maryland submitted two separate formal revisions to its SIP. One SIP revision consists of (1) a revised reference to the Federal definition of VOC at 40 CFR 51.100(s) which is found in Maryland's definition for "volatile organic compounds (VOC)" (COMAR 26.11.01.01B(53)); and (2) revised references to the Federal PSD regulations at 40 CFR 52.21 found in both Maryland's definition of "prevention of significant deterioration (PSD) source" (COMAR 26.11.01.01B(37)) and the general regulation governing control of PSD sources (COMAR 26.11.06.14). These regulatory revisions became effective on December 10, 2001. The other SIP revision expands and clarifies the type of records and information which Maryland may require from installations and sources governed by its air pollution control regulations (COMAR 26.11.01.05). The revisions to this regulation became effective on June 30, 1997, and a subsequent clarifying amendment became effective on December 10, 2001. Maryland certified that public hearings on the revised regulations to COMAR 26.11.01.01B and 26.11.06.14 were held on October 23, 2001. Maryland also certified that public hearings were held on March 26 and March 28, 1997 on the first revision to COMAR 26.11.01.05, and additional hearings were held on October 23, 2001 on the second revision to COMAR 26.11.01.05. Maryland held these hearings in accordance with the requirements of 40 CFR 51.102.

## II. Evaluation of SIP Revisions

### A. Revisions to Reference Updates to VOC and PSD

Maryland has amended COMAR 26.11.01.01B(53) to update the Federal reference for incorporation of the EPA definition of VOC found at 40 CFR 51.100(s) from the 1999 edition (the currently SIP-approved version) to the 2000 edition of the Code of Federal Regulations (CFR). The amendment ensures that Maryland's definition of the term is identical to the Federal definition. EPA defines VOCs as any organic compound that contributes to ground-level ozone formation and lists as exclusions the compounds that have negligible photochemical reactivity. As EPA completes its reactivity testing, the list of exempt compounds expands. Since Maryland accepts the EPA test results on VOC exempt compounds, it is appropriate for Maryland to adopt the Federal definition of VOC as it appears in 40 CFR 51.100(s) as of a specified date. The 2000 edition of 40 CFR 51.100(s) does not add any new solvents, refrigerants or other compounds to the list of exempt VOCs.

The amendments to COMAR 26.11.01.01B(37) and COMAR 26.11.06.14 update the reference for incorporation of the Federal PSD regulations found at 40 CFR 52.21 from the 1999 edition to the 2000 edition. This edition of 40 CFR 52.21 does not add, amend, or remove any provisions when compared to the 1999 edition of 40 CFR 52.21. Therefore, EPA approves these 40 CFR cross-reference updates found in the definition of VOC at COMAR 26.11.01.01B(53) and the PSD provisions found at COMAR 26.11.01.01B(37) and 26.11.06.14.

### B. Revisions to COMAR 26.11.01.05 (Records and Information)

Maryland has extensively revised the provisions of this regulation when compared to the SIP-approved version. Maryland's revised regulation expands the scope of entities which the State may require to establish and maintain records, in a format approved by the Maryland Department of the Environment (MDE), sufficient to provide the information, such as material and fuel use, necessary to:

(1) Assist the MDE in the development of an implementation plan, air emissions standard, equipment performance standard, or material formulation standard;

(2) Determine compliance with an air emissions standard, equipment performance standard, material formulation standard, or permit condition;

(3) Verify or update registration information; or

(4) Update Maryland's air emissions inventory.

Under the revised provision, the State can require a person who owns or operates such installation or source, upon request, to supply the requested information to the MDE, summarizing the information in a format approved by the MDE and on a schedule specified by the MDE. The current SIP provision applies only to fuel suppliers.

Maryland's 1998 and 2001 amendments have expanded the scope of this rule to include a person who owns or operates an installation or source, as defined in COMAR 26.11.01.01B(19) and 26.11.01.01B(43) respectively. Both of these definitions are included in the current Maryland SIP. In its support document accompanying this SIP revision which provided justification for the amended provisions, Maryland stated that this amendment is intended to require owners and operators of applicable sources, when requested, to establish and maintain records as well as provide information to the Maryland Department of the Environment (MDE) on operating data, materials consumption, materials formulation, and similar information necessary to quantify air emissions and determine compliance. According to the State, most major facilities have specific record keeping requirements established in a source-specific regulation or by a permit condition. Maryland concludes that there would be little or no economic impact from the revised provisions because entities subject to this rule already maintain information such as fuel use, equipment use, and production rates as part of their normal business practice.

EPA has reviewed the revisions to COMAR 26.11.01.05 and has determined that the revised provisions are consistent with the requirements of 40 CFR part 51, subpart K (Source surveillance), particularly the requirements for determining compliance with the applicable rules and regulations (40 CFR 51.210) and for requiring owners or operators of stationary sources to maintain records and periodically report to the State such information which will enable the State to determine compliance with applicable portions of the control strategy (40 CFR 51.211). In addition, EPA has determined that the revised provisions would enhance Maryland's ability to comply, as needed, with the requirements of 40 CFR part 51, subpart G (Control strategy), particularly sections 51.114 (Emissions data and projections), and 51.116 (data

availability). At the same time, EPA agrees with Maryland's assertion that having installations and sources provide such information presents no undue burden since such information is maintained during the course of normal business practice, or is already required by a source-specific regulation or by a permit condition. Therefore, EPA approves the revised version of COMAR 26.11.01.05 as a revision to the Maryland SIP.

## III. Final Action

EPA is approving revisions to the Maryland SIP that update the references to the EPA definition of VOC found at 40 CFR 51.100(s) (COMAR 26.11.01.01B(53)), and the Federal PSD regulations at 40 CFR 52.21 (COMAR 26.11.01.01B(37) and 26.11.06.14). EPA is also approving as a revision to the Maryland SIP the State's revised general records and information requirements for installations and sources (COMAR 26.11.01.05). EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 29, 2002 without further notice unless EPA receives adverse comment by June 27, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. Administrative Requirements

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That



Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### *B. Submission to Congress and the Comptroller General*

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

#### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland’s revised definition of VOC, revised PSD requirements, and the revised general records and information requirements for installations and sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: May 1, 2002.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart V—Maryland**

2. Section 52.1070 is amended by adding paragraphs (c)(171) and (c)(172) to read as follows:

#### **§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(171) Revisions to the Code of Maryland Administrative Regulations (COMAR) which update the Maryland regulation references to both the Federal Prevention of Significant Deterioration (PSD) regulations found at § 52.21 and the EPA definition of “volatile organic compound” (VOC) found at 40 CFR 51.100(s) of the 2000 edition of the Code of Federal Regulations, submitted on December 11, 2001 by the Maryland Department of the Environment:

(i) *Incorporation by reference.*

(A) Letter of December 11, 2001 from the Maryland Department of the Environment transmitting updated references to the Code of Federal Regulations (CFR) with regard to the Prevention of Significant Deterioration (PSD) regulations and the definition of “volatile organic compound” (VOC).

(B) Revisions to COMAR 26.11.01.01B(37) and COMAR 26.11.06.14 effective December 10, 2001, which updates the references for incorporation of the Federal PSD regulations found at § 52.21 from the 1999 to the 2000 edition of the CFR.

(C) The revision to COMAR 26.11.01.01B(53) effective December 10, 2001, which updates the references of the EPA definition of VOC found at 40 CFR 51.100(s) from the 1999 edition to the 2000 edition of CFR.

(ii) *Additional material.* Remainder of the State submittals pertaining to the revisions listed in paragraphs (c)(171)(i)(B) and (C) of this section.

(172) Revision to the Code of Maryland Administrative Regulations (COMAR) governing general records and information requirements, submitted on December 11, 2001 by the Maryland Department of the Environment:

(i) *Incorporation by reference.*

(A) Letter of December 11, 2001 from the Maryland Department of the Environment transmitting revisions to COMAR 26.11.01.05 (Records and Information).

(B) Revised COMAR 26.11.01.05, effective June 30, 1997, replacing COMAR 26.11.01.05, effective July 18, 1980, as recodified August 1, 1988.

(C) Revision to the introductory paragraph of COMAR 26.11.01.05A., effective December 10, 2001.

(ii) *Additional material.* Remainder of the State submittals pertaining to the

revisions listed in paragraphs (c)(172)(i)(B) and (C) of this section.

[FR Doc. 02-13110 Filed 5-24-02; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 268

[FRL-7217-4]

#### Land Disposal Restrictions: Site-Specific Treatment Variance to Chemical Waste Management, Inc.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA or Agency) is today taking direct final action by granting a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for two selenium-bearing hazardous wastes. EPA first granted a variance for these two waste streams three years ago. We are now taking action to extend the variance because: the chemical properties of these two wastes continue to differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the TCLP); and Chemical Waste Management, Inc. (CWM) has adequately demonstrated that the two wastes cannot be treated with current technologies to meet this treatment standard.

CWM will stabilize these two specific wastes at their Kettleman City, California facility to meet the following alternative treatment standards: 51 mg/L, as measured by the TCLP, for the Owens-Brockway waste and 25 mg/L, as measured by the TCLP, for the St. Gobain (formerly Ball Foster) waste. After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill provided they meet the applicable LDR treatment standards for the other hazardous constituents in the wastes. We are granting this variance for three years.

**DATES:** This rule is effective on July 12, 2002, without further notice, unless EPA receives adverse comment on the direct final rule by June 27, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** The official record for this rulemaking is identified as Docket Number F-2002-CWVF-FFFFF and is

located in the RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703-603-9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of this direct final rule, contact Josh Lewis at 703-308-7877, [lewis.josh@epa.gov](mailto:lewis.josh@epa.gov), or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** EPA is publishing this rule without prior proposal because we view it as a noncontroversial action. We anticipate no significant adverse comment because of the site-specific nature of this action and because we are merely extending a variance that is already in effect, and which has already been the subject of notice and opportunity for comment. In the three years since we granted the original variance, no new treatment options have become available to treat these two waste streams more effectively. Having said this, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant this variance if significant adverse comments are filed. See the proposed rule for information on submitting comments.

This direct final rule will be effective on July 12, 2002, without further notice unless we receive adverse comment by June 27, 2002. If we receive significant adverse comment, we will publish a timely withdrawal in the **Federal Register** indicating that this direct final rule action is being withdrawn due to adverse comment on the proposed rule. We will then address all public comments, as appropriate, based on the proposed rule. Any parties interested in commenting on this treatment variance must do so at this time.

## Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type <http://www.epa.gov/epaoswer/hazwaste/ldr>.

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## I. Background

### A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council vs. EPA*, 886 F. 2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be

substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance. See 40 CFR 268.44. If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

#### *B. What Is the Basis of the Current Selenium Treatment Standard?*

In the so-called Third Third rule (55 FR 22521, June 1, 1990), we used performance data from the stabilization of a selenium D010 mineral processing waste, which we determined to be the most difficult to treat selenium waste, to set the national treatment standard for selenium. This waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment selenium TCLP levels were between 1.80 and 0.154 mg/L, which led to our establishment of a national treatment standard of 5.7 mg/L for D010 selenium nonwastewaters. At that time, EPA also had information indicating that wastes containing high concentrations of selenium are rarely generated and land disposed and, therefore, concluded that the standard of 5.7 mg/L was achievable.

In the Phase IV final rule, the Agency determined that a treatment standard of 5.7 mg/L, as measured by the TCLP, continued to be appropriate for D010 nonwastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium nonwastewaters from 0.16 mg/L to 5.7 mg/L. In the preamble to the Phase IV final rule, we noted that we received comments from one company, Chemical Waste Management (CWM), indicating that they were attempting to stabilize selenium wastes with concentrations much higher than those EPA was examining to establish the national selenium standard. In response, we indicated that for these high-level selenium waste streams, we would propose a site-specific treatment variance.

## II. Basis for Today's Determination

### *A. What Is the History of This Variance?*

As we just mentioned, in the preamble to the Phase IV rule we said we would propose a site-specific treatment variance for high selenium waste streams. We proposed this treatment variance on October 23, 1998 (63 FR 56886) and subsequently finalized it in a May 26, 1999 **Federal Register** notice (64 FR 28387). The variance was for a three-year period

from the date of signature (i.e., May 11, 1999) and it covered two specific waste streams: An electrostatic precipitator dust from Owens Brockway; and a dry scrubber solid from Ball Foster (now St. Gobain). Both waste streams contain relatively high leachable selenium concentrations. As we mentioned in the original treatment variance, CWM presented data showing that selenium TCLP concentrations in the untreated wastes are one to three orders of magnitude higher than the untreated mineral processing wastes that EPA used to develop the current D010 selenium treatment standard.<sup>1</sup> The data also showed that neither treated waste stream can reliably meet the numerical standard of 5.7 mg/L, as measured by the TCLP, even though CWM shows that they were using the treatment technology on which EPA based the selenium treatment standard.<sup>2</sup>

In the May 26, 1999 **Federal Register** notice, we established the following alternative treatment standards for selenium: 51 mg/L TCLP for Owens Brockway; and 25 mg/L TCLP for Ball Foster (now St. Gobain). We also included a requirement that CWM submit to EPA an annual report containing any analytical data from studies using alternative treatment technologies, data showing the stabilization recipes they are using to meet the alternative treatment standards, and the untreated and treated selenium concentrations in these wastes.

On June 8, 2000 and May 7, 2001, CWM submitted, respectively, the first and second annual reports to the Agency.<sup>3</sup> On March 25, 2002, CWM submitted a letter to EPA requesting a continuation of the treatment variance for another three-year period. In the letter, CWM states that because both wastes continue to have elevated levels of leachable selenium, they are unable to achieve the selenium treatment standard consistently. CWM also asserts that they are unaware of any additional reagents that would be more effective in the treatment process.

<sup>1</sup> Selenium concentrations in the untreated Owens Brockway wastes were between 465 and 1024 mg/L, as measured by the TCLP, while the selenium concentration in the Ball-Foster waste was 59.8 mg/L, as measured by the TCLP.

<sup>2</sup> CWM submitted stabilization data from each facility using combinations of the following stabilization reagents: ferrous sulfate, calcium polysulfide, ferric chloride, sodium bisulfate, portland cement, and cement kiln dust. For more detailed information about the original petition, see the docket supporting this rulemaking (docket number F-2002-CWVF-FFFFF).

<sup>3</sup> All three CWM's annual reports are in the docket supporting today's rulemaking.

### *B. What Criteria Govern a Treatment Variance?*

Under 40 CFR 268.44 (h), EPA allows facilities to apply for a site-specific variance when a waste generated under conditions specific to only one site cannot be treated to the specified level(s). In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard.

In 40 CFR 268.44 (h)(1) and (2), EPA describes the two main cases in which we will grant a treatment variance. The case described in 40 CFR 268.44 (h)(1) is applicable to this treatment variance, which addresses process wastes that are generated on a routine basis by two glass manufacturing companies. Basically, EPA must determine if the petitioner has adequately shown that, "It is not physically possible to treat the waste to the level specified in the treatment standard \* \* \* because the physical or the chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard. \* \* \*"

### *C. What Is the Basis for EPA's Approval of CWM's Request for an Alternative D010 Treatment Standard?*

After careful review of the original treatment variance and of the data that CWM has submitted since we granted the original treatment variance, we conclude that CWM has adequately demonstrated that the wastes continue to satisfy the requirements for a treatment variance under 40 CFR 268.44 (h)(1).

The two glass manufacturing waste streams continue to differ significantly in chemical composition from the waste used to generate the original selenium treatment standard. Selenium TCLP concentrations in the untreated wastes continue to be one to three orders of magnitude higher than the concentrations in the waste used in developing the treatment standard for D010 hazardous wastes. Furthermore, CWM continues to use stabilization as the treatment technology, which is consistent with EPA's determination of BDAT, and the process is well-designed and operated.<sup>4</sup>

As we mentioned in the preamble to the original treatment variance, treatment of these two wastes is especially difficult because of the presence of other metals (i.e., arsenic, cadmium, chromium, and lead) above their respective characteristic levels. It

<sup>4</sup> See the docket supporting today's rule for more detailed information on CWM's standard practices for land disposal restricted waste.

is difficult, if not impossible, to optimize treatment for selenium when other metals are being treated because the selenium solubility curve differs from that of most other metals.<sup>5</sup>

Therefore, EPA is today granting an extension to the site-specific treatment variance from the D010 treatment standards for the two waste streams in question since the wastes cannot be physically treated to the level specified in the regulations. Today's alternative treatment standards will provide sufficient latitude for CWM to treat the other metals present in the wastes to LDR treatment standards and, by raising the selenium treatment standard, will avoid the difficulty posed by the different metal solubility curves.

#### D. What Are the Terms and Conditions of the Variance?

This variance applies to the following two waste streams that are generated during glass manufacturing operations: electrostatic precipitator dust from Owens Brockway Glass Container Company; and dry scrubber solid from St. Gobain (formerly Ball Foster).

#### 1. Determination of the Treatment Standard for the Owens Brockway Waste

When we originally set the alternative treatment standard for the Owens Brockway waste, we determined the most effective stabilization recipe consisted of 0.7 parts iron sulfate combined with 2.0 parts cement, resulting in a reagent to waste ratio of 2.7 to 1. This recipe achieved final selenium TCLP values of 36.8, 34.08, and 43.7 mg/L.<sup>6</sup> We then used the BDAT methodology<sup>7</sup> to calculate an alternative D010 standard of 51 mg/L, as measured by the TCLP.

In the approximately three years the treatment variance has been in effect, CWM has treated 26 batches of the Owens Brockway waste. Untreated selenium TCLP values ranged from 26.5–649 mg/L, with an average value of about 265 mg/L. Treated TCLP values range from non-detect to 32.6 mg/L, with an average value of about 12.5

<sup>5</sup> Selenium's minimum solubility is at a neutral to mildly acidic pH (6.5–7.5) while other characteristic metals have a minimum solubility in the alkaline pH range (8–12) (see 62 FR 26045).

<sup>6</sup> The treatment extract had a pH ranging from 10.5–11.9, which encompasses the maximum solubility (and, therefore, leaching potential) of selenium. This, in turn, suggests that use of the TCLP in this particular case adequately reflects a worst-case disposal scenario. (This is unlike the situation in *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914, in which the TCLP testing did not reflect the post-treatment conditions).

<sup>7</sup> BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology, October 23, 1991.

mg/L. Because the TCLP values in the untreated and treated wastes are comparable to the levels in the wastes we used to set the original alternative treatment standard of 51 mg/L, we determined that a TCLP value of 51 mg/L continues to be the appropriate alternative treatment standard for this waste.

#### 2. Determination of the Treatment Standard for the St. Gobain Waste

When we originally set the alternative selenium treatment standard for the Ball-Foster waste, we determined the most effective stabilization recipes have reagent to waste ratios of 1.8, 2.2, 2.3, 2.4, and 2.7. Selenium concentrations in the treated wastes were 11.6, 7.47, 8.22, 15.6, and 4.82 mg/L, as measured by the TCLP.<sup>8</sup> Using these five data points, we calculated an alternative treatment D010 standard of 25 mg/L, as measured by the TCLP.

In the approximately three years the treatment variance has been in place, CWM has treated seven batches of the Owens Brockway waste. Untreated selenium TCLP values ranged from 33.5–43.9 mg/L, with an average value of about 38.9 mg/L. Treated TCLP values range from 1.6 to 14.6 mg/L, with an average value of about 8.7 mg/L. Because the TCLP values in the untreated and treated wastes are comparable to the levels in the wastes we used to set the original alternative treatment standard of 25 mg/L, we determined that a TCLP value of 25 mg/L continues to be the appropriate alternative treatment standard for this waste.

#### 3. Specifics Applicable to Both Waste Streams

After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill<sup>9</sup> provided CWM complies with any other applicable treatment standards associated with these wastes, including other applicable Federal, State, or local requirements as specified in the facility's waste analysis plan. We are granting this variance for three years for reasons discussed in section IV below.

<sup>8</sup> The treatment extract pH ranged from 11.9–12.0, which again suggested that the use of the TCLP adequately reflected the worst case disposal scenario. Furthermore, these treatment recipes were all consistent with the reagent to waste ratios used to establish the existing selenium standard of 5.7 mg/L, as measured by the TCLP.

<sup>9</sup> Note that disposal in a Subtitle C landfill is required because the treated wastes are still characteristic for selenium (i.e., the wastes have TCLP values above the toxicity characteristic level for selenium of 1.0 mg/L).

#### 4. Summary

In summary, after evaluating the data from the three years that the treatment variance has been in place, we have determined that the conditions that were present when we originally granted this treatment variance still exist: the two glass manufacturers continue to produce these high selenium waste streams; the untreated and treated selenium concentrations continue to be one to three orders of magnitude higher than the wastes we used to set the original selenium treatment standard; and alternative treatment options have not been established to more effectively treat these wastes.

We also note that although the alternative selenium standards for these two wastes are relatively high, this treatment variance is a technically necessary compromise. As noted above and in the May 12, 1997 **Federal Register** (62 FR 26045), treatment cannot be optimized for both acid and base-soluble metals due to their different solubility curves. Because all of the other toxic metals (i.e., arsenic, cadmium, chromium, and lead) are being immobilized to meet their respective universal treatment standards, we consider, under the circumstances, that threats are being minimized if the alternative selenium treatment standards are met, as required by 3004 (m).

Furthermore, not only are all of the other toxic metals meeting their respective UTS standards, but the alternative selenium treatment standards essentially require CWM to use a well-designed and well-operated treatment system that is consistent, particularly in terms of the selection of reagents and reagent to waste ratios, with the technical basis for the current selenium treatment standard.

#### III. Reasons for Imposing Another Three-Year Limitation

We are granting this treatment variance for another three-year period. Again, we believe the conditions that led us to set the original three-year limit still exist. To be more specific, because selenium is a non-renewable resource, and because the wastes in question contain high selenium concentrations, one potential avenue that we want to continue to explore is whether the selenium component could be recycled in an environmentally sound manner instead of being stabilized and landfilled.<sup>10</sup> Over the next three years,

<sup>10</sup> In 2001, Hydromet Environmental Recovery Ltd. opened the first plant in the U.S. that recovers

we also intend to work with the two glass manufacturers to better understand the processes that generate these waste streams and to explore whether opportunities exist to reduce the amount of selenium that ultimately is disposed.

For the three-year period, we expect CWM to update us annually on the alternative treatment technologies they are investigating and to submit any analytical data from studies using these alternative technologies. We ask that CWM's submission also include information showing which stabilization recipe they are using to meet the alternative treatment standards, the selenium concentrations in untreated wastes, and the analytical results from these treated wastes. We intend to use this information to determine, among other things, if there are any reductions in the amount of selenium that ultimately is disposed and if the alternative treatment standards for selenium are appropriate as a more permanent standard for these wastes.

At the end of the three-year period, today's alternative treatment standards expire. Thus, if the two glass manufacturers continue to generate these wastes with commensurate selenium levels, and if CWM has not found a new treatment technology to treat the two wastes to the national treatment level for D010 selenium wastes (or if the Agency has not adopted more permanent alternative treatment standards for these two wastes), then CWM and/or the generators of the two waste streams will have to re-open discussions with EPA about the most appropriate course of action for future management of these waste streams.

#### IV. Administrative Requirements

##### A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal

governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule does not create any new regulatory requirements, it is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

##### B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect, and it only applies to the CWM facility in Kettleman City, California. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

##### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit

analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of \$100 million or more in the aggregate to either State, local, or tribal governments or the private sector in one year. The rule would not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes, and local governments would have no compliance costs under this rule. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act. Thus, today's rule is not subject to the requirements of sections 202, 204 and 205 of UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule will not significantly or uniquely affect small governments. This rule will not impose any requirements on small entities. This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect. Today's rule is not, therefore, subject to

selenium from waste materials. The plant processes selenium materials from the copper refining and photocopy industries. These materials contain 25% or greater selenium.

the requirements of section 203 of UMRA.

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

“Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today’s rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The subject wastes will comply with all other treatment standards and be disposed of in RCRA Subtitle C landfills. Therefore, we have identified no risks that may disproportionately affect children.

*E. Environmental Justice Executive Order 12898*

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency’s goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA’s policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA’s Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today’s variance applies to two D010 waste streams that will be treated by Chemical Waste Management, Inc. at

their Kettleman City, California facility and disposed of in a RCRA Subtitle C landfill, ensuring protection to human health and the environment. Therefore, the Agency does not believe that today’s rule will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

*F. Paperwork Reduction Act*

This variance only changes the treatment standards applicable to two D010 waste streams at the Chemical Waste Management, Inc. facility in Kettleman City, California. It does not change in any way the paperwork requirements already applicable to these wastes. Therefore, this rule is not affected by the requirements of the Paperwork Reduction Act.

*G. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards based on new methodologies. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and

responsibilities between the Federal government and Indian tribes.”

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect. Thus, Executive Order 13175 does not apply to this rule.

*I. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments.”

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect. Thus, Executive Order 13132 does not apply to this rule.

*J. Executive Order 13211 (Energy Effects)*

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

K. Congressional Review Act

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

defined by 5 U.S.C. 804(2). This rule will be effective July 12, 2002.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: May 13, 2002.

Michael H. Shapiro, Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.44, the table in paragraph (o) is amended by: a. Removing the entry for "Ball Foster Glass Container Corp, El Monte, CA";

b. Adding in alphabetical order a new entry for "St. Gobain Containers, El Monte, CA"; and

c. Revising footnote 7.

The revision and addition read as follows:

§ 268.44 Variance from a treatment standard.

\* \* \* \* \*

(o) \* \* \*

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Table with 9 columns: Facility name (1) and address, Waste code, See also, Regulated hazardous constituent, Wastewaters (Concentration (mg/L), Notes), Nonwastewaters (Concentration (mg/kg), Notes). Row 1: St. Gobain Containers, El Monte, CA (6) (7), D010, Standards under § 268.40, Selenium, NA, NA, 25, NA.

(1) A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

(6) Alternative D010 selenium standard only applies to dry scrubber solid from glass manufacturing wastes.

(7) D010 wastes generated by these two facilities are subject to the following conditions: (a) the wastes must be treated by Chemical Waste Management, Inc. at their Kettleman Hills facility in Kettleman City, California; and (b) this treatment variance will be valid until July 12, 2005.

Note: NA means Not Applicable.

[FR Doc. 02-13114 Filed 5-24-02; 8:45 am] BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 02-494]

FCC Registration Number Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On August 31, 2001 the Commission released final rules amending its rules to require persons and entities doing business with the Commission to obtain a unique identifying number called the FCC Registration Number (FRN) and to supply it when doing business with the Commission. The Commission is revising those rules to correct nonsubstantive errors.

DATES: Effective May 28, 2002.

FOR FURTHER INFORMATION CONTACT:

Laurence H. Schecker, Office of General Counsel (202) 418-1720.

SUPPLEMENTARY INFORMATION: This order adopted February 29, 2000 revises 47 CFR 1.8002 and 1.8004 to make nonsubstantive, editorial revisions. The Commission's rules are amended as set forth:

Ordering Clause

According, pursuant to § 0.231(b) of the Commission's rules, 47 CFR 0.231(b), that sections 1.8002(b)(1), 1.8004(c), and 1.8004(d) of the Commission's rules, 47 CFR 1.8002(b)(1), 1.8004(c), and 1.8004(d), are AMENDED as set forth in the rule changes.

List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communication Commission.

Marlene H. Dortch, Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR Part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

§ 1.8002 [Amended].

2. In § 1.8002(b)(1), remove the words "THE CORES" and add in their place the words "the CORES".

3. Revise § 1,8004(c) and (d) to read as follows:

§ 1.8004 Penalty for Failure to Provide the FRN.

\* \* \* \* \*

(c) Where the Commission has not established a filing deadline for an application, a missing or invalid FRN on such an application may be corrected and the application resubmitted. Except as provided in paragraph (d) of this section or in other Commission rules, the date that the resubmitted application is received by the

Commission with a valid FRN will be considered the official filing date.

(d) Except for the filing of tariff publications (see 47 CFR 61.1(b)) or as provided in other Commission rules, where the Commission has established a filing deadline for an application and that application may be filed on paper, a missing or invalid FRN on such an application may be corrected with ten (10) business days of notification to the filer by the Commission staff and, in the event of such timely correction, the original date of filing will be retained as the official filing date.

[FR Doc. 02-13226 Filed 5-24-02; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571.121

[Docket No. NHTSA-02-12053]

RIN No. 2127-AI48

#### Federal Motor Vehicle Safety Standards; Air Brake Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA, DOT.)

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

**SUMMARY:** In a May 3, 1989 final rule, NHTSA changed the brake applications and release timing requirements of the Federal motor vehicle safety standard on air brake systems. The changes to these requirements resulted in the addition of a new schematic diagram of a trailer test rig, labeled as Figure 1, to the standard. A pre-existing trailer test rig schematic was re-labeled as Figure 1(a) and retained for use until the new brake application and release timing requirements and the new figure became effective May 3, 1991. We are now deleting the obsolete Figure 1(a). A provision describing the pressure characteristics of the trailer test rig depicted in Figure 1(a) is also being deleted. We are also taking this opportunity to correct various minor errors and omissions in the standard.

**DATES:** *Effective Date:* The amendment made by this final rule is effective June 27, 2002.

*Petitions:* Petitions for reconsideration must be received by July 12, 2002.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400

Seventh Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

*For non-legal issues:* Mr. Jeffrey Woods, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366-8525, fax (202) 493-2739, electronic mail "jwoods@nhtsa.dot.gov".

*For legal issues:* Otto Matheke, Office of the Chief Counsel, NCC-20, telephone (202) 366-5253, facsimile (202) 366-3820, electronic mail "omatheke@nhtsa.dot.gov".

**SUPPLEMENTARY INFORMATION:** On May 3, 1989, we published a final rule (54 FR 18890) amending the brake applications and release timing requirements of Standard No. 121, Air brake systems. Under Standard 121, pneumatic brake systems must meet a number of performance requirements when subjected to testing that includes both on-road and dynamometer testing. One of the aspects of brake system performance measured by Standard No. 121 is how quickly brakes are applied once the brake pedal is depressed and how quickly the brakes release after the brake pedal is allowed to return to its original position. The 1989 final rule modified the existing application and release timing requirements and made several changes in how these application and release times are measured. One of the changes involved the test device, the trailer test rig, used in the timing tests. Due to this change, a schematic diagram of the test device to be used until the new timing requirements became effective on May 3, 1991, was re-labeled as Figure 1(a).

Mr. Robert J. Crail submitted a petition for rulemaking to NHTSA dated July 17, 2000 requesting that Figure 1(a) be deleted from Standard No. 121. Mr. Crail's petition correctly indicated that Figure 1(a) depicts a trailer test rig no longer used in the standard. The petition requested that Figure 1(a) be deleted because Figure 1 depicts the only trailer test rig now used in the standard. NHTSA granted the petition on April 6, 2001, indicating that it would review the issue to determine if further action would be appropriate.

The agency has reviewed this issue and concluded that Figure 1(a), which is now obsolete, should be deleted. NHTSA also has reviewed Standard No. 121 for other errors and omissions and

is correcting these matters in this technical amendment. The agency believes that none of these corrections will change the substantive requirements of the Standard or have any effect on manufacturers of vehicles subject to Standard No. 121.

As noted above, this technical amendment deletes Figure 1(a) depicting an obsolete trailer test rig S6.1.13(b) which describes the pressure characteristics of the old trailer test rig depicted in Figure 1(a), is also being deleted. S6.1.13(a) which references the currently-used trailer test rig in Figure 1, is renumbered as S6.1.13.

NHTSA is also correcting other typographical errors and omissions. The last sentence of S5.4.1.1 currently states "after each stop, rotate the brake drum or disc until the temperature of the brake falls to between 125 °F. And 200 °F." This sentence is being corrected by deleting the period after "125 °F" and removing the capitalization of the A in "and" to join the two sentences. As corrected, the last section of the sentence states "between 125 °F and 200 °F." S6.1.2 states that "the inflation pressure is as specified by the vehicle manufacturer for the GVWR." The word "tire" is now being inserted before the word "inflation." Prior to this technical amendment, S6.1.8 included this sentence:

If the vehicle cannot attain a speed of 40 mph in 1 mph, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first.

We are now correcting S6.1.8 by replacing "1 mph" with "1 mile" so the sentence states "If the vehicle cannot attain a speed of 40 mph in 1 mile, continue \* \* \*" Prior to the technical corrections set forth in this notice, S6.2.5 stated, in part, that "the rate of brake drum or disc rotation on a dynamometer or responding to the rate of rotation \* \* \*" This phrase contained a typographical error as the words "or responding" were originally intended to be the single word "corresponding." NHTSA now amends this section of S6.2.5 to state "the rate of brake drum or disc rotation on a dynamometer corresponding to the rate of rotation \* \* \*"

Several errors in tables and figures are also being corrected. Table III specifies brake chamber pressures that relate to brake retardation forces in the dynamometer test requirements in S5.4.1 *Brake retardation force*. NHTSA is modifying Table III to remedy a typographical error in the heading for the first column of the table. The



column heading incorrectly read "Column 1, Brake Retardation Force, GAWR." The comma in between the word "Force" and the abbreviation "GAWR" is being modified to reflect that the numbers in Column 1 are the quotient of brake retardation force divided by gross axle weight rating. The column heading is being changed to "Brake Retardation Force/GAWR."

A correction is also being made to the rated brake chamber volumes presented in Table V. In a final rule published in the **Federal Register** on July 11, 1996, (61 FR 36516) NHTSA revised the rated brake chamber volumes for long-stroke brake chambers in Table V. However, the revised brake volumes were never put into Table V. Therefore, the correct values from the July 11, 1996, final rule are now being put into Table V.

NHTSA is also inserting a new section into the Standard. Standard No. 121 establishes brake performance requirements employing both dynamometer and road tests to measure braking force. Both tests require that brake temperatures be monitored before and during testing and each test must be performed when the brakes are in a certain temperature range. In order to assist those performing the dynamometer test, S6.2.4 provides guidance on the placement and mounting of temperature sensing devices on the brake shoes and contains a reference to a diagram contained in Figure 2. However, reference to Figure 2 and guidance on the installation of temperature sensing devices were omitted from the conditions for the road test contained in S6.1. In order to remedy this omission, S6.1 is amended to add a new paragraph, S6.1.16, outlining temperature sensor installation:

S6.1.16 *Thermocouples*. The brake temperature is measured by plug-type thermocouples installed in the approximate center of the facing length and width of the most heavily loaded shoe or disc pad, one per brake, as shown in Figure 2. A second thermocouple may be installed at the beginning of the test sequence if the lining wear is expected to reach a point causing the first thermocouple to contact the rubbing surface of a drum or rotor. The second thermocouple shall be installed at a depth of .080 inch and located within 1 inch circumferentially of the thermocouple installed at .040 inch depth. For centergrooved shoes or pads, thermocouples are installed within one-eighth of an inch to one-quarter of an inch of the groove and as close to the center as possible.

We find for good cause that notice and the opportunity to comment on these technical amendments are unnecessary and contrary to the public

interest. As noted above, the agency believes that none of these corrections will change the substantive requirements of the Standard or have any effect on manufacturers of vehicles subject to Standard No. 121.

#### Rulemaking Analyses

##### A. Executive Order 12866 (*Federal Regulation*) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, NHTSA has determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The final rule makes no substantive changes. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

##### B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. For the reasons discussed above, I certify that this action would not have a significant economic impact upon "a substantial number of small entities." The amendment is intended to assist potential applicants for temporary exemptions, including small businesses, to understand agency procedures so that, if a request for confidentiality is made, the documentation will be complete at the time the request is made. It is also designed to provide guidance as to arguments the agency considers relevant in making decisions upon exemption applications. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming imported motor vehicles.

##### C. Executive Order 12612 (*Federalism*)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act and concludes that the action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles produced or imported will not vary from that existing before promulgation of the rule.

##### E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. A procedure is set forth in 49 U.S.C. 30161 for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

##### F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the cost, 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 more than \$100 million annually. Since this final rule will not have a \$100 million effect, no Unfunded Mandates assessment has been prepared.

##### List of Subjects in 49 CFR Part 571

Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR part 571.121 as follows:

##### PART 571.121—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Amend Section 571.121 by revising S5.4.1.1, S6.1.8, S6.1.13, S6.2.5, Table III, Table V, removing figure 1(a), and adding S6.1.16 to read as follows:

##### § 571.121 Air brake systems.

\* \* \* \* \*

S5.4.1.1 After burnishing the brake pursuant to S6.2.6, retain the brake assembly on the inertia dynamometer. With an initial brake temperature between 125 °F. and 200 °F., conduct a stop from 50 m.p.h., maintaining brake chamber air pressure at a constant 20 psi. Measure the average torque exerted by the brake from the time the specified air pressure is reached until the brake stops and divide by the static loaded tire radius specified by the tire manufacturer to determine the retardation force. Repeat the procedure six times, increasing the brake chamber

air pressure by 10 psi each time. After each stop, rotate the brake drum or disc until the temperature of the brake falls to between 125 °F. and 200 °F.

\* \* \* \* \*

S6.1.8 For vehicles with parking brake systems not utilizing the service brake friction elements, burnish the friction elements of such systems prior to the parking brake test according to the manufacturer's recommendations. For vehicles with parking brake systems utilizing the service brake friction elements, burnish the brakes as follows: With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 f.p.s.p.s., or at the vehicle's maximum deceleration rate if less than 10 f.p.s.p.s. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mile, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. Any automatic pressure limiting valve is in use to limit pressure

as designed. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendation.

\* \* \* \* \*

S6.1.13 *Trailer test rig.*

The trailer test rig shown in Figure 1 is calibrated in accordance with the calibration curves shown in Figure 3. For the requirements of S5.3.3.1 and S5.3.4.1, the pressure in the trailer test rig reservoir is initially set at 100 psi for actuation tests and 95 psi for release tests.

\* \* \* \* \*

S6.1.16 *Thermocouples.*

The brake temperature is measured by plug-type thermocouples installed in the approximate center of the facing length and width of the most heavily loaded shoe or disc pad, one per brake, as shown in Figure 2. A second thermocouple may be installed at the beginning of the test sequence if the lining wear is expected to reach a point causing the first thermocouple to contact the rubbing surface of a drum or rotor. The second thermocouple shall be installed at a depth of .080 inch and located within 1 inch circumferentially

of the thermocouple installed at .040 inch depth. For centergrooved shoes or pads, thermocouples are installed within one-eighth of an inch to one-quarter of an inch of the groove and as close to the center as possible.

\* \* \* \* \*

S6.2.5 The rate of brake drum or disc rotation on a dynamometer corresponding to the rate of rotation on a vehicle at a given speed is calculated by assuming a tire radius equal to the static loaded radius specified by the tire manufacturer.

\* \* \* \* \*

TABLE III.—BRAKE RETARDATION FORCE

Column 1 brake retardation force/GAWR	Column 2 brake chamber pressure, PSI
0.05 .....	20
0.12 .....	30
0.18 .....	40
0.25 .....	50
0.31 .....	60
0.37 .....	70
0.41 .....	80

\* \* \* \* \*

TABLE V.—BRAKE CHAMBER RATED VOLUMES

Brake Chamber type (nominal area of piston or diaphragm in square inches)	Column 1 full stroke (inches)	Column 2 rated volume (cubic inches)
Type 9 .....	1.75/2.10	25
Type 12 .....	1.75/2.10	30
Type 14 .....	2.25/2.70	40
Type 16 .....	2.25/2.70	46
Type 18 .....	2.25/2.70	50
Type 20 .....	2.25/2.70	54
Type 24 .....	2.50/3.20	67
Type 30 .....	2.50/3.20	89
Type 36 .....	3.00/3.60	135

Dated: Issued: May 21, 2002.

**Stephen R. Kratzke,**  
Associate Administrator for Safety  
Performance Standards.

[FR Doc. 02-13221 Filed 5-24-02; 8:45 am]

BILLING CODE 4910-59-P

**DEPARTMENT OF TRANSPORTATION  
Surface Transportation Board**

**49 CFR Part 1109**

[STB Ex Parte No. 586]

**Arbitration—Various Matters Relating To Its Use as an Effective Means of Resolving Disputes That Are Subject to the Board's Jurisdiction**

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

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board) is making a technical

amendment to its regulation on confidentiality in administrative dispute resolution matters, in order to correct a statutory reference to the Administrative Dispute Resolution Act, the numbering of which has changed.

**EFFECTIVE DATE:** May 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565-1600. (TDD for the hearing impaired: (800) 877-8339).

**SUPPLEMENTARY INFORMATION:** A technical revision to 49 CFR 1109.3 is made to change the reference (relating to the confidentiality of ADR procedures) from "5 U.S.C. 584" to "5 U.S.C. 574" to reflect the transfer made by Public

Law 102-354, section 3(b)(2), August 26, 1992, 106 Stat. 944. Because this change is merely a technical correction, it is being implemented without requesting public comment.

**Small Entities:** The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities.

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

#### List of Subjects in 49 CFR Part 1109

Administrative practice and procedures.

**Authority:** 49 U.S.C. 721(a).

Decided: May 20, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, Part 1109 of the Code of Federal Regulations, is amended as follows:

#### PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

1. The authority citation for part 1109 continues to read as follows:

**Authority:** 5 U.S.C. 571 *et seq.*

2. Revise § 1109.3 to read as follows:

##### § 1109.3 Confidentiality in ADR Matters

In all ADR matters involving the Board, whether under the Administrative Dispute Resolution Act or not, the confidentiality provisions of that Act (5 U.S.C. 574) shall bind the Board and all parties and neutrals in those ADR matters.

[FR Doc. 02-13258 Filed 5-24-02; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

##### Surface Transportation Board

##### 49 CFR Part 1111

[STB Ex Parte No. 586]

#### Arbitration—Various Matters Relating To Its Use as an Effective Means of Resolving Disputes That Are Subject to the Board's Jurisdiction

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

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board) is amending its

regulations at 49 CFR part 1111 governing formal complaints to add a requirement that in complaint cases that are potentially arbitrable under the Board's voluntary arbitration process (49 CFR part 1108), the complaint must contain a statement that arbitration was considered, but rejected, as a means of resolving the dispute.

**EFFECTIVE DATE:** June 21, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 565-1600. (TDD for the hearing impaired: (800) 877-8339).

**SUPPLEMENTARY INFORMATION:** In this proceeding, in addition to amending its regulations as indicated in the summary, the Board updated its records as to those persons currently available and possessing the requisite qualifications (*i.e.*, those experienced in rail transportation or economic issues similar to those arising before the Board) to serve as an arbitrator under 49 CFR part 1108. A copy of the list can be obtained from the Board's Office of Public Services, Suite 840, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423-0001; telephone (202) 565-1592.

Additionally, the Board obtained comments from interested parties on whether binding arbitration of small rail rate disputes should be mandated through legislation. The comments reflect a divergence of views on this subject and no areas of consensus. The Board will provide a report to Congress summarizing the comments received.

Additional information is contained in the Board's decision. To purchase a copy of the decision, write to, call or pick up in person from Dā-2-Dā Legal, Room 405, 1925 K Street, NW, Washington, DC 20006, telephone (202) 293-7776. The decision is also posted on the Board's Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

#### Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities.

#### Environment

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

#### List of Subjects in 49 CFR part 1111

Administrative practice and procedures.

**Authority:** 49 U.S.C. 721(a).

Decided: May 20, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, Part 1111 of the Code of Federal Regulations, is amended as follows:

#### PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

1. The authority citation for part 1111 continues to read as follows:

**Authority:** 49 U.S.C. 721, 10704, and 11701.

2. In § 1111.1(a), paragraph (a)(11) is added to read as follows:

##### § 1111.1 Content of formal complaints; joinder.

(a) \* \* \*

(11) For matters for which voluntary, binding arbitration is available pursuant to 49 CFR part 1108, the complaint shall state that arbitration was considered, but rejected, as a means of resolving the dispute.

\* \* \* \* \*

[FR Doc. 02-13257 Filed 5-24-02; 8:45 am]

BILLING CODE 4915-00-P

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Part 17

RIN 1018-AH83

#### Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for *Chorizanthe robusta* var. *robusta* (Robust Spineflower)

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Chorizanthe robusta* var. *robusta* (robust spineflower). Approximately 190 hectares (469 acres) of land fall within the boundaries of the critical habitat designation. Critical habitat is located in Santa Cruz County, California. This critical habitat designation provides additional protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data

and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation, and our approaches for handling any future habitat conservation plans.

**DATES:** This rule becomes effective on June 27, 2002.

**ADDRESSES:** Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA, 93003.

**FOR FURTHER INFORMATION CONTACT:** Connie Rutherford, Ventura Fish and Wildlife Office, at above address (telephone 805/644-1766; facsimile 805/644-3958).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Chorizanthe robusta* var. *robusta*, also known as robust spineflower or Aptos spineflower, is endemic to sandy soils in central California. The taxon is currently found in southern Santa Cruz County. Plants formerly considered *C. r.* var. *robusta*, but whose identity is now questioned, are found in northern Monterey County. Historically, *C. r.* var. *robusta* was also known from Alameda, San Mateo, and Santa Clara Counties. In California, the spineflower genus (*Chorizanthe*) in the buckwheat family (Polygonaceae) comprises species of wiry annual herbs that inhabit dry sandy soils, both along the coast and inland. Because of the patchy and limited distribution of such soils, many species of *Chorizanthe* tend to be highly localized in their distributions.

Like other spineflowers, *Chorizanthe robusta* var. *robusta* is branched from the base, which has a cluster of leaves arising from the base of the stem. The overall appearance of *C. r.* var. *robusta* is that of a low-growing herb that is soft-hairy and grayish or reddish in color. The plant has an erect to spreading or prostrate habit, with large individuals reaching 50 centimeters (cm) (20 inches (in)) or more in diameter. This taxon is distinguished by white (rarely pinkish) scarious (translucent) margins on the lobes of the involucre (circle or collection of modified leaves surrounding a flower cluster) or head that subtend the white- to rose-colored flowers. The aggregate of flowers tends to be 1.5 to 2.0 cm (0.6 to 0.8 in) across in diameter and distinctly aggregate. Each flower produces one seed; the seeds are 3.5 to 4.0 millimeters (0.14 to 0.16 in) long.

*Chorizanthe robusta* var. *robusta* is one of two varieties of the species *Chorizanthe robusta*. The other variety (*Chorizanthe robusta* var. *hartwegii*), known as Scotts Valley spineflower, is restricted to the Scotts Valley area in the Santa Cruz Mountains. The range of *C. r.* var. *robusta* partially overlaps with *Chorizanthe pungens* var. *pungens* (Monterey spineflower), another closely related taxon in the *Pungentes* section of the genus, in southern Santa Cruz County. *Chorizanthe pungens* var. *pungens* is a threatened species and *Chorizanthe robusta* var. *hartwegii* is an endangered species; for a detailed description of these related taxa, see the Draft Recovery Plan for the Robust Spineflower (Service 2000) and references within the plan. We are designating critical habitat for *Chorizanthe pungens* var. *pungens* and *Chorizanthe robusta* var. *hartwegii* in separate Federal Register rules.

*Chorizanthe robusta* var. *robusta* is a short-lived annual species. It germinates during the winter months and flowers from April through June. Pollinators observed on *C. r.* var. *robusta* include six species of flies, including two species of bee flies (Bombyliidae) and two species of syrphid flies (Syrphidae); three species of beetles, including ladybird beetles (Coccinellidae); honey bees (*Apis mellifera*); bumblebees (Apidae); leaf cutter bees (megachilids); at least six species of butterflies, including one species in the Nymphalidae family; sphecid wasps; and ants (Randy Morgan, biologist, Soquel, California, pers. comm., 2000; S. Baron, *in litt.*, 2000; Annie Murphy, Pacific Gas and Electric Company, *in litt.*, 2001). In other annual species of *Chorizanthe*, the flowers are protandrous, a reproductive strategy in which the anthers (part of flower that produces pollen) mature and shed pollen prior to the maturation of the style (part of the female reproductive structure of a flower) to receive pollen, with a delay of style receptivity of 1 or 2 days. Protandry facilitates cross-pollination by insects. However, if cross-pollination does not occur within 1 or 2 days, self-pollination may occur as the flower closes at the end of the day (Reveal 2001). The relative importance of insect pollination and self-pollination to seed set is unknown; however, in the closely related *C. p.* var. *pungens*, the importance of pollinator activity in seed set was demonstrated by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000).

Seed is mature by August. The plants turn a rusty hue as they dry through the summer months, eventually shattering

during the fall. Seed dispersal is facilitated by the involucre spines, which attach the seed to passing animals. Black-tailed hares (*Lepus californicus*) have been observed to browse on *Chorizanthe robusta* var. *robusta* (S. Baron, *in litt.*, 2000), and most likely act to disperse seeds as well. Other animals likely to assist in seed dispersal include, but are not limited to, mule deer (*Odocoileus hemionus*), gray foxes (*Urocyon cinereoargenteus*), coyotes (*Canis latrans*), bobcats (*Felis rufus*), ground squirrels (*Otospermophilus beecheyi*), striped skunks (*Mephitis mephitis*), opossums (*Didelphis virginiana*), raccoons (*Procyon lotor*), and other small mammals and birds. While animal vectors most likely facilitate dispersal between populations, or within portions of populations, the prevailing coastal winds undoubtedly play a part in scattering seed within colonies and populations.

For annual plants, maintaining a seed bank (a reserve of dormant seeds, generally found in the soil) is important to year-to-year and long-term survival (Baskin and Baskin 1978). A seed bank includes all of the seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year (Given 1994). The number and location of standing plants (the observable plants) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. The extent of seed bank reserves is variable from population to population, and large fluctuations in the number of standing plants at a given site may occur from one year to the next. Depending on the vigor of the individual plant and the effectiveness of pollination, dozens, if not hundreds of seeds could be produced. In one study at Sunset State Beach, individual *Chorizanthe robusta* var. *robusta* plants had an average of 126 flowers, and an average seed set of 51 seeds per plant (S. Baron, pers. comm., 2001). The production of seed itself does not guarantee production of future reproductive individuals for several reasons: seed viability may be low, as has been found in other species of *Chorizanthe* (Bauder 2000); proper conditions for germination may not be present in most years; and seedling mortality may result from withering before maturity, herbivory, or uprooting by gopher activity (Baron 1998). At one site, seedling mortalities of 42 and 31 percent in 1998 and 2000, respectively, were caused in *C. r.* var. *robusta* primarily by a larval microlepidoptera

from the family Gelichiideae (Baron 2000).

While sites that support large populations of *Chorizanthe robusta* var. *robusta* most likely also support large seed banks and can sustain several years of poor weather or bouts of predation, sites that support smaller populations and smaller seed banks may be more vulnerable to extirpation. For example, the population of *C. r.* var. *robusta* at Sunset State Beach appears to be consistently large, with tens of thousands of individuals over the past decade. Also, the population that occurs within the Aptos unit numbered approximately 3,000 in the year 2000 (Taylor 2000); based on only 1 year of observation, this appears to be the second largest population of *C. r.* var. *robusta*. However, five other known populations have been estimated to support 1,500 or fewer plants, though in some cases, the estimate has been based on only 1 year of observation: the Pogonip population comprised 800 individuals in the year 2000 (Baron 2000); the Branciforte population comprised approximately 500 individuals in the year 2001 (Connie Rutherford, Service, *in litt.*, 2001); the Freedom unit supported approximately 500 individuals in 1995 (California Natural Diversity Data Base (CNDDDB) 2001); the Buena Vista population supported approximately 1,500 individuals in 1999 (Baron 1999b); and the Wilder Creek population approximated 1,000 individuals in 2001 (Gray Hayes, *in litt.*, 2001).

The locations where *Chorizanthe robusta* var. *robusta* occurs are subject to a mild maritime climate, where fog helps keep summer temperatures cool and winter temperatures relatively warm, and provides moisture in addition to the normal winter rains. *Chorizanthe robusta* var. *robusta* is currently known from a total of eight sites, six of which are included in this critical habitat designation. One of these sites is located on active coastal dunes (Sunset State Beach), while the other sites are located inland from the immediate coast in sandy openings within scrub, maritime chaparral, or oak woodland habitats. All of these habitat types include microhabitat characteristics that are favored by *C. r.* var. *robusta*. First, all sites are on sandy soils; whether the origin of the soils are from active dunes or interior fossil dunes appears unimportant. The most prevalent soil series represented are Baywood, Ben Lomond, Zayante, Tierra, and Watsonville (Soil Conservation Service 1980). Second, these sites are relatively open and free of other vegetation; sandy soils tend to be

nutrient-poor, which limits the abundance of other herbaceous species that can grow on them. However, if these soils have been enriched, either through the accumulation of organic matter or importation of other soils, these sandy soils may support more abundant herbaceous vegetation which may then compete with *C. r.* var. *robusta*. Management of the herb cover, through grazing, mowing or fire, may allow the spineflower to persist. In scrub and chaparral communities, *C. r.* var. *robusta* does not occur under dense stands, but will occur between more widely spaced shrubs. Controlled experiments in altering soil and shade regimes for the closely related Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) showed that plants grown on their native low-nutrient soil were less successful (measured by flower production and total biomass) than those grown on adjacent soils with a higher organic matter content. Furthermore, plants grown in high shade were less successful than those grown in low or no shade. These results indicate that the plants grow on sandy soils because their nutrient-poor nature tends to restrict the growth of other species that would compete with the spineflower for light (McGraw and Levin 1998).

According to information included in the CNDDDB, *Chorizanthe robusta* var. *robusta* once ranged from Alameda County, on the eastern side of San Francisco Bay, south to northern Monterey County—a range of approximately 160 kilometers (km) (100 miles (mi)). The identity of the Alameda collections, however, is still unresolved; Reveal and Hardham (1989) noted that these collections may be more closely related to other spineflowers in the Pungentes section of the genus. Resolution of the identity of the Alameda collections is unlikely since the Alameda population was last collected in 1948, and the population at this site is believed to be extirpated (Service 2000). Other historic collections were made from Colma in San Mateo County, Los Gatos and San Jose in Santa Clara County, and several locations in Santa Cruz and Monterey Counties. The species is believed to be extirpated at all of these sites (Service 2000). The current distribution of *Chorizanthe robusta* var. *robusta* is restricted to coastal and near-coastal sites in southern Santa Cruz County, ranging from Pogonip Park in the city of Santa Cruz, southeast to coastal dunes at Sunset State Beach. One other currently occupied location is also found in northern Monterey County, but the

identity of the plants at the site has recently come into question (see below, Summary of Changes From the Proposed Rule, item 5).

At the time of the proposed rule, we were aware of seven sites with *Chorizanthe robusta* var. *robusta*. At Pogonip Park, two *C. r.* var. *robusta* colonies occur on sandy soils derived from the Santa Margarita sandstone formation; one of these colonies is growing in sandy openings within a mixed forest community (S. Baron, *in litt.*, 1999a; CNDDDB 2000). Within the city of Santa Cruz, near where Highway 1 crosses Carbonera Creek (referred to as the Branciforte site), a population occurs in a field that supports grassland species, including *Avena barbata* (wild oats), *Vulpia* sp. (*vulpia*), *Lupinus* sp. (sky lupine), *Eschscholzia californica* (California poppy), *Conyza* sp. (telegraph weed), *Navarettia atractylodes* (*navaretia*), and *Erodium* sp. (*filaree*) (R. Morgan, pers. comm., 2000). At the Aptos site, *C. r.* var. *robusta* occurs in an opening within maritime chaparral on inland marine sand deposit (CNDDDB 2000). At the Freedom site, *C. r.* var. *robusta* occurs in a grassy opening within maritime chaparral and oak woodland (Dean Taylor, Jepson Herbarium, Berkeley, California, *in litt.*, 2000). At the Buena Vista site, *C. r.* var. *robusta* occurs on sandy soils in openings within oak forest and maritime chaparral (S. Baron, *in litt.*, 1999b). The Buena Vista site also supports the endangered Santa Cruz long-toed salamander (*Ambystoma californiense*).

At Sunset State Beach, *Chorizanthe robusta* var. *robusta* is found at the base of backdunes in openings of coastal scrub, including *Eriophyllum staechadifolium* (seaside woolly sunflower), *Artemisia pycnocephala* (coastal sagewort), *Ericameria ericoides* (mock heather), and *Baccharis pilularis* (coyote bush) (CNDDDB 2000). *Chorizanthe pungens* var. *pungens* grows in a band parallel to the *C. r.* var. *robusta*, in the foredunes along the beach (CNDDDB 2000). The distribution of suitable habitat on coastal dunes is subject to dynamic shifts caused by patterns of dune mobilization, stabilization, and successional trends in coastal dune scrub that increase in cover over time. Individual colonies of *C. r.* var. *robusta*, found in gaps between stands of scrub, shift in distribution and size over time. The seventh site at which the species was thought to occur at the time of the proposed rule was on coastal dunes between Marina and Seaside on lands formerly known as Fort Ord, in northern Monterey County. The identity of the plants at this site has

recently come into question (see below, Summary of Changes From the Proposed Rule).

During the public comment periods, we became aware of additional habitat that supports *Chorizanthe robusta* var. *robusta*, that we had not included in the critical habitat proposal. Two areas supporting *C. r.* var. *robusta*, but not included in the critical habitat designation, are considered new sites: (1) A location to the south of Empire Grade and north of Wilder Ranch State Park on private lands (G. Hayes, *in litt.*, 2001) and (2) two places in Manresa State Beach. A third new area that came to our attention after we had proposed critical habitat is an expansion of the previously known location just east of Aptos High School on lands owned by the Pajaro Valley Unified School District (Vince Cheap, California Native Plant Society, *in litt.*, 2000). This latter area is directly adjacent to the Freedom unit that is discussed in this rule.

Under the Act and the Administrative Procedure Act (APA) (5 U.S.C. 702 and 706), we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, because these new areas were not included in the proposed rule, we are not including them in the final rule. Although these areas were not included in the critical habitat proposal, they may be important to the recovery of the species and could be included in recovery activities in the future.

Portions of the coastal dune, coastal scrub, grassland, chaparral, and oak woodland communities that support *Chorizanthe robusta* var. *robusta* have been eliminated or altered by recreational use, conversion to agriculture, and urban development. Dune communities have also been altered in composition by the introduction of non-native species, especially *Carpobrotus* spp. (sea-fig or iceplant) and *Ammophila arenaria* (European beachgrass), in an attempt to stabilize shifting sands. In the last decade, significant efforts have been made to restore native dune communities, including the elimination of these non-native species (California Department of Parks and Recreation (CDPR) 1995).

#### Previous Federal Action

On May 16, 1990, we received a petition from the Santa Cruz Chapter of the California Native Plant Society to list *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) as endangered. Based on a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted (55

FR 46080), we initiated a status review of this taxon. During that time, we also reviewed the status of *Chorizanthe robusta* var. *robusta*. We proposed endangered status for the *C. r.* var. *robusta* on October 24, 1991 (56 FR 55107). The final rule, published on February 4, 1994, (59 FR 5499) listed *C. robusta*, inclusive of var. *robusta* and var. *hartwegii*, as endangered. At the time *Chorizanthe robusta* was listed, we found that designation of critical habitat for *Chorizanthe robusta* was prudent but not determinable and that designation of critical habitat would occur once we had gathered the necessary data.

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe robusta* within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity v. Babbitt* (Case No. C99-3202 SC). On August 30, 2000, the U.S. District Court for the Northern District of California (court) directed us to publish a proposed critical habitat designation within 60 days of the court's order, and a final critical habitat designation no later than 120 days after the proposed designation is published. On October 16, 2000, the court granted our request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, we agreed to propose critical habitat for *Chorizanthe robusta* var. *robusta* by January 15, 2001, and to publish a final rule by October 19, 2001. The plaintiffs subsequently agreed to, and the court approved, an extension until May 17, 2002, to complete the final rule.

Because the two varieties of *Chorizanthe robusta* are geographically and ecologically separated, critical habitat designations were developed separately. The proposed rule to designate critical habitat for *Chorizanthe robusta* var. *robusta* was sent to the **Federal Register** on January 16, 2001, and was published in the **Federal Register** February 15, 2001 (66 FR 10419). The proposed critical habitat designation included approximately 660 ha (1,635 ac) of lands in Santa Cruz and Monterey Counties as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on April 16, 2001. On May 3, 2001, we published technical corrections to the proposal to correct a mapping error that had been published in the proposal with respect to the location of Unit D (66 FR 22141). We accepted comments until June 4, 2001 on this correction. On September 19, 2001, we published a notice announcing the reopening of the comment period on

the proposal to designate critical habitat for *Chorizanthe robusta* var. *robusta*, and a notice of availability of the draft economic analysis on the proposed determination (66 FR 48228). This second public comment period closed on October 19, 2001. On February 1, 2002, the Office of the Secretary of the Interior published a notice reopening the comment period until February 15, 2002 (67 FR 4940). The comment period was reopened to allow individuals to resubmit comments that we may not have received due to the Department's Internet access, including the receipt of outside e-mail, being shut down.

#### Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of a legal notice in the Santa Cruz Sentinel on February 24, 2001. We received individually written letters from seven parties, which included three designated peer reviewers, two State agencies, one local jurisdiction, and one individual. Approximately 800 additional letters were submitted as part of a mailing campaign. Of the seven parties who did not respond as part of the mailing campaign, five supported the proposed designation and two were opposed. The 2 commenters opposing the proposal were specifically opposing designation of critical habitat on lands they own or manage, and were requesting that these areas be excluded from critical habitat designation. Of the 800 additional letters, 23 were opposed, 1 was neutral, and the remaining were in support of the critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat for *Chorizanthe robusta* var. *robusta*. Similar comments were grouped into general issues and are addressed in the following summary.

*Comment 1:* The University of California at Santa Cruz requested that their lands be excluded from the Pogonip unit of the critical habitat designation because no suitable habitat for *Chorizanthe robusta* var. *robusta* occurs there.

*Our Response:* For the proposed designation, we frequently used U.S. Geological Survey (USGS) Township/Range/Section boundaries to provide the legal description of the unit locations. The use of recently acquired high resolution aerial photographs dating from April 2000, and the use of Universal Transverse Mercator (UTM)

coordinates to provide the legal descriptions, has enabled us to undertake more precise mapping for the final designation. After conducting this new analysis, we found that the University lands do not contain the primary constituent elements needed to ensure the conservation of *C. r. var. robusta*. Therefore, we removed these lands from the designation, reducing the size of the Pogonip unit from 165 ha (410 ac) to 64 ha (159 ac).

*Comment 2:* The Pajaro Valley Unified School District (District) requested that District lands be excluded from the Freedom unit because the unit was mapped inaccurately, and included buildings and landscaped areas.

*Our Response:* In the proposal, the map showing the location of the Freedom unit was in error. We published a technical correction in the **Federal Register** on May 3, 2001 (66 FR 22141). As discussed in Comment 1 above, we now have access to more recent aerial photos, and are able to map boundaries using UTM coordinates. Therefore, we are able to more accurately map areas containing the primary constituent elements. This 4-ha (10-ac) unit is comprised of local agency lands (Pajaro Valley Unified School District) and private lands. We modified the boundaries of this unit to eliminate several hundred square meters of a baseball field from one corner of the unit. However, some of the District's land contains *Chorizanthe robusta* var. *robusta* and its primary constituent elements and remains as part of unit D.

*Comment 3:* The CDPR commented that a population of spineflower observed at Manresa State Beach was *Chorizanthe robusta* var. *robusta*, and not Monterey spineflower (*Chorizanthe pungens* var. *pungens*), as the Service stated in a companion critical habitat proposal for Monterey spineflower.

*Our Response:* The records available to us at the time the two proposed critical habitat designations were being prepared for *Chorizanthe pungens* var. *pungens* and *Chorizanthe robusta* var. *robusta* indicated that the populations of spineflower at Manresa State Beach were *Chorizanthe pungens* var. *pungens*. A site visit was subsequently made by State Park staff and a local species expert to Manresa State Beach, and they clarified that the currently extant populations of spineflower at Manresa State Beach are *C. r. var. robusta* (*C. Rutherford, in litt., 2001*). However, since we were not aware of the presence of *C. r. var. robusta* at Manresa State Beach at the time of the proposed designation, we did not

propose critical habitat for *C. r. var. robusta* at that location.

Under the Act and APA, we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, because these populations were not in the proposed rule, we are unable to consider these areas in the final rule.

*Comment 4:* One peer reviewer suggested expanding the list of primary constituent elements to include such factors as seed germination requirements, substrate salinity, microreliefs and microclimates within local habitats, seasonal and yearly groundwater levels, and bird populations that migrate within the range of *Chorizanthe robusta* var. *robusta*.

*Our Response:* While we recognize that these factors may be important components of the habitats within which *Chorizanthe robusta* var. *robusta* is found, we do not have sufficient information at this time that indicates that they are the primary factors responsible for the distribution of *C. r. var. robusta* throughout its range.

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from three knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region that the species occurs in, and familiarity with the principles of conservation biology. All three of the peer reviewers supported the proposal, and provided us with comments which were summarized in the previous section and incorporated into the final rule.

#### Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat, we have reevaluated our proposed designation and included several changes to the final designation of critical habitat. These changes include the following:

(1) We clarified the description of the primary constituent elements and changed the number of primary constituent elements from six to four elements. We believe that two of the primary constituent elements included in the proposed designation are better described as features of the landscape. The two primary constituent elements that were included in the proposed rule but deleted in the final rule are: pollinator activity between existing

colonies of *Chorizanthe robusta* var. *robusta*, and seed dispersal mechanisms between existing colonies and other potentially suitable sites. The two deleted elements are features of the landscape discussed in the section of this rule entitled Special Management Considerations or Protections and therefore, we did not include them as primary constituent elements.

(2) We added a section describing the Special Management Considerations or Protections that *Chorizanthe robusta* var. *robusta* may require. We believe that this new section will assist land managers in developing management strategies for *C. r. var. robusta* on their lands.

(3) We made revisions to the unit boundaries. These changes were made based on information supplied by commenters, as well as the use of the high resolution aerial photos, indicating either that the primary constituent elements were not present in certain portions of the proposed unit, or that certain changes in land use had occurred on lands within the proposed designation that would preclude those areas supporting the primary constituent elements. The use of recently acquired high resolution aerial photographs dating from April 2000 enabled us to undertake this more precise mapping.

A brief summary of the modifications made on each unit is given below:

#### Unit A: Pogonip Unit

Modifications were made to this unit to exclude areas that do not contain the primary constituent elements, including urban and industrial areas, and heavily forested areas through the use of high resolution imagery. These modifications resulted in a reduction from 165 ha (410 ac) in the proposed rule to 64 ha (159 ac) that are primarily within Pogonip Park in the city of Santa Cruz.

#### Unit B: Branciforte Unit

Minor modifications were made to this unit to remove paved areas and heavily forested areas. These modifications resulted in a reduction from 5 ha (11 ac) to 4 ha (9 ac).

#### Unit C: Aptos Unit

Modifications were made to this unit to remove heavily forested areas and areas with unsuitable soil types, while still maintaining connectivity between patches of suitable soil types. These modifications resulted in a reduction from 32 ha (78 ac) to 28 ha (70 ac).

#### Unit D: Freedom Unit

Unit D consists of grasslands and sandy areas in openings within

maritime chaparral and oak woodland. This 4-ha (10-ac) unit is comprised of private and Pajaro Valley Unified School District lands. This unit was modified to eliminate several hundred square meters of a baseball field from one corner of the unit.

#### Unit E: Buena Vista Unit

Unit E consists of grasslands within maritime chaparral and oak woodland on the privately owned Buena Vista parcel. We modified the unit by removing lands in a watershed in which the *Chorizanthe robusta* var. *robusta* is not known to occur. These modifications resulted in a reduction from 75 ha (185 ac) to 55 ha (135 ac).

#### Unit F: Sunset Unit

Unit F consists of coastal dune habitat, and is identical to critical habitat that is being designated for the *Chorizanthe pungens* var. *pungens*. Modifications were made to this unit to eliminate the beaches within the surf zone along the western boundary of this unit. The acreage included in this unit was reduced from 50 ha (130 ac) to 35 ha (86 ac). All of this unit is within Sunset State Beach.

#### Unit G: Marina Unit

In 1992, a population of what was believed to be *Chorizanthe robusta* var. *robusta* was discovered on the coastal dunes between Marina and Seaside (Monterey County), in the course of surveys performed in preparation for the transfer of Department of Defense (DOD) lands formerly known as Fort Ord to the CDPR; this same stretch of dunes also supports the threatened *C. p.* var. *pungens* and the threatened western snowy plover (*Charadrius alexandrinus nivosus*) (U.S. Army Corps of Engineers (ACOE) 1997). We originally proposed this unit due to the reported discovery of the *C. r.* var. *robusta* population and to establish a contiguous area of habitat along Monterey Bay because fragmentation of habitat is a threat to the species. However, based on subsequent discussions with the botanist and the project manager that directed the botanical surveys on these lands, and the fact that no voucher specimens exist for *C. r.* var. *robusta* in this unit, we believe that there is not enough evidence to verify that a population of *C. r.* var. *robusta* occurs at this location (P. Cylinder, pers. comm. 2001; R. Morgan, pers. comm. 2001). Therefore, because this unconfirmed location is outside the known range of the species and no historical collections have ever been made from this site, the proposed critical habitat, Unit G, was removed from the critical habitat designation.

The acreage of this unit in the proposed rule was 325 ha (805 ac). Further calculations indicate that the elimination of the unit decreases the designation of critical habitat by 328 ha (811 ac) due to a revision in our calculations.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

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 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In regulations at 50 CFR 402.02, we define destruction or adverse modification as “\* \* \* the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not result in any regulatory requirements for these actions.

In order to be included in a critical habitat designation, the habitat must first be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all areas essential for the conservation of the species.

Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that, “The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.” (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies,



and biological assessments or other unpublished materials.

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the Act's section 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

#### Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Chorizanthe robusta* var. *robusta*. This included information from CNDDDB (2000), soil survey maps (Soil Conservation Service 1980), recent biological surveys and reports, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits at four of the known locations (Pogonip, Freedom, Buena Vista, and Sunset State Beach).

We also reviewed the goals for the delisting of *Chorizanthe robusta* var. *robusta* included in our draft recovery plan (Service 2000). The criteria for delisting *C. r.* var. *robusta* include: (1) The permanent protection of a minimum of 10 spineflower populations through establishment of new populations or the discovery of other new or historic populations; (2) with each population maintaining a

minimum of 1,000 individuals for a period of 10 years that includes a normal rainfall cycle; and (3) the development and implementation of management plans for all sites on park lands and private lands.

The draft plan calls for the following recovery actions: (1) Protect habitat for *Chorizanthe robusta* var. *robusta* by working with local lead agencies; (2) manage habitat as needed at all locations that support extant populations; (3) conduct research that will contribute to developing appropriate management actions, including regular monitoring for population trends and potential threats; (4) establish new populations in appropriate habitat within the historic range of the species; and (5) increase public awareness of the species and its associated habitats through various outreach efforts. At the time the recovery plan was prepared, we were aware of only four populations; at the current time, we are aware of eight populations. Because the criteria for delisting *C. r.* var. *robusta* include the permanent protection of a minimum of 10 sites, we believe protection of all eight known sites is necessary for the long-term persistence of the species.

All of the critical habitat units are occupied by either above-ground plants or seed banks. In addition, each of the units probably contains areas that are considered currently unoccupied by the species. "Occupied" is defined here as an any area with above-ground *C. r.* var. *robusta* plants or a *C. r.* var. *robusta* seed bank of indefinite boundary. Current surveys need not have identified above-ground individuals for the area to be considered occupied because plants may still exist at the site as part of the seed bank (Given 1994). All occupied sites contain some or all of the primary constituent elements and are essential to the conservation of the species, as described below. "Unoccupied" is defined here as an area that contains no above-ground *C. r.* var. *robusta* plants and is unlikely to contain currently viable seeds.

Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The distribution of *C. r.* var. *robusta* appears to be more closely tied to the presence of sandy soils than to specific plant communities; the plant communities may undergo changes over time which, due to the degree of cover that is provided by that vegetation type, may or may not favor the growth of *C. r.* var. *robusta* above-ground; (2) the method in which the current distribution of *C. r.* var. *robusta* is mapped can be variable, depending on the scale at which patches of

individuals are recorded (e.g. many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seed bank present, enlarge and cover a more extensive area. Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site every year, we cannot quantify in a meaningful way what proportion of each critical habitat unit may actually be occupied by *C. r.* var. *robusta*. Therefore, patches of unoccupied habitat are interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon. Both occupied and unoccupied areas that are designated as critical habitat are essential to the conservation of the species. Unoccupied areas provide areas into which populations might expand, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms.

#### Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Chorizanthe robusta* var. *robusta* is described in the Background section of this final rule. Based on the best available information at this time, the primary constituent elements of critical habitat for *C. r.* var. *robusta* are:

(1) Sandy soils associated with active coastal dunes and inland sites with sandy soils;

(2) Plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, and oak woodland communities, and have a structure such that there are openings between the dominant elements (e.g. scrub, shrub, oak trees, clumps of herbaceous vegetation);

(3) Plant communities that contain little or no cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe robusta* var. *robusta*; and

(4) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas.

#### Site Selection

We selected critical habitat areas to provide for the conservation of *Chorizanthe robusta* var. *robusta*, at the single confirmed coastal site and five inland sites where it was known to occur at the time the proposal was prepared. A second coastal site, on the lands formerly known as Fort Ord, was proposed, but is not being designated as critical habitat because the identity of the plants at the location has recently come into question. Historic locations for which there are no recent records of occupancy (within the last 25 years) were not proposed for designation. At a number of these sites, including Alameda in Alameda County, Colma in San Mateo County, and Los Gatos and San Jose in Santa Clara County, the plant has not been seen for approximately 100 years; this, combined with the consideration that these locations have been urbanized, leads us to conclude that a critical habitat designation would be inappropriate for these sites.

Additional areas where *Chorizanthe robusta* var. *robusta* has been documented include one at Manresa State Beach, just seaward from the community of La Selva Beach in Santa Cruz County. *Chorizanthe robusta* var. *robusta* was observed near the entrance to the Beach in 1979, but it has not been seen since then and may be extirpated (CNDDDB 2000).

Another population of *Chorizanthe* was known from the south end of the Manresa State Beach on a bluff top location, but it had been mistakenly identified as *Chorizanthe pungens* var. *pungens* (Monterey spineflower). The correct identity of the population was not determined until preparation of the final critical habitat designation was underway (C. Rutherford, *in litt.*, 2001). Another population is located south of Empire Grade and north of Wilder Ranch State Park on private land and

contains approximately 1,000 individuals (G. Hayes, *in litt.*, 2001). In addition, Pajaro Valley Unified School District lands contain *Chorizanthe robusta* var. *robusta* colonies adjacent to Unit D, and associated with the colonies that are included within this unit. These three areas were brought to our attention after the proposed critical habitat designation had been published.

Under the Act and the Administrative Procedure Act (5 U.S.C. 702 and 706), we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, because these sites were not included in the proposed rule, we are not including them in the final rule.

It is important to note that lands that support these populations do not appear to be threatened by actions that may negatively affect the species or its habitat. Because these areas are occupied by *Chorizanthe robusta* var. *robusta*, any actions in which there is a Federal nexus and that may affect the species will require consultation under section 7 of the Act.

Another area where *Chorizanthe robusta* var. *robusta* has been documented within the last 25 years is an area north of the community of Soquel in Santa Cruz County, and bounded by Paul Sweet Road to the west, Rodeo Gulch Road to the east, and as far north as Mountain View Road. Collections from this area were made in 1936, 1960, and 1977; although this area has undergone some scattered development, much of the area remains rural, and populations of *C. r.* var. *robusta* may persist in this area. However, due to the size of this area and our lack of information needed to delineate boundaries more specifically, we were not able to propose critical habitat in this area.

We do not believe this critical habitat designation alone will be sufficient to conserve *Chorizanthe robusta* var. *robusta*, a species in danger of extinction due to the highly restricted range in which the species is known to occur. The draft recovery plan for *C. r.* var. *robusta* (Service 2000) proposes as a recovery task "the reestablishment of populations within the historic range of the species if appropriate habitat can be located." The task of locating appropriate habitat, which would entail developing a predictive model based on habitat characteristics (similar to, but more detailed than, the constituent elements described in this final rule), followed by field surveys and coordination with other agencies, has not yet been initiated. Once these data have been gathered and the recovery plan is finalized, we may revisit critical

habitat designation for this species, if appropriate.

The long-term conservation of *Chorizanthe robusta* var. *robusta* is dependent to a great extent upon the protection of existing population sites and on maintaining ecological functions within these sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example dune dynamics at the coastal sites, and fire disturbance at inland sites) that maintain the openness of vegetation cover upon which the species depends. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of *C. r.* var. *robusta*.

#### Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the primary constituent elements for *Chorizanthe robusta* var. *robusta* within the units being designated as critical habitat. In some cases, protection of existing habitat and current ecological processes may be sufficient to ensure that populations of *C. r.* var. *robusta* are maintained, and have the ability to reproduce and disperse into surrounding habitat at those sites. In other cases, however, active management may be needed to maintain the primary constituent elements for *C. r.* var. *robusta*. We have outlined below the most likely kinds of special management and protection that *C. r.* var. *robusta* may require.

(1) In near-coastal areas, the supply and movement of sand along the coast must be maintained to create the dynamic dune habitats that are needed for *Chorizanthe robusta* var. *robusta*.

(2) In more interior locations, the sandy soils on which *Chorizanthe robusta* var. *robusta* is found should be maintained to optimize conditions for the species. Physical properties of the soil, such as its chemical composition, salinity, and drainage capabilities would best be maintained by limiting or restricting the use of herbicides, fertilizers, or other soil amendments.

(3) The associated plant communities must be maintained to ensure that the habitat needs of pollinators and dispersal agents are maintained. The use of pesticides should be limited or restricted so that viable populations of pollinators are present to facilitate reproduction of *Chorizanthe robusta* var. *robusta*. Fragmentation of habitat through construction of roads and certain types of fencing should be

limited so that seed dispersal agents may move seed of *C. r. var. robusta* throughout the unit.

(4) In some plant communities, it may be important to maintain a mosaic of different-aged stands of coastal scrub or maritime chaparral patches so that openings that support *Chorizanthe robusta* var. *robusta* will be maintained. Depending on location, the use of prescribed fire, thinning, or other forms of vegetation management may be useful in creating and maintaining this type of mosaic.

(5) In all plant communities where *Chorizanthe robusta* var. *robusta* occurs, invasive, non-native species such as harding grass (*Phalaris aquaticus*), veldt grass (*Ehrharta* spp.), European beachgrass, iceplant, and other species need to be actively managed to maintain the open habitat that *C. r. var. robusta* needs.

(6) Certain areas where *Chorizanthe robusta* var. *robusta* occurs may need to be fenced to protect them from accidental or intentional trampling by humans and livestock. While *C. r. var. robusta* appears to withstand light to moderate disturbance, heavy disturbance may be detrimental to its persistence. Seasonal exclusions may work in certain areas to protect *C. r. var. robusta* during its critical season of growth and reproduction.

#### Criteria Used To Identify Critical Habitat

We believe it is important to preserve all areas that currently support native populations of *C. r. var. robusta* because the number of populations that have been extirpated and the reduction in range that the species has undergone place a great importance on the conservation of all the known remaining sites. We are designating critical habitat at six of the eight known locations of *C. r. var. robusta*. We are not designating the other two known sites and a potential expansion of the Aptos Unit as critical habitat for reasons described above in the Site Selection section. When possible, areas that were in close geographic proximity were included in the same unit to emphasize the need to maintain connectivity between different populations or colonies. We also included habitat for *C. r. var. robusta* adjacent to and contiguous to areas of known occurrences to maintain landscape scale processes, such as maintaining normal rates of surface and subsurface water flow, normal rates of erosion, maintaining the composition and structure of the plant community, and maintaining wildlife/plant interactions. Each unit contains habitat that is occupied by *C. r. var. robusta*.

The proposed designated critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Chorizanthe robusta* var. *robusta*, using information from CNDDDB (2000), recent biological surveys and reports, our draft recovery plan for this species, and discussions with botanical experts. These data layers were created on a base of USGS 7.5' quadrangle maps obtained from the State of California's Stephen P. Teale Data Center. We defined the boundaries for the designated critical habitat units using a combination of: (1) Public Land Survey (PLS) coordinates of township, range, and section; (2) known landmarks and roads; and (3) a protracted PLS grid system used to infill grid coordinates within Spanish land grant areas where actual PLS does not exist. During preparation of the final rule, we found several discrepancies between the legal description of the boundaries of the critical habitat units and the boundaries of the units as depicted in the maps accompanying the proposed rule. The discrepancies resulted primarily from our use of data layers created at a small scale (e.g., 1:100,000 scale USGS mapping) during preparation of the maps of proposed critical habitat. For the final rule, the mapped boundaries of critical habitat first were corrected to be consistent with the boundaries as described in the proposed rule. We then modified the boundaries of proposed critical habitat using information on the location of existing developed areas from recent aerial imagery (April 2000), additional information from botanical experts, and comments on the proposed rule. The boundaries of the final critical habitat units are defined by UTM's.

In selecting areas of designated critical habitat, we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Chorizanthe robusta* var. *robusta*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. r. var. robusta*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, and other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary

constituent elements in adjacent critical habitat.

#### Critical Habitat Designation

The critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation and recovery of *Chorizanthe robusta* var. *robusta*. Critical habitat being designated for *C. r. var. robusta* includes six units that currently sustain the species. The areas being designated as critical habitat are either along the coast (Sunset State Beach), or are at inland sites ranging from Pogonip Park southeast to the Buena Vista property in southern Santa Cruz County, and include the appropriate dune, scrub, maritime chaparral, or oak woodland habitat that include the sandy openings which support *C. r. var. robusta*.

A brief description of each critical habitat unit is given below:

##### Unit A: Pogonip Unit

Unit A consists of sandy openings within mixed forest habitat within Pogonip Park in the City of Santa Cruz. Of the 64 ha (159 acre) unit, 62 ha (152 ac) are owned and managed by the City; and the remainder are privately owned. As of the year 2000, two colonies comprising approximately 800 individuals occupied this site. This unit is important to the conservation of the taxon because it supports extant colonies of *Chorizanthe robusta* var. *robusta*. This unit also includes habitat that is important for the expansion of existing colonies and connectivity between the two colonies. In addition, it is also important because, aside from the Wilder Creek location which we were not aware of at the time of the proposed rule, Pogonip Park is the most northerly and westerly location known for the species. It is also one of only three known locations where *C. r. var. robusta* is found more than 5 km (3 mi) away from the beach. Preserving the genetic characteristics that have allowed individuals at this site to survive under these slightly different environmental conditions may be important for the long-term survival and conservation of *C. r. var. robusta*.

##### Unit B: Branciforte Unit

Unit B consists of an old field/grassland unit within the city limits of Santa Cruz. The 4-ha (9-ac) unit is privately owned. As of the year 2001, this unit supported a *Chorizanthe robusta* var. *robusta* population of approximately 500 individuals. This unit also includes habitat that is important for the expansion of the existing population. This unit is

important to the conservation of the species because it contains one of the only eight known locations of *C. r. var. robusta*. It is the only other unit in close proximity to Unit A.

*Unit C: Aptos Unit*

Unit C consists of sandy openings within maritime chaparral. The 28 ha (70 ac) unit is comprised entirely of private lands. As of the year 2000, this unit supported a *Chorizanthe robusta* var. *robusta* population of approximately 3,000 individuals. This unit also includes habitat that is important for the expansion of the existing population. It is also one of only three locations that supports *C. r. var. robusta* more than 5 km (3 mi) away from the beach. Preserving the genetic characteristics that have allowed individuals at this site to survive under these slightly different environmental conditions (i.e., more inland conditions) may be important for the long-term survival and conservation of *C. r. var. robusta*.

*Unit D: Freedom Unit*

Unit D consists of grasslands and sandy areas in openings within maritime chaparral and oak woodland. This 4 ha (9 ac) unit is comprised of private and Pajaro Unified School District lands. As of the year 2001, this unit supports a *Chorizanthe robusta* var.

*robusta* colony of several hundred individuals. Additionally, other colonies of *C. r. var. robusta* occur within a few hundred yards of the first colony; these additional colonies are outside the critical habitat boundary. This unit is important to the conservation of the taxon because it supports one of only eight known extant locations of *C. r. var. robusta*. This unit also includes habitat that is important for the expansion of the existing colony and connectivity between the two colonies.

*Unit E: Buena Vista Unit*

Unit E consists of grasslands within maritime chaparral and oak woodland on the Buena Vista parcel. The 55 ha (135 ac) unit is comprised entirely of private lands. As of 1999, this unit supports multiple colonies of *Chorizanthe robusta* var. *robusta* comprising approximately 1,500 individuals. This unit is important to the conservation of the species because it is one of only two units that supports multiple extant colonies of *C. r. var. robusta*. This unit also includes habitat that is important for the expansion of the existing colonies, and connectivity between the multiple colonies.

*Unit F: Sunset Unit*

Unit F consists of coastal dune habitat, and is identical to critical

habitat that is being designated for the *Chorizanthe pungens* var. *pungens*. All of this 35 ha (86 ac) unit is within Sunset State Beach. As of 2001, this unit supports the largest concentration of *C. r. var. robusta*, including dozens of colonies of comprising tens of thousands of individuals. This unit is important to the conservation of the species because it is only one of two units that supports multiple extant colonies of *C. r. var. robusta*. This unit also includes habitat that is important for the expansion of these existing colonies into areas that were historically occupied, and for maintaining connectivity between the multiple colonies. The unit is also important because it is the most southerly location known for the species and the only location, aside from Manresa State Beach which was not proposed for critical habitat, where *C. r. var. robusta* is found so close to the beach. Preserving the genetic characteristics that have allowed individuals at this site to survive under these slightly different environmental conditions (i.e., more coastal conditions) may be important for the long-term survival and conservation of *C. r. var. robusta*.

Lands designated as critical habitat are under private, city, and State jurisdiction. The approximate areas of designated critical habitat by land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS IN HECTARES (HA) AND ACRES (AC) OF FINAL CRITICAL HABITAT FOR CHORIZANTHE ROBUSTA VAR. ROBUSTA BY LAND OWNERSHIP

Unit Name	State	Private	City/Local	Total
A. Pogonip .....	.....	2ha (7 ac) .....	62 ha (152 ac) .....	64 ha (159 ac)
B. Branciforte .....	.....	4 ha (9 ac) .....	.....	4 ha (9 ac)
C. Aptos .....	.....	28 ha (70 ac) .....	.....	28 ha (70 ac)
D. Freedom .....	.....	4 ha (9 ac) .....	less than 1 ha (1 ac) .....	4 ha (10 ac)
E. Buena Vista .....	.....	55 ha (135 ac) .....	.....	55 ha (135 ac)
F. Sunset .....	35 ha (86 ac) .....	.....	.....	35 ha (86 ac)
TOTAL .....	35 ha (86 ac) .....	93 ha (230 ac) .....	62 ha (153 ac) .....	190 ha (469 ac)

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other

non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section

7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports

include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinstatement of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal actions that may affect *Chorizanthe robusta* var. *robusta* or its critical habitat will require section 7 consultation. Activities on private or

State lands requiring a permit from a Federal agency, such as the ACOE under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

To properly portray the effects of critical habitat designation, we must first compare the requirements pursuant to section 7 of the Act for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. All of the units we are designating are occupied by either above-ground plants or a *Chorizanthe robusta* var. *robusta* seed bank, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. Each unit also contains some areas which are considered unoccupied. However, we believe, and the economic analysis discussed below illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as 404 permits from the ACOE or

permits from Housing and Urban Development, authorization of release of biological control agents by the Department of Agriculture, regulation by the Environmental Protection Agency of activities affecting point source pollution discharges into waters of the U.S., authorization of Federal grants or loans, restoration projects sponsored by the Natural Resources Conservation Service, pest control projects undertaken by the Animal and Plant Health Inspection Service, and land acquisition by the Service's Refuges Division. These actions would be subject to the section 7 consultation process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 of the Act consultation process. Several other species that are listed under the Act occur in the same general areas as *Chorizanthe robusta* var. *robusta*. *Chorizanthe pungens* var. *pungens* occurs in close proximity to *C. r.* var. *robusta* at Sunset State Beach; *Gilia tenuiflora* ssp. *arenaria* (sand gilia) occurs at Sunset State Beach; western snowy plover occurs at Sunset State Beach; and the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) occurs on the Buena Vista property.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Chorizanthe robusta* var. *robusta* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to; activities that appreciably degrade or destroy native dune, scrub, maritime chaparral, and oak woodland communities, including but not limited to: inappropriately managed livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

If you have questions regarding whether specific activities will likely

constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232-4181 (503/231-6131; facsimile 503/231-6243).

#### **Relationship to Habitat Conservation Plans**

Currently, there are no habitat conservation plans (HCP) that include *Chorizanthe robusta* var. *robusta* as a covered species. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although "take" of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs covering *C. r.* var. *robusta* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *C. r.* var. *robusta*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term conservation of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify appropriate management for lands essential for the long-term conservation of *C. r.* var. *robusta*. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

#### **Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made available for review on September 19, 2001 (66 FR 48228). We accepted comments on the draft analysis until this second public comment period closed on October 19, 2001.

Our draft economic analysis evaluated the potential future effects associated with the listing of *Chorizanthe robusta* var. *robusta* as an endangered species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 of the Act consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 of the Act consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat including educational benefits. The most likely economic effects of critical habitat designation are on

activities funded, authorized, or carried out by a Federal agency.

Based on our draft analysis, we concluded that the designation of critical habitat would have little significant additional regulatory burden or associated significant additional costs because of critical habitat above and beyond those attributable to the listing of *Chorizanthe robusta* var. *robusta*. Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to perceived increase in the regulatory burden. Our economic analysis also takes into account that unoccupied habitat is being designated and that there may be some cost associated with new section 7 consultations that would not have occurred but for critical habitat being designated. However, we believe all these impacts will be either short-term or minimal in cost.

Although the draft economic analysis concludes that, over the next 10 years the costs attributable to the designation are expected to be approximately \$106,000, we anticipate the costs will be even less due to the elimination of proposed Unit G from final designation. Costs to Federal agencies are expected to be approximately \$21,000. Costs to State agencies are expected to be approximately \$25,000, primarily resulting from consultations and project modifications in the Sunset unit. Local agencies are not expected to be impacted by the designation of critical habitat, principally because activities on local agency lands do not typically involve Federal nexuses. Costs to private landowners are expected to range from \$1,000 to \$14,000, primarily resulting from consultations and modifications within the Pogonip, Branciforte, Freedom, and Buena Vista units (Units A, B, D, and E). These estimates are based on the existing consultation history with agencies in this area and increased public awareness regarding the actual impacts of critical habitat designation on land values. Therefore, we conclude that minimal, significant incremental costs are anticipated as a result of the designation of critical habitat for *Chorizanthe robusta* var. *robusta*.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis. The values presented above may be an overestimate of the

potential economic effects of the designation because the final designation has been reduced to encompass 190 ha (469 ac) versus the 660 ha (1,635 ac) proposed as critical habitat, a reduction of approximately 470 ha (1,166 ac).

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (see ADDRESSES section).

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) In the economic analysis, we determined that this rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. *Chorizanthe robusta* var. *robusta* was listed as endangered in February, 1994. Since that time, we have conducted, and will continue to conduct, formal and informal section 7

of the Act consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *Chorizanthe robusta* var. *robusta*.

Under the Act, Federal agencies shall consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. The Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2).

TABLE 2.—IMPACTS OF CHORIZANTHE ROBUSTA VAR. ROBUSTA LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation <sup>1</sup>
Federal activities potentially affected <sup>2</sup> .	Activities conducted by the U.S. Army Corps of Engineers, the Department of Housing and Urban Development, the U.S. Department of Agriculture, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and any other Federal Agencies, including, but not limited to, the authorization of permits under section 404 of the Clean Water Act, the disbursement of grant monies for housing projects, spraying of herbicides or pesticides, the permitting or funding of clean-up activities of contaminants, pest control projects, and land acquisition.	Activities by these Federal Agencies in designated areas where section 7 of the Act consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal activities potentially affected <sup>3</sup> .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for <i>Chorizanthe robusta</i> var. <i>robusta</i> by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 of the Act consultations would not have occurred but for the critical habitat designation.

<sup>1</sup> This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

<sup>2</sup> Activities initiated by a Federal agency.

<sup>3</sup> Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Based upon our knowledge of the species and its ecological needs, and the fact that it is so restricted in its range, we conclude that any Federal action or authorized action that could potentially result in the destruction or adverse modification of critical habitat would also be considered as “jeopardy” under the Act in areas occupied by the species.

Accordingly, the designation of currently occupied areas as critical habitat is not anticipated to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding beyond the effects resulting from the listing of this species. Non-Federal persons that do not have a Federal “sponsorship” in their actions are not restricted by the designation of critical habitat. The designation of areas

as critical habitat where section 7 of the Act consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. These impacts were evaluated in our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies’ actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe robusta* var. *robusta* since its listing in 1994. We evaluated the impact of designating areas where section 7 of the Act consultations would not have

occurred but for the critical habitat designation in our economic analysis (see Economic Analysis section of this rule). The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist on currently occupied land, and will not create inconsistencies with other agencies’ actions on unoccupied lands.

(c) This final rule is not expected to materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification analysis resulting from critical habitat designation will have any incremental effects.

(d) OMB has determined that this rule may raise novel and legal or policy issues. Therefore, this rule is significant under Executive Order 12866, and, as a result, has undergone OMB review.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to Federal agencies to require a certification statement. In this rule, we are certifying that the critical habitat designation for *Chorizanthe robusta* var. *robusta* will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

In determining whether this rule could "significantly affect a substantial number of small entities," the economic analysis first determined whether critical habitat could potentially affect a

"substantial number" of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Development on private land constitutes the only commercial activity that could take place within the area of proposed critical habitat. To be conservative (*i.e.*, more likely to overstate impacts than understate them), the economic analysis assumed that all potentially affected parties that may be engaged in development activities within critical habitat are small entities. There are approximately 35 small residential development and construction companies in Santa Cruz County. Because the draft economic analysis estimates that, at most, three formal consultations could arise involving private entities, the analysis for impacts on small businesses assumes that at most three residential/small business entities may be affected by the designation of critical habitat for the *Chorizanthe robusta* var. *robusta* in Santa Cruz County over 10 years.

In each year, on average, there would likely be less than a single consultation for real estate development projects. As a result, less than 1 percent of the total number of small residential development and construction companies could be affected annually by the designation of critical habitat for *Chorizanthe robusta* var. *robusta*. Because the percentage of small businesses that could be affected by this designation is far less than the 20 percent threshold that would be considered "substantial," the economic analysis concludes that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for *Chorizanthe robusta* var. *robusta*.

In general, two different mechanisms in section 7 of the Act consultations

could lead to additional regulatory requirements for one small business, on average, that may be required to consult with us each year regarding their project's impact on *Chorizanthe robusta* var. *robusta* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 of the Act consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. Since we have not conducted any formal



consultations for *Chorizanthe robusta* var. *robusta*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation.

It is likely that a developer could modify a proposed project or take measures to protect *Chorizanthe robusta* var. *robusta*. Based on the types of modifications and measures that have been implemented in the past for plant species, a developer may take such steps as installing fencing or re-aligning the project to avoid sensitive areas. The cost for implementing these measures for one project is expected to be of the same order of magnitude as the total cost of the consultation process, *i.e.*, approximately \$10,000. It should be noted that developers likely would already be required to undertake such measures due to regulations under the California Environmental Quality Act. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Chorizanthe robusta* var. *robusta* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

#### *Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare a Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat include urban and agricultural development, recreation, open space, and conservation facilities. The only energy-related facilities located within designated critical habitat is a transmission line easement owned by Pacific Gas and Electric Company that traverses the Aptos unit, and the only activities that we are aware in their easement is management of shrub species to reduce fuel load. Therefore, this action does not represent a significant action effecting energy production, supply, and distribution facilities 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.*):

(a) This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they must ensure that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

#### *Takings*

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for *Chorizanthe robusta* var. *robusta* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

#### *Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed

above, the designation of critical habitat in areas currently occupied by *Chorizanthe robusta* var. *robusta* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 of the Act consultation to occur.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Department of the Interior’s Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Chorizanthe robusta* var. *robusta*.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

#### *National Environmental Policy Act*

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

*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 the 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. The designated critical habitat for *Chorizanthe robusta* var. *robusta* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary author of this final rule is Constance Rutherford, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

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

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

**Regulation Promulgation**

Accordingly, we hereby 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. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by revising the entry for *Chorizanthe robusta* (incl. vars. *robusta* & *hartwegii*) and by adding an entry for *Chorizanthe robusta* var. *hartwegii*, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
<i>Chorizanthe robusta</i> var. <i>hartwegii</i> .	Scots Valley spineflower.	U.S.A., CA .....	Polygonaceae-Buckwheat.	E	528	NA	NA
<i>Chorizanthe robusta</i> var. <i>robusta</i> .	Robust Spineflower	U.S.A., CA .....	Polygonaceae-Buckwheat.	E	528	17.96(b)	NA
*	*	*	*	*	*		*

3. In § 17.96, add critical habitat for *Chorizanthe robusta* var. *robusta* (robust spineflower), as the first entry under paragraph (a) to read as follows:

**§ 17.96 Critical habitat—plants.**

(a) Flowering plants.

Family Polygonaceae: *Chorizanthe robusta* var. *robusta* (robust spineflower).

(1) Critical habitat units are depicted for Santa Cruz County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Chorizanthe robusta* var. *robusta* include, but are not limited to, the habitat components that provide:

(i) Sandy soils associated with active coastal dunes, coastal bluffs with a

deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(ii) Plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure such that there are openings between the dominant elements (e.g., scrub, shrub, oak trees, clumps of herbaceous vegetation);

(iii) Plant communities that contain no or little cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe robusta* var. *robusta*; and

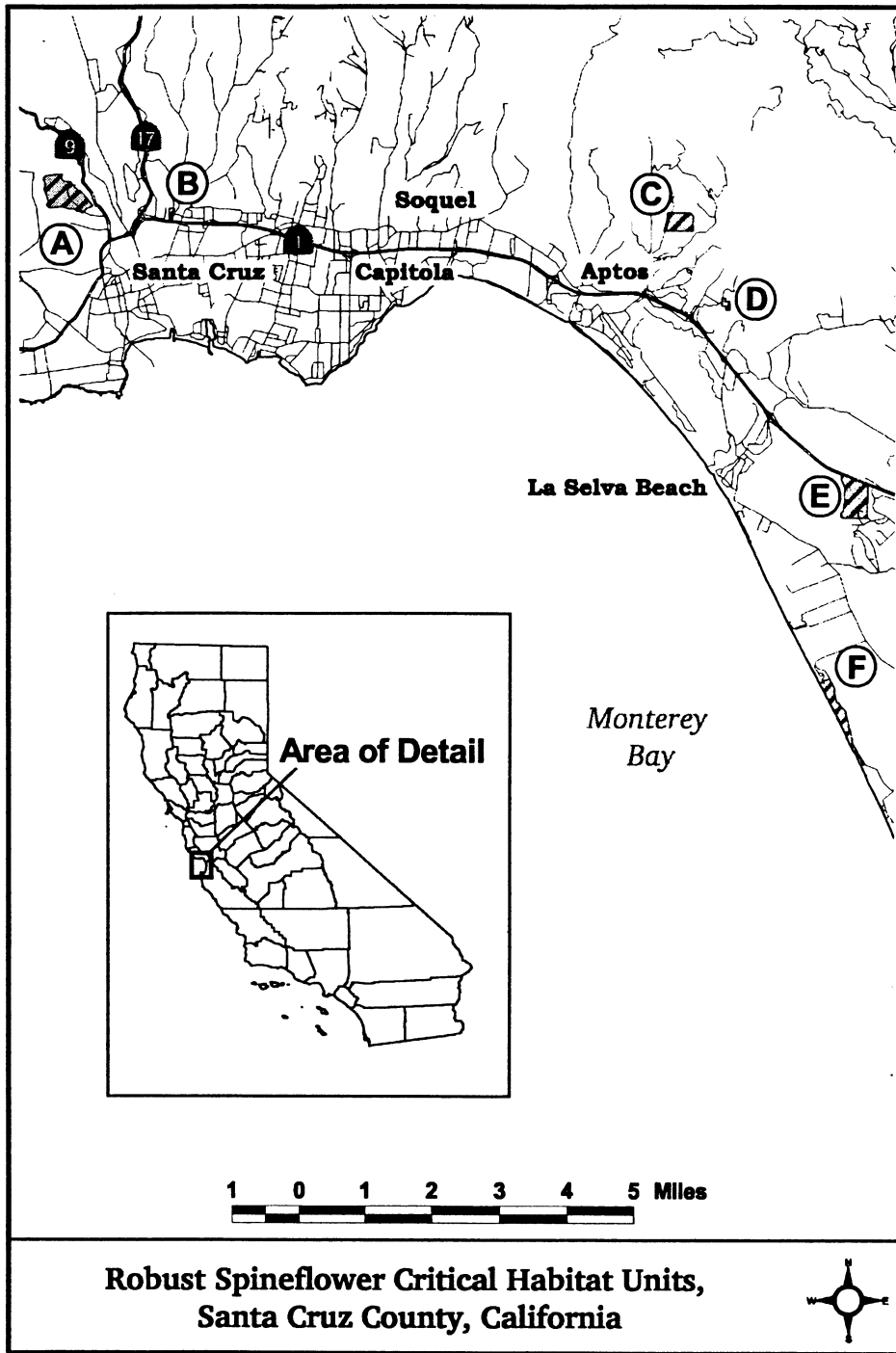
(iv) Physical processes, such as occasional soil disturbance, that support

natural dune dynamics along coastal areas.

(3) Existing features and structures, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical Habitat Map Units—Index Map Follows

**BILLING CODE 4310–55–P**



(5) Map Unit A (Pogonip): Santa Cruz County, California

From USGS 7.5' quadrangle map Santa Cruz, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 585912, 4094380; 585909, 4094380; 585900, 4094370; 585882, 4094350; 585830, 4094330; 585798, 4094320; 585775, 4094300; 585747, 4094260; 585722, 4094230; 585688, 4094200; 585666, 4094200; 585649, 4094210; 585617, 4094230; 585571, 4094230; 585556, 4094240; 585546, 4094240; 585537, 4094250; 585505, 4094280; 585487, 4094290; 585468, 4094290; 585442, 4094290; 585393, 4094290; 585340, 4094290; 585313, 4094300; 585220, 4094330; 585162, 4094330; 585101, 4094320; 584986, 4094300; 584917, 4094290; 584886, 4094300; 584871, 4094310; 584856, 4094320; 584839, 4094340;

584828, 4094360; 584829, 4094380; 584834, 4094390; 584846, 4094400; 584853, 4094420; 584856, 4094440; 584853, 4094470; 584844, 4094500; 584811, 4094600; 584798, 4094630; 584787, 4094650; 584773, 4094670; 584762, 4094700; 584754, 4094740; 584756, 4094770; 584762, 4094790; 584772, 4094830; 584777, 4094870; 584772, 4094890; 584730, 4094960; 584729, 4094990; 584738, 4095020; 584751, 4095040; 584767, 4095050; 584781, 4095060; 584805, 4095060; 584841, 4095070; 584879, 4095080; 584901, 4095090; 584926, 4095090; 585050, 4095110; 585125, 4095110; 585174, 4095110; 585168, 4095090; 585166, 4095070; 585169, 4095000; 585182, 4094980; 585193, 4094970; 585208, 4094960; 585223, 4094950; 585244, 4094950; 585265, 4094950; 585337, 4094940; 585366, 4094940;

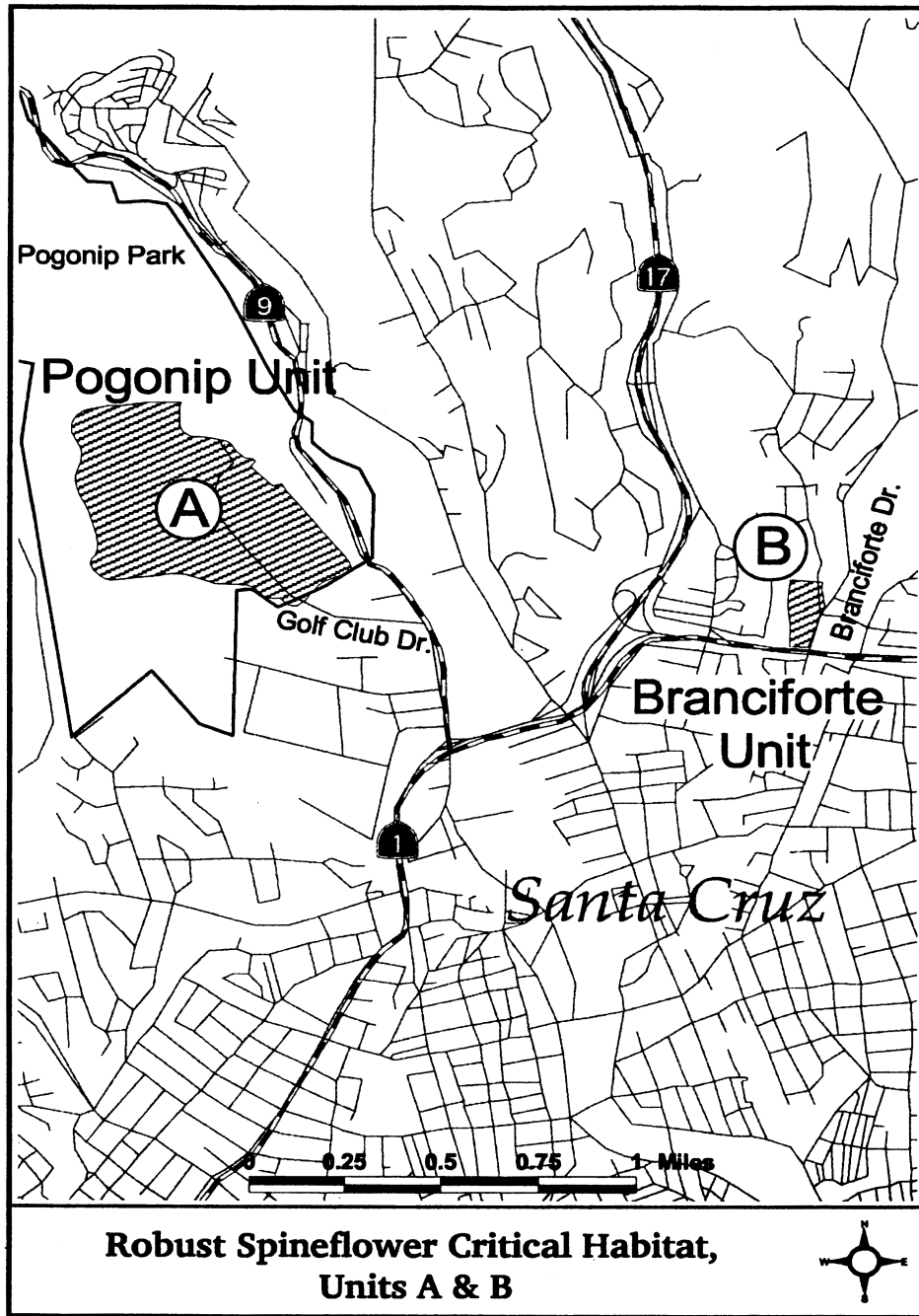
585388, 4094930; 585397, 4094910; 585414, 4094890; 585446, 4094870; 585480, 4094860; 585492, 4094850; 585470, 4094830; 585568, 4094740; 585606, 4094750; 585626, 4094720; 585885, 4094430; 585899, 4094410; 585907, 4094400; 585912, 4094380.

(6) Map Unit B (Branciforte): Santa Cruz County, California

(i) From USGS 7.5' quadrangle map Santa Cruz, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 587730, 4094370; 587728, 4094390; 587865, 4094380; 587863, 4094360; 587877, 4094270; 587816, 4094080; 587738, 4094090; 587737, 4094190; 587724, 4094280; 587730, 4094370.

(ii) Map Unit A and B: Pogonip and Branciforte Map Follows.

**BILLING CODE 4310-55-P**



(7) Map Unit C (Aptos): Santa Cruz County, California

Santa Cruz County, California.

Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N):

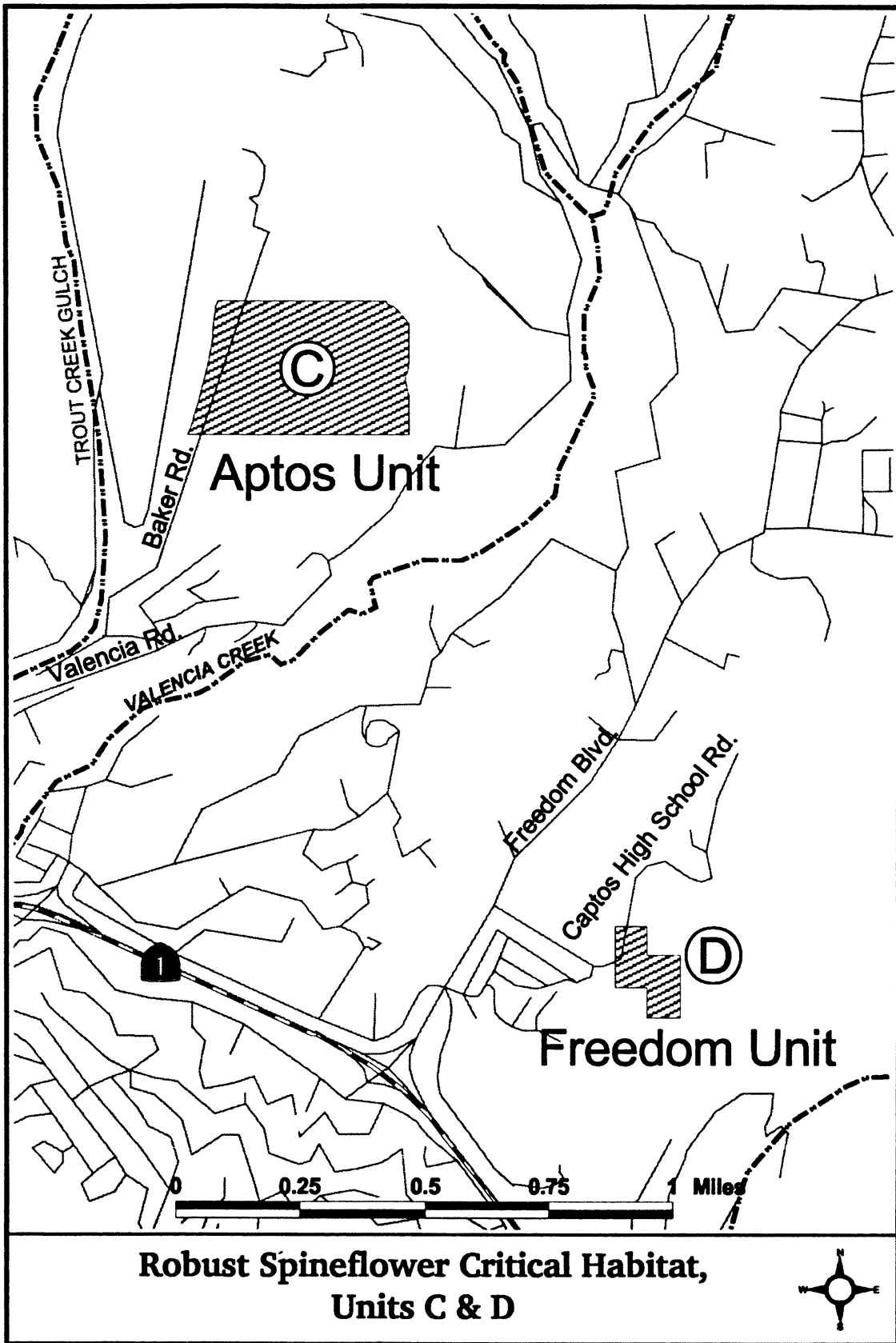
599729, 4094230; 599670, 4094230;  
599629, 4094230; 599577, 4094230;  
599591, 4094270; 599596, 4094290;  
599609, 4094340; 599623, 4094400;  
599636, 4094460; 599641, 4094490;  
599645, 4094530; 599647, 4094540;  
599647, 4094570; 599648, 4094580;  
599653, 4094640; 599655, 4094650;  
599658, 4094660; 599661, 4094660;

599662, 4094660; 599701, 4094670;  
599776, 4094670; 600002, 4094670;  
600092, 4094680; 600199, 4094680;  
600204, 4094670; 600209, 4094670;  
600220, 4094670; 600225, 4094660;  
600231, 4094660; 600242, 4094650;  
600247, 4094640; 600272, 4094620;  
600276, 4094610; 600280, 4094480;  
600280, 4094480; 600278, 4094460;  
600276, 4094460; 600274, 4094450;  
600271, 4094440; 600270, 4094440;  
600270, 4094430; 600271, 4094420;  
600283, 4094380; 600287, 4094250;  
600138, 4094250; 600007, 4094240;  
599915, 4094240; 599729, 4094230.

(8) Map Unit D (Freedom): Santa Cruz County, California

(i) From USGS 7.5' quadrangle map Watsonville West, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 601011, 4092690; 601113, 4092700; 601116, 4092600; 601223, 4092600; 601230, 4092400; 601122, 4092400; 601119, 4092500; 601019, 4092490; 601011, 4092690.

(ii) Map Units C and D: Aptos and Freedom Map Follows.



(9) Map Unit E (Buena Vista): Santa Cruz County, California

From USGS 7.5' quadrangle map Watsonville West, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 604046, 4088420; 604031, 4088480; 604029, 4088530; 604036, 4088560; 604049, 4088580; 604681, 4088360; 604692, 4087930; 604701, 4087560; 604071, 4087530; 604064, 4087550; 604057, 4087580; 604053, 4087630; 604060, 4087660; 604069, 4087670; 604089, 4087690; 604101, 4087700; 604111, 4087730; 604110, 4087790; 604109, 4087820; 604116, 4087870; 604125, 4087900; 604131, 4087930; 604130, 4088020; 604119, 4088060; 604114, 4088090; 604114, 4088110; 604123, 4088170; 604125, 4088250; 604120,

4088280; 604102, 4088320; 604082, 4088350; 604046, 4088420.

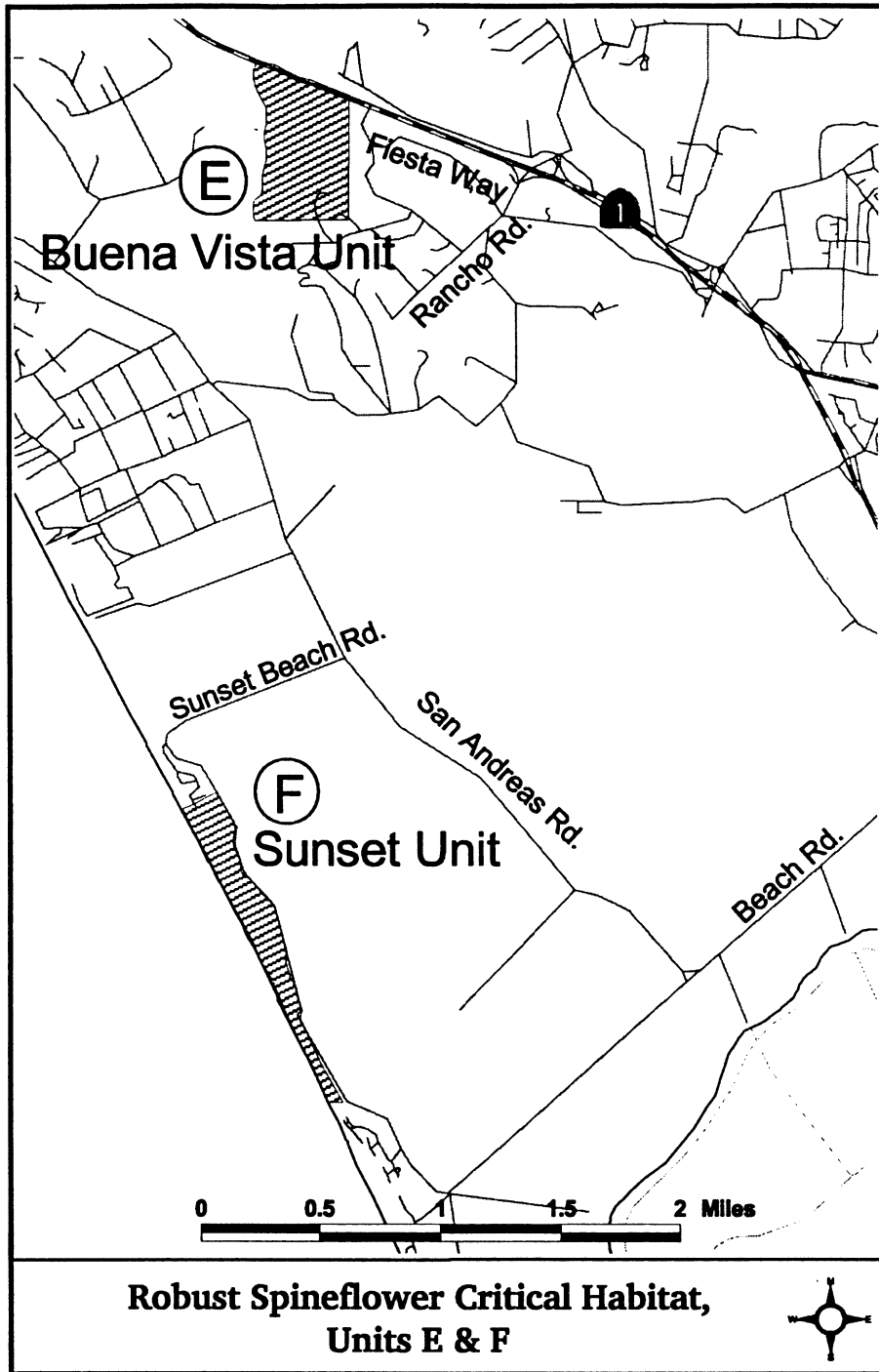
(10) Map Unit F (Sunset): Santa Cruz County, California

(i) From USGS 7.5' quadrangle map Watsonville West, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 603772, 4083610; 603885, 4083680; 603931, 4083700; 604008, 4083560; 604053, 4083490; 604059, 4083450; 604054, 4083420; 604045, 4083380; 604045, 4083350; 604080, 4083290; 604092, 4083270; 604102, 4083220; 604103, 4083180; 604109, 4083160; 604122, 4083150; 604149, 4083140; 604176, 4083120; 604202, 4083090; 604224, 4083060; 604243, 4083040; 604256, 4083020; 604279, 4083000; 604303, 4082980; 604328, 4082960; 604349,

4082920; 604373, 4082840; 604386, 4082800; 604412, 4082710; 604424, 4082670; 604425, 4082640; 604425, 4082610; 604426, 4082580; 604443, 4082530; 604449, 4082510; 604457, 4082490; 604460, 4082470; 604480, 4082440; 604492, 4082430; 604504, 4082400; 604512, 4082350; 604530, 4082300; 604546, 4082260; 604547, 4082250; 604536, 4082200; 604688, 4081900; 604847, 4081650; 604743, 4081650; 604613, 4081900; 604539, 4082040; 604449, 4082220; 604338, 4082450; 604258, 4082580; 604205, 4082690; 604132, 4082830; 604076, 4082910; 603987, 4083070; 603871, 4083280; 603804, 4083400; 603755, 4083480; 603700, 4083580; 603772, 4083610.

(ii) Map Units E and F: Buena Vista and Sunset Map Follows.





Dated: May 17, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-13064 Filed 5-24-02; 8:45 am]

BILLING CODE 4310-55-C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 043002A]

#### Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the Second Half of 2002

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

**ACTION:** Pacific halibut and red king crab bycatch rate standards; request for comments.

**SUMMARY:** NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 2002. Publication of these bycatch rate standards is required by regulations implementing the vessel incentive program (VIP). This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), July 1, 2002, through 2400 hours, A.l.t., December 31, 2002. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 27, 2002.

**ADDRESSES:** Comments may be submitted to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907-586-7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228, fax 907-

586-7465, e-mail [mary.furuness@noaa.gov](mailto:mary.furuness@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a VIP to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the Federal Register. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 2002 fishing months and halibut and red king crab bycatch rate standards for the first half of 2002 were published in the **Federal Register** (67 FR 1160, January 9, 2002).

As required by § 679.21(f)(3) and (4), the Administrator of the Alaska Region, NMFS (Regional Administrator), has established the bycatch rate standards for the second half of 2002 (July 1 through December 31). These standards were endorsed by the Council at its April 2002 meeting and are set out in Table 1. As required by § 679.21(f)(4), bycatch rate standards must be based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.21(d) and (e);

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

TABLE 1—BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 2002 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

<i>Fishery</i>	<i>2002 bycatch rate standard</i>
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch)	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

#### Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the second half of 2002 trawl fisheries are unchanged from those implemented for the second half of 2001. The Regional Administrator based standards for the second half of 2002 on anticipated seasonal fishing effort for groundfish species and on 1998-2001 halibut bycatch rates observed in the trawl fisheries included under the incentive program. Along with bycatch rate standards, the industry and the Council are exploring opportunities under fishery cooperatives and other voluntary or mandatory arrangements to control bycatch and optimize the amount of groundfish harvested under halibut and crab bycatch limits. Under § 679.50(k), vessel specific prohibited species bycatch rates from observer data are published weekly on the NMFS, Alaska Region website ([www.fakr.noaa.gov](http://www.fakr.noaa.gov)).

In determining these bycatch rate standards, the Regional Administrator considered the annual and seasonal bycatch specifications for the BSAI and the GOA trawl fisheries (67 FR 956, January 8, 2002). In the BSAI, the rockfish, yellowfin sole, and rock sole/flathead sole/"other flatfish" fishery categories will open or reopen on June 30 when seasonal apportionments of halibut bycatch allowances specified for these fisheries become available. The BSAI Pacific cod trawl fishery is currently open for catcher vessels and catcher processors. On June 10 the third allocation of trawl Pacific cod becomes available until November 1. The Regional Administrator also considered the June 10 opening date of the 2002 Bering Sea pollock 'B' season (§ 679.23(e)(5)) and the Gulf of Alaska 'C' and 'D' season pollock fisheries on August 25 and October 1, respectively (§ 679.23(d)(3)). The Regional Administrator acknowledged that the 2002 BSAI and GOA trawl fisheries for pollock and Pacific cod are closed November 1 for the remainder of the year as a protection measure for the endangered Western population of Steller sea lions.

The halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" trawl fisheries are each set at 5 kilograms (kg) of halibut per metric ton (mt) of groundfish. The BSAI yellowfin sole fishery has experienced undesirably high bycatch rates that NMFS and the Council wish to reduce through existing incentives. The average halibut bycatch rate for the 2001 third and fourth calendar quarter fisheries was equal to 8 and 13 kg halibut/mt groundfish, respectively. These rates are lower than those in 1999 and similar to those in 2000.

Since 1999, the use of nonpelagic trawl gear has been prohibited in the BSAI non-CDQ directed pollock fishery (§ 679.24(b)(4)). Even with this prohibition, a vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21(f)(2) because assignment to a fishery for purposes of the VIP is based on retained catch composition during a weekly period instead of gear type. If the majority of the catch is pollock, but pollock comprises less than 95 percent of the catch, then a haul is assigned to the BSAI bottom pollock fishery. The

prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery. Since the prohibition became effective, the halibut bycatch rates for this fishery are low compared to the halibut bycatch rate standards established for this fishery. The average halibut bycatch rate for the 2001 third and fourth calendar quarter pollock fisheries was equal to 3.17 and 0.63 kg halibut/mt groundfish, respectively.

The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg of halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery. The average halibut bycatch rates for the BSAI 2001 third and fourth calendar quarter fisheries are equal to 0.17 and 0.22 kg halibut/mt groundfish, respectively, and the average halibut bycatch rates for the GOA 2001 third and fourth calendar quarter fisheries are equal to 0.95 and 0.06 kg halibut/mt groundfish, respectively.

The considerations that support the bycatch rate standards for the "other trawl" fisheries are unchanged from previous years and are discussed in the **Federal Register** publications of 1995 bycatch rate standards (60 FR 2905, January 12, 1995, and 60 FR 27425, May 24, 1995). A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI "other trawl" fishery. This standard has remained unchanged since 1992. Observer data from the 2001 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 9 and 6 kg of halibut/mt of groundfish. A bycatch rate standard of 40 kg of halibut/mt of groundfish is established for the GOA "other trawl" fishery, which is unchanged since 1994. Observer data collected from the 2001 GOA "other trawl" fishery show average third and fourth quarter halibut bycatch rates of 27 and 57 kg of halibut/mt of groundfish, respectively.

#### **Bycatch Rate Standards for Red King Crab**

The red king crab bycatch rate standard for the yellowfin sole and

"other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 2002. This standard has remained unchanged since 1992. Through April 6, 2002, the rock sole/flathead sole/"other flatfish" fishery category has taken 104 percent of its annual red king crab bycatch allowance in Zone 1 including the Red King Crab Savings Subarea bycatch limit. The Pacific cod and yellowfin sole fisheries have taken 38 percent and 9 percent, respectively, of their bycatch allowances in Zone 1. The Regional Administrator anticipates that the non-pelagic trawl gear closure of the Red King Crab Savings Area in Zone 1 and the trawl gear closure for rock sole/flathead sole/"other flatfish" in Zone 1 will continue to result in low red king crab bycatch rates for the remainder of the year and is maintaining the 2.5 red king crab/mt of groundfish bycatch rate standard.

The Regional Administrator has determined that the bycatch rate standards set forth in Table 1 for the second half of 2002 are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator, pending his consideration of the information set forth at § 679.21(f)(4).

#### **Classification**

The halibut and red king crab bycatch rate standards for the second half of 2002 must be effective by July 1, 2002, when the bycatch rate standards for the first half of 2002 expire, in order to limit bycatch rates in the second half of the 2002 fishing year. Consequently, NMFS finds good cause to waive the requirement for prior notice comment pursuant to 5 U.S.C. 553(b)(B) as such procedures are contrary to the public interest. For the same reason, NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived. This action is taken under 50 CFR 679.21(f) and is exempt from Office of Management and Budget review under Executive Order 12866.

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: May 21, 2002.

**Virginia M. Fay,**

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

[FR Doc. 02-13255 Filed 5-24-02; 8:45 am]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 67, No. 102

Tuesday, May 28, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 02-AGL-04]

#### Proposed Modification of Class E Airspace; Lapeer, MI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class E airspace at Lapeer, MI. A VOR-A, Standard Instrument Approach Procedure (SIAP) has been developed for Dupont-Lapeer Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing controlled airspace for Dupont-Lapeer Airport.

**DATES:** Comments must be received on or before July 8, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL-7, Rules Docket No. 02-AGL-04, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02-AGL-04." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Lapeer, MI, for Dupont-Lapeer Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

\* \* \* \* \*

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

\* \* \* \* \*

**AGL MI E5 Lapeer, MI [Revised]**

Dupont-Lapeer Airport, MI  
(Lat. 43°04'00"N., long. 83°16'20"W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Dupont-Lapeer Airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on April 22, 2002.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–13216 Filed 5–24–02; 8:45 am]

**BILLING CODE 4910–13–M**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MD132 & MD133–3087b; FRL–7210–2]

**Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Revised Definitions and Recordkeeping Provisions**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. The revisions adopt by reference the EPA definition of volatile organic compounds (VOC), update the Federal citation of the prevention of significant deterioration (PSD) requirements references in Maryland's definitions and general emission standards provisions, and revise the general records and information requirements for installations and sources. In the Rules and Regulations section of this **Federal Register**, EPA is approving these revisions to the State of Maryland's SIP as a direct final rule in accordance with the requirements of the Clean Air Act. If EPA receives no

adverse comments on the direct final rule, EPA will not take further action. If EPA receives adverse comments on the direct final rule, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by June 27, 2002.

**ADDRESSES:** Written comments should be addressed to Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:**

Harold A. Frankford at (215) 814–2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the direct final rule and if that provision may be severed from the remainder of the direct final rule, EPA may adopt as final those provisions of the direct final rule that are not the subject of an adverse comment.

Dated: May 1, 2002.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 02–13111 Filed 5–24–02; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 268**

[FRL–7217–3]

**Land Disposal Restrictions: Site-Specific Treatment Variance to Chemical Waste Management, Inc.**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA or Agency) is today proposing to grant a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for two selenium-bearing hazardous wastes. EPA is proposing to grant this variance because: the chemical properties of these two wastes differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the TCLP); and Chemical Waste Management, Inc. (CWM) has adequately demonstrated that the two wastes cannot be treated to meet this treatment standard.

CWM intends to stabilize the wastes at their Kettleman City, California facility. If this proposal is finalized, CWM may treat these two specific wastes to alternate treatment standards of 51 mg/L, as measured by the TCLP, for the Owens-Brockway waste and 25 mg/L, as measured by the TCLP, for the St. Gobain waste. After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill provided they meet the applicable LDR treatment standards for the other hazardous constituents in the wastes. We are proposing to grant this variance for three years.

In the "Rules and Regulations" section of the **Federal Register**, we are publishing a direct final rule that would grant this site-specific treatment variance without prior proposal because we view this action as noncontroversial and we anticipate no significant adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If we receive significant adverse comment on the direct final rule, however, we will withdraw the direct final action and the treatment variance will not take effect. We will address all public comments, as appropriate, based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this proposed variance must do so at this time.

**DATES:** Written comments must be received by June 27, 2002.

**ADDRESSES:** If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing Docket Number F-2002-CWVP-FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; or, if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view public comments and supporting materials in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703-603-9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost \$ 0.15 per page. For information on accessing an electronic copy of the data base, see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of this proposed rule, contact Mr. Josh Lewis at 703-308-7877, [lewis.josh@epa.gov](mailto:lewis.josh@epa.gov), or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** This document concerns a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for two selenium-bearing hazardous wastes to be treated by Chemical Waste Management, Inc. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

#### Electronic Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: [rcra-docket@epamail.epa.gov](mailto:rcra-docket@epamail.epa.gov). You should

identify comments in electronic format with the docket number F-2001-CWVP-FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form. You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

If you do not submit comments electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential that you specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to protect the diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

#### I. Description of Proposed Rule

Today's notice proposes to continue for another three-year period a site-specific treatment variance for two selenium-bearing waste stream that will be treated by Chemical Waste Management, Inc. In the "Rules and Regulations" section of the **Federal Register**, we are issuing a direct final rule to grant this variance without prior proposal because we view this action as noncontroversial and anticipate no significant adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule, and do not believe it necessary to repeat those discussions here. If we receive significant adverse comment on the direct final rule, we will withdraw the direct final action and the treatment variance will not take effect. We will address all public comments in a

subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this proposed rule must do so at this time. For further information, please see the "Rules and Regulations" section of today's **Federal Register** publication.

#### II. How Can I Influence EPA's Thinking on This Rule?

In developing this rule, we tried to address the concerns of stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. We welcome your views on all aspects of this rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

#### List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: May 13, 2002.

**Michael H. Shapiro,**

*Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 02-13115 Filed 5-24-02; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AG71

**Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species From the Islands of Kauai and Niihau, Hawaii****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for plant species from the islands of Kauai and Niihau, Hawaii. We are also providing notice of the reopening of the comment period for the proposal to determine prudency and to designate critical habitat for these plants to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in the final rule.

**DATES:** We will accept public comments until June 27, 2002.**ADDRESSES:** Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850-0001. For further instructions on commenting, refer to Public Comments Solicited section of this notice.**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541-3441; facsimile: 808/541-3470).**SUPPLEMENTARY INFORMATION:****Background**

A total of 95 plant species historically found on Kauai and Niihau were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1996. Fifty-seven of these species are endemic to the islands of Kauai and/or Niihau, while 38 species are reported from one or more other islands, as well as Kauai, and/or Niihau.

In other published proposals we proposed that critical habitat was prudent for 90 of the 95 species from the islands of Kauai and Niihau because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks of designation (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492). In addition, we proposed that critical habitat designation was not prudent for three species of loulou palm (*Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa*) because it would likely increase the threats from vandalism or collection of these species on Kauai and Niihau, and that critical habitat designation was not prudent for *Acaena exigua* and *Melicope quadrangularis* because they have not been seen recently in the wild, and no viable genetic material is known to exist (65 FR 66808, 65 FR 79192, 67 FR 3940, 67 FR 15856).

In the January 28, 2002, revised prudency and critical habitat proposal (67 FR 3940), we proposed critical habitat for 83 of the 95 species from the islands of Kauai and Niihau. Critical habitat was not proposed for seven of the 95 species (*Achyranthes mutica*, *Hibiscus brackenridgei*, *Isodendron pyrifolium*, *Phlegmariurus mannii*, *Silene lanceolata*, *Solanum incompletum*, and *Vigna o-wahuensis*) which no longer occur on the islands of Kauai or Niihau, and for which we were unable to identify any habitat that is essential to their conservation on the islands of Kauai or Niihau. Critical habitat was not proposed for three species of loulou palm nor for *Melicope quadrangularis* and *Acaena exigua* for the reasons given above.

We have proposed to designate a total of 15 critical habitat units on Kauai and one unit on Niihau covering approximately 40,147 hectares (ha) (99,206 acres (ac)) on Kauai and 282 ha (697 ac) on Niihau.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for plant species from Kauai and Niihau, and comments received during the previous comment period, we have

prepared a draft economic analysis of the proposed critical habitat designations. The draft economic analysis is available on the Internet and mailing address in the Public Comments Solicited section below.

**Public Comments Solicited**

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850-0001.

(2) You may send comments by electronic mail (e-mail) to: [kani\\_crithab@r1.fws.gov](mailto:kani_crithab@r1.fws.gov). If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AG71" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541-3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at <http://pacificislands.fws.gov> or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

**Author(s)**

The primary authors of this notice are Marigold Zoll and Christa Russell (see **ADDRESSES** section).

**Authority**

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 17, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-13189 Filed 5-24-02; 8:45 am]

**BILLING CODE 4310-55-P**



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

### Draft Supplement to the Final Environmental Impact Statement for the Deep Vegetation Management Project, Ochoco National Forest, Crook and Wheeler Counties, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to supplement a final environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare a draft supplement to the final environmental impact statement (Draft SEIS) for the Deep Vegetation Management Project. A Notice of Intent to Prepare a draft Environmental Impact Statement (DEIS) was originally published in the **Federal Register** on December 23, 1999. The Notice of Availability of the DEIS appeared in the **Federal Register** on April 27, 2001, the Notice of Availability of the final Environmental Impact Statement (FEIS) was published on October 12, 2001.

On September 26, 2001, Ochoco and Deschutes National Forest Deputy Supervisor Becky Heath signed the Record of Decision (ROD) to implement Alternative C (mod) of the Deep Vegetation Management Project Final Environmental Impact Statement (FEIS). On November 9, 2001, six environmental groups appealed this decision. On April 26, 2002, Acting Ochoco Forest Supervisor, Judy Levin, withdrew the September 26, 2001 ROD. Additional information will be incorporated into the Draft SEIS to address raised in the appeal with emphasis on the effects of prescribed fire on snags and down wood, and the effects of on-going grazing by domestic livestock.

**DATES:** Comments concerning this analysis should be received, in writing by June 10, 2002, to be most useful.

**ADDRESSES:** Send written comments to Judith E. Levin, Acting Forest Supervisor, Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754,

or William Fish, Acting District Ranger, Paulina Ranger District, 7803 Beaver Creek Road, Paulina, Oregon 97751.

**FOR FURTHER INFORMATION CONTACT:** Tom Mafera, Deep Project Leader, Paulina Ranger District, 7803 Beaver Creek Road, Paulina, OR 97751, phone (541) 477-6910.

**SUPPLEMENTARY INFORMATION:** The SEIS will display the original alternatives, including C (mod) selected in the 2001 ROD. Specific actions include: Silvicultural treatments that include timber harvest on approximately 6,393 acres (approximately 14mmbf), Precommercial thinning of approximately 10,042 acres, Post harvest fuels treatment on approximately 5,511 acres, Natural fuels underburning of approximately 4,192 acres, Forage enhancement/Juniper reduction underburning on approximately 4,549 acres, Riparian planting along 28 miles of stream, Large woody material placement on 7.4 miles of stream, Riparian protection at six dispersed recreation sites, Aspen enhancement on approximately 81 acres, Willow enhancement at two sites, Meadow enhancement on approximately 825 acres, Culvert replacement at eight locations, Road closure of approximately 16.2 miles, Road decommissioning on 15.2 miles. These activities would occur on approximately 19,800 acres within the Deep Creek watershed, located on the Paulina Ranger District of the Ochoco National Forest. The total planning area of the Deep Vegetation Management Project is 55,368 acres.

The purpose and need for action is to provide landscape-level health and diversity with the project by moving and existing vegetation toward conditions that are sustainable, provide habitat diversity, and contribute to riparian management objectives. Also to provide multiple use benefits: such as wildlife and fish habitat restoration; riparian and watershed restoration; visual quality; and timber products.

The original issues will guide the analysis. The original issues are: landscape level pattern and vegetative diversity; water quality and fish habitat; and fuels and fire hazard.

The decision-to-be-made will include whether, where, and/or how much of each proposed vegetation activity should occur, and/or how much road and where decommissioning, repair,

obliteration, or construction should occur.

The public is invited to offer suggestions and comments in writing. Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d); any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Draft SEIS is expected to be completed in June 2002. The comment period on the Draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a Draft SEIS 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 SEIS stage but that are not raised until after completion of the Final SEIS 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 objects are

made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final SEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft SEIS 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 SEIS 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.)

The Final SEIS will be completed in September 2002. In the Final SEIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft SEIS and applicable laws, regulations, and policies considered in making the decisions regarding the Deep Vegetation Management Project.

The Forest Service is the lead agency. The Forest Supervisor of the Ochoco National Forest is the Responsible Official. The Responsible Official will determine which alternative best meets the purpose and need of this project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 FR part 215).

Dated: May 15, 2002.

**Judith E. Levin,**

*Acting Forest Supervisor.*

[FR Doc. 02-13198 Filed 5-24-02; 8:45 am]

**BILLING CODE 3410-11-M**

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## DEPARTMENT OF AGRICULTURE

### Notice of Resource Advisory Committee Meeting

**AGENCY:** Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106-393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Wednesday, June 12th, 2002

and Wednesday, July 10th, 2002 in Alturas, California for business meetings. The meetings are open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting June 12th begins at 5 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of 05/11/02 minutes, reports from subcommittees and review and selection of projects that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve health and water quality. Time will also be set aside for public comments at the beginning of the meeting. The business meeting July 10th begins at 5 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th Street, Alturas. Agenda topics will include approval of the 06/12/02 minutes, reports from subcommittees and selection of projects on the Modoc National Forest that meet the intent of Pub. L. 106-393. Time will be set aside for public comments at the beginning of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Dan Chisholm, Forest Supervisor and Designated Federal Officer, at (530) 233-8700; or Public Affairs Officer Nancy Gardner at (530) 233-8713.

**Dan Chisholm,**

*Forest Supervisor.*

[FR Doc. 02-13197 Filed 5-24-02; 8:45 am]

**BILLING CODE 3410-11-M**

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum of the Illinois Advisory Committee to the Commission will convene at 9 a.m. and recess at 6 p.m. on Monday, June 17, 2002; reconvene on Tuesday, June 18 at 9 a.m. and adjourn at 6 p.m. at the Ralph Metcalfe Federal Building, 77 West Jackson, Room 331, Chicago, Illinois 60604. The purpose of the two-day community forum is to gather information on "Arab and Muslim Civil Rights Issues in the Chicago Metropolitan Area: Post 9/11."

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312-353-8311 (TDD 312-353-8362). Hearing-

impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 21, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02-13241 Filed 5-24-02; 8:45 am]

**BILLING CODE 6335-01-P**

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 4:30 p.m. on Wednesday, June 26, 2002, at the Doubletree Hotel, 201 Marquette, NW., Albuquerque, New Mexico 87106. The purpose of the meeting is to review current civil rights issues in New Mexico and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303-866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 21, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02-13242 Filed 5-24-02; 8:45 am]

**BILLING CODE 6335-01-P**

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4:30 p.m. on Wednesday,

June 12, 2002, at the Hamilton Room, One Flight Up Restaurant, Burlington International Airport, 1200 Airport Drive, South Burlington, Vermont 05430. The Advisory Committee will hold a planning meeting to begin its project activities on harassment of minorities in Vermont public schools and communities. The Committee will draft questions to educators, community organizations, civil rights leaders, and plan its fall 2002 town hall style meetings.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 21, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*  
[FR Doc. 02-13243 Filed 5-24-02; 8:45 am]

**BILLING CODE 6335-01-P**

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## DEPARTMENT OF COMMERCE

### Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**AGENCY:** U.S. Census Bureau.

*Title:* 2001 Panel of the Survey of Income and Program Participation, Wave 6 Topical Modules.

*Form Number(s):* SIPP 21505(L) Director's Letter; SIPP/CAP I Automated Instrument, SIPP 21003 Reminder Card.

*Agency Approval Number:* 0607-0875.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 120,428 hours.

*Number of Respondents:* 78,750.

*Avg Hours Per Response:* 30 minutes.

*Needs and Uses:* The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 6 Topical Module interview for the 2001 Panel of the Survey of Income and Program Participation (SIPP). We also request approval for a few replacement

questions in the reinterview instrument. The core SIPP instrument and reinterview instrument were cleared previously. The reinterview instrument will be used for quality control purposes. We are also seeking continued clearance for the SIPP Methods Panel instrument field testing to be conducted in November and December 2002. The test targets SIPP Wave 2 items and sections that require thorough and rigorous testing in order to improve the quality of core data. The experiment is conducted under the direction of the Methods Panel Team, which is committed to delivering an improved and less burdensome instrument for use in the 2004 SIPP Panel.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2001 SIPP Panel is scheduled for three years and will include nine waves beginning February 1, 2001.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 2001 Panel Wave 6 are Medical Expenses and Utilization of Health Care (Adults and Children), Work Related Expenses and Child Support Paid, and Assets, Liabilities, and Eligibility. Wave 6 interviews will be conducted from October 2002 through January 2003.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis

since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

*Affected Public:* Individuals or households.

*Frequency:* Every 4 months.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182.

*OMB Desk Officer:* Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [mclayton@doc.gov](mailto:mclayton@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer,  
Office of the Chief Information Officer.*

[FR Doc. 02-13187 Filed 5-24-02; 8:45 am]

**BILLING CODE 3510-07-P**

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## DEPARTMENT OF COMMERCE

### Economic Development Administration

#### Revolving Loan Fund Reporting Requirements

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 29, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via Internet at [McClayton@doc.gov](mailto:McClayton@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection

instruments and instructions should be directed to Patricia Flynn, Director, Operations Review and Analysis Division, Economic Development Administration, Room 7015, Washington, DC 20230, telephone: (202) 482-5353.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Economic Development Administration (EDA) provides investments that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and high skill, high wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives.

EDA's Revolving Loan Fund (RLF) Reporting Requirements are needed to ensure proper monitoring and compliance with program and administrative requirements as set forth in EDA's authorizing legislation (Public Law 105-393) and EDA's implementing regulations at 13 CFR Chapter III.

##### II. Method of Collection

The RLF Reporting Requirements are used by EDA to monitor grantee progress in establishing the loan funds, making initial loans, collecting and relending the proceeds from loans, and compliance with time schedules and federal requirements for administering grants, civil rights, environmental and other requirements prior to grant disbursement. The RLF Reporting Requirements are based on OMB administrative requirements for federal grants as implemented by DOC rules at 15 CFR Parts 14, 24, 29, and CFR 13 CFR Part III and are intended to supplement and explain such requirements and are not intended to replace or negate such requirements.

##### III. Data

*OMB Number(s):* 0610-0095.

*Agency Form Number:* ED-209A, ED-209S and ED-209I.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or Tribal Governments and not-for-profit organizations.

*Estimated Number of Respondents:* 627.

*Estimated Time per Response:* 12 hours for RLF Reporting Requirements (includes RLF Annual Report, RLF Semiannual Report and RLF Income and Expense Statement).

*Estimated Total Annual Burden Hours:* 15,048 hours.

*Estimated Total Annual Cost:* \$833,910.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; and they also will become a matter of public record.

Dated: May 21, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer,  
Office of the Chief Information Officer.*

[FR Doc. 02-13239 Filed 5-24-02; 8:45 am]

**BILLING CODE 3510-34-M**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-427-816, A-475-826, A-533-817, A-560-805, A-588-847]

##### Certain Cut-To-Length Carbon-Quality Steel Plate from France, Italy, Indonesia, India, and Japan: Rescission of Antidumping Duty Administrative Review

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

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

**EFFECTIVE DATE:** May 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Chris Brady, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4406.

#### SUPPLEMENTARY INFORMATION:

##### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2002).

#### Background

On February 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty orders on certain cut-to-length carbon-quality steel plate (CTL plate) from France, Italy, Indonesia, India, Japan, and the Republic of Korea (67 FR 4945, 4946).

On March 27, 2002, the Department initiated administrative reviews of the antidumping duty orders on CTL plate from France, Italy, Indonesia, India, Japan, and the Republic of Korea for the period February 1, 2001, through January 31, 2002, (67 FR 14696, 14697) pursuant to requests made by Bethlehem Steel Corporation and United States Steel Corporation (collectively "the petitioners") on February 28, 2002. Also on February 28, 2002, Nucor Corp. requested an administrative review for only the Republic of Korea for the period February 1, 2001, through January 31, 2002. On April 26, 2002, the petitioners withdrew their request for the administrative reviews of CTL plate from France, Italy, Indonesia, India, Japan, and the Republic of Korea. In accordance with 19 CFR 351.213(d)(1), the Department is rescinding the administrative reviews covering France, Italy, Indonesia, India, and Japan because the petitioners have withdrawn their requests for an administrative review in a timely manner and they were the only petitioners to request those reviews.

However, as Nucor Corp. has not withdrawn its request that the Department conduct an administrative review of the order on CTL plate from the Republic of Korea, this review will proceed.

#### Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding the administrative reviews of the order on CTL plate from France, Italy, Indonesia, India, and Japan because the requesting

parties have withdrawn their request for these administrative reviews within the 90 day time limit and no other interested parties have requested a review for these countries.

The notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: May 20, 2002

**Bernard T. Carreau,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 02-13270 Filed 5-24-02; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-848]

#### Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat From the People's Republic of China

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

**SUMMARY:** The Department of Commerce is extending the time limit of the preliminary results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. The period of review is September 1, 2000 through August 31, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

**EFFECTIVE DATE:** May 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Doug Campau or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482-1395 or (202) 482-3020, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statutes and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2001).

#### Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for

which a review is requested and final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

#### Background

On September 28, 2001, the Department of Commerce received a timely request from the Crawfish Processors Alliance, petitioner in this case, and the Louisiana Department of Agriculture & Forestry and Bob Odom, Commissioner, for an administrative review of the antidumping order on freshwater crawfish tail meat from the People's Republic of China for numerous companies for the period of September 1, 2000, through August 31, 2001, in accordance with 19 CFR section 351.213(b)(2) of the Department's regulations. Also, on September 28, 2001, China Kingdom Import & Export Co., Ltd., aka China Kingdome Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd., and Qingdao Zhengri Seafood Co., Ltd., which were included in the petitioner's request for review, requested a review of their own shipments. We published a notice of initiation of this antidumping duty administrative review on October 26, 2001. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 65 FR 54195 (October 26, 2001).

#### Extension of Time Limits for Preliminary Results

Due to the complexity of the issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1) of the Department's regulations. For example, the Department requires additional time to gather information and solicit comments from interested parties regarding the surrogate valuation issue. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of preliminary results. These preliminary results will now be due no later than September 30, 2002.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 20, 2002

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 02-13272 Filed 5-24-02; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-485-805]

#### Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania: Extension of Preliminary Results of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** May 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Tisha Loeper-Viti at (202) 482-7425 or Charles Riggle at (202) 482-0650, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### Time Limits

##### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

##### Background

On October 1, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania, covering the period February 4, 2000, through July 31, 2001

(66 FR 49924). On May 8, 2002, the Department published, in the **Federal Register**, a notice to extend the deadline for the preliminary results in this administrative review until May 24, 2002. See *Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Extension of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 30874 (May 8, 2002). On May 10, 2002, the Romanian Ministry of Foreign Affairs filed a request for revocation of Romania's non-market economy status.

#### *Extension of Time Limit for Preliminary Results of Review*

We determine that it is not practicable to complete the preliminary results of this review within the extended time limit. Specifically, additional time is necessary to consider the proper surrogate valuation of the factors of production. In addition, the Department only recently received a request from the Romanian Ministry of Foreign Affairs to revoke Romania's non-market economy status in either a free standing proceeding or in this administrative review. Additional time is necessary to consider this request. As such, it will not be possible to complete the preliminary analysis in this review by May 24, 2002. Therefore, the Department is fully extending the time limit for completion of the preliminary results until no later than September 3, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 21, 2002.

**Bernard Carreau,**

*Deputy Assistant Secretary for AD/CVD Enforcement II.*

[FR Doc. 02-13271 Filed 5-24-02; 8:45 am]

**BILLING CODE 3510-DS-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 052102E]

#### Mid-Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) and its

Executive Committee; Ecosystems Planning Committee; Squid, Mackerel, and Butterfish Committee; and, Surfclam and Ocean Quahog Committee with Industry Advisors will hold a public meeting.

**DATES:** The meetings will be held on Tuesday, June 11, 2002 through Thursday, June 13, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** This meeting will be held at Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD; telephone: 301-589-5200.

*Council address:* Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302-674-2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

**SUPPLEMENTARY INFORMATION:** On Tuesday, June 11, the Executive Committee will meet from 10 a.m. until noon. The Ecosystems Planning Committee will meet from 1 p.m. to 3 p.m. From 3 p.m. to 5:30 p.m., there will be a Law Enforcement Information and Education Program regarding Homeland Defense and the integration and coordination of that program with other Law Enforcement Programs. On Wednesday, June 12, the Squid, Mackerel, and Butterfish Committee will meet from 8 a.m. to 10 a.m. The Surfclam and Ocean Quahog Committee, with its Industry Advisors, will meet from 10 a.m. until noon. The Council will meet from 1 p.m. to 5:30 p.m. On Thursday, June 13, the Council will meet from 8 a.m. until 4 p.m.

Agenda items for the committees and Council meeting are: the Ecosystem Planning Committee will receive a report on NMFS' final rule regarding essential fish habitat, and receive an update on the status of the Council's 2003 research set aside program; the Squid, Mackerel, and Butterfish Committee will set priorities for future fishery management plan (FMP) actions; the Surfclam and Ocean Quahog Committee, with Industry Advisors, will review staff recommendations for 2003 quotas and management measures for surfclams and ocean quahogs, and develop 2003 quota specification recommendations. The Council will: review the Surfclam and Ocean Quahog Committee's recommendations for 2003 quotas and management measures for surfclams and ocean quahogs, and approve recommendations regarding 2003 quota specifications; approve management alternatives regarding

Amendment 2 to the Monkfish FMP; approve Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP for Secretarial submission; receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, act on any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 22, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02-13260 Filed 5-24-02; 8:45 am]

**BILLING CODE 3510-22-S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 051402A]

#### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of cancellation of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) has cancelled the public meeting of its Scallop Oversight Committee and Advisory Panel that was scheduled for June 10 & 11, 2002, at 9 a.m.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The initial notice published in the **Federal Register** on May 22, 2002 (67 FR 35964). All other information contained in the previously-published notice remains unchanged. The meeting will be rescheduled at a later date and announced in the **Federal Register**.

Dated: May 22, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02-13259 Filed 5-24-02; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 051002B]

#### Assessment Modeling Paper on Large Coastal Sharks

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

**ACTION:** Notice of availability of large coastal shark assessment modeling paper; request for comments; announcement of large coastal shark stock assessment workshop.

**SUMMARY:** NMFS announces the availability of a paper that evaluates the range of sensitivity trials and alternative model structures recommended by independent peer reviews of the 1998 large coastal shark (LCS) stock assessment. The paper describes the sensitivity trial results obtained from using 1998 data to evaluate the recommended range of alternative model/data formulations. NMFS requests public comment on the paper and whether the recommendations of the independent peer reviews have been adequately addressed. NMFS also announces the 2002 LCS stock evaluation workshop (SEW) will be held June 24-28, 2002, in the NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

**DATES:** Written comments must be received no later than 5 p.m., eastern standard time, on June 5, 2002.

**ADDRESSES:** Written comments on the modeling paper should be sent to Margo Schulze-Haugen, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301-713-1917. Written requests for copies of the

modeling paper should be sent to Margo Schulze-Haugen.

**FOR FURTHER INFORMATION CONTACT:**

Margo Schulze-Haugen or Karyl Brewster-Geisz, (301) 713-2347, fax (301) 713-1917; or Enric Cortes, (850) 234-6541.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

On November 21, 2000, Southern Offshore Fishing Association and other commercial fishermen and dealers (plaintiffs) and NMFS reached a settlement agreement that prescribed actions to be taken by both parties in order to resolve issues raised in two lawsuits brought against NMFS by the plaintiffs. On December 7, 2000, Judge Steven D. Merryday of the U.S. District Court for the Middle District of Florida entered an order approving the settlement agreement.

The settlement agreement, *inter alia*, required NMFS to obtain an independent review of the 1998 LCS stock assessment. In October 2001, NMFS received the complete peer reviews of the 1998 LCS stock assessment. The reviews contained various recommendations for future LCS stock assessments.

The modeling paper evaluates the range of sensitivity trials and alternative model structures recommended by the independent peer reviews of the 1998 LCS stock assessment. The paper describes the sensitivity trial results obtained from using 1998 data to evaluate the recommended range of alternative model/data formulations. NMFS requests public comment on the paper and whether the recommendations of the peer reviews have been adequately addressed. The paper is now available on the NMFS website (<http://www.nmfs.noaa.gov/sfa/hmspg.html>). Hard copies of the document are available upon request (see **ADDRESSES**).

NMFS also announces the 2002 LCS stock evaluation workshop (SEW) will be held June 24-28, 2002, in the NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408. Past and prospective participants and observers will be contacted with the SEW details. Persons interested in participating or observing the SEW should contact Enric Cortes (see **FOR FURTHER INFORMATION CONTACT**).

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 22, 2002.

**John H. Dunnigan**

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

[FR Doc. 02-13254 Filed 5-24-02; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Designations under the Textile and Apparel Short Supply Provision of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

May 22, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Determination.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (Committee) has determined, under the CBTPA, that yarn of combed cashmere, combed cashmere blends, or combed camel hair, classified in subheading 5108.20.60 of the Harmonized Tariff Schedule of the United States (HTS) for use in fabric for apparel, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee hereby designates apparel articles that are both cut and sewn in an eligible country, from fabric woven in the United States containing yarn of combed cashmere, combed cashmere blend, or combed camel hair not formed in the United States, as eligible for quota-free and duty-free treatment under the textile and apparel short supply provisions of the CBTPA, and eligible under HTS subheading 9820.11.27 to enter free of quotas and duties, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the U.S.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Walsh, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

### Background

The short supply provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and

sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States or a beneficiary CBTPA country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether particular yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On January 4, 2002, the Committee received a request alleging that yarn of combed cashmere, combed cashmere blends, or combed camel hair, classified in subheading 5108.20.60 of the HTS for use in fabric for apparel, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and requesting that apparel articles from U.S. formed-fabric containing such yarns be eligible for preferential treatment under the CBTPA. On January 10, 2002, the Committee published a notice in the **Federal Register** requesting public comment on the request (67 FR 1330). On January 29, 2002, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On January 29, 2002, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On February 15, 2002, the U.S. International Trade Commission provided advice on the request. Based on the information and advice received and its understanding of the industry, the Committee determined that the yarn set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On March 5, 2002, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the CBTPA.

The Committee hereby designates as eligible for preferential treatment under subheading 9820.11.27 of the HTS apparel articles that are both cut and sewn in one or more eligible CBTPA beneficiary countries from fabric woven in the United States containing yarn of combed cashmere, combed cashmere blends, or combed camel hair, classified in subheading 5108.20.60 in the HTS, not formed in the United States, provided that all other yarns are wholly formed in the United States and that all fabrics are wholly formed in the United States, that are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country. An article otherwise eligible for preferential treatment under this designation shall not be ineligible for such treatment because the article contains findings, trimmings, certain interlinings, or deminimus foreign yarn, as specified in Section 213(b)(2)(A)(vii)(I), (II), and (III) of the CBTPA.

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of chapter 98 of the HTS.

**James C. Leonard III,**  
*Chairman, Committee for the Implementation of Textile Agreements.*  
[FR Doc. 02-13273 Filed 5-24-02; 8:45 am]  
**BILLING CODE 3510-DR-S**

## COMMODITY FUTURES TRADING COMMISSION

### Notice of Public Meeting

**AGENCY:** Commodity Futures Trading Commission.

**SUMMARY:** Notice is hereby given that the Commodity Futures Trading Commission ("Commission") will convene a public meeting at which invited participants will appear before it to give oral and written statements to assist the Commission in its study of potential changes in the regulation of intermediaries, pursuant to Section 125 of the Commodity Futures Modernization Act of 2000.<sup>1</sup>

<sup>1</sup> Commodity Futures Modernization act of 2000, Pub. L. 106-554—Appendix E, § 105(c), 114 Stat. 2763A-365 (2000).

Participants will be announced at a later date.

**DATES:** Thursday, June 6, 2002, from 10 a.m. to 12 p.m.

**Place:** 1155 21st Street, NW., Washington, DC. Lobby Level Hearing Room located at Room 1000.

**Status:** Open.

**FOR FURTHER INFORMATION CONTACT:** Jean W. Webb, 202-418-5100.

Issued in Washington, DC this 21st day of May 2002.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02-13178 Filed 5-24-02; 8:45 am]

**BILLING CODE 6351-01-M**

## DEPARTMENT OF EDUCATION

### Parental Information and Resource Centers Program

**AGENCY:** Department of Education.

**ACTION:** Notice of final priority, selection criteria, and eligibility requirements.

**SUMMARY:** We announce a competitive preference, selection criteria, and eligibility requirements for grants for fiscal year (FY) 2002 under the Parental Information and Resource Centers (PIRC) Program. We are taking this action to implement a competition authorized under the No Child Left Behind Act of 2001. These grants will assist eligible parties in establishing school-based or school-linked PIRCS.

**EFFECTIVE DATE:** June 27, 2002.

**FOR FURTHER INFORMATION CONTACT:** Daisy Greenfield, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E307, FOB-6, Washington, DC 20202-6400. Telephone: (202) 401-0039 or via Internet: [daisy.greenfield@ed.gov](mailto:daisy.greenfield@ed.gov).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-888-877-8339. Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above. Please note, however, that the Department is not able to reproduce in an alternative format the standard forms included in the notice.

**SUPPLEMENTARY INFORMATION:** On April 4, 2002, we published in the **Federal Register** (67 FR 16096-16099) a notice of proposed priority, selection criteria, and eligibility requirements. In that notice, we announced our intent to give a competitive preference of 10 additional points to the highest-scoring



applicant from each of the States in which the current PIRC project is ending. We also proposed selection criteria for the FY 2002 PIRC competition and interpreted the term "non-profit organization" for purposes of eligibility under the competition. The present notice announces the final competitive preference, selection criteria, and eligibility requirements for the FY 2002 PIRC competition.

**Note:** This notice does not solicit applications. A notice inviting applications for the FY 2002 PIRC competition is published elsewhere in this issue of the **Federal Register**.

### Analysis of Comments and Changes

Five parties submitted comments in response to the notice of proposed priority, selection criteria, and eligibility requirements. Most of these comments were unrelated to the issues on which we solicited comments in that notice. The following is a summary of the comments that were submitted and our responses to those comments. We did not make any changes to the competitive preference, selection criteria, or eligibility requirements as a result of the comments.

*Comment:* One commenter requested that we eliminate the requirement that each PIRC must serve both urban and rural areas.

*Discussion:* We had not requested comments on this particular requirement. However, the legislation expressly requires each PIRC to serve both urban and rural areas. The intent of this provision is to help ensure that centers serve a broad region of their respective States.

*Changes:* None.

*Comment:* One commenter sought clarification on whether a national nonprofit organization is eligible for funding.

*Response:* The intent of the legislation is that each PIRC address the needs of parents in individual States. A national nonprofit organization may submit a State-specific application to provide services within a given State. The organization may not, however, submit a single application to address the needs of multiple States. This position is consistent with the legislation, and we do not believe that rulemaking on this issue is necessary.

*Changes:* None.

*Comment:* One commenter suggested that we (1) add language to other provisions of the Elementary and Secondary Education Act, as amended, (ESEA) to ensure that those programs collaborate and coordinate with the *PIRCs*; (2) identify how an applicant

may demonstrate that its programs would be school-based or school-linked; (3) require applicants to identify how they are working with local educational agencies (LEAs) and the State educational agency (SEA); (4) indicate which types of early childhood, parent education programs may be supported by the *PIRCs*; (5) indicate whether we will award the 10-point competitive preference in PIRC competitions in future years; and (6) specify more directly that the non-profit organizations and consortia must be parent-focused.

*Response:* These comments do not address the particular matters on which comments were sought in the notice of proposed priority, selection criteria, and eligibility requirements, and we do not believe that rulemaking on these issues is necessary. However, we are responding as follows to the comments:

First, in implementing Federal programs, we are already working to ensure that activities supported under different programs are coordinated as appropriate.

The new PIRC legislation and application package for the FY 2002 *PIRCs* competition emphasize that the centers must be school-based or school-linked. Each applicant must devise specific strategies to meet this requirement. In doing so, applicants should consider the specific types of services identified in section 5564 of the ESEA and examine carefully the selection criteria for the competition, particularly the criteria concerning the quality of the design of the proposed PIRC and the quality of the services. A high-quality application would describe, among other things, how the PIRC would specifically work with schools, LEAs, and the SEA.

The PIRC program statute requires that at least 30 percent of a grantee's PIRC funds be used to establish, expand, or operate Parents as Teachers programs, Home Instruction for Preschool Youngsters programs, or other early childhood parent education programs. In deciding which early childhood parent education programs to support, *PIRCs* should consider factors such as whether a program (a) is research-based; (b) is comprehensive; (c) is of sufficient duration and intensity to ensure the likelihood of positive outcomes for parents and children; and (d) focuses on building the capacity of parents to support their children's learning and development over time.

The Department has made no decisions regarding what priorities, if any, might apply to any future PIRC competitions.

Finally, we believe that the materials in the application package, including the selection criteria for the program as published in this notice, will adequately ensure that all funded *PIRCs* will be parent-focused, with the ultimate aim of improving student academic achievement.

*Changes:* None.

*Comment:* One commenter supported our interpretation of the term "non-profit organization," which excludes institutions of higher education, SEAs, LEAs, intermediate school districts, schools, government entities, or hospitals. This commenter, however, questioned the appropriateness of the competitive preference, particularly with respect to large States. The commenter indicated that the preference makes it very difficult for a second or third proposal from the same State to receive funding. This commenter also suggested that we award more points under the need criterion and that the need relate to a specific geographic area.

*Response:* The competitive preference priority will permit us to comply with the Congressional mandate that grant funds be distributed, to the extent practicable, to all regions of the United States. The priority will increase the likelihood of establishing at least one PIRC in every State, while allowing nonprofit organizations from any State to compete for a PIRC grant. Regarding the suggestion concerning assigning the need criterion additional points, we note that the need criterion is currently worth one-fifth of the total points under the selection criterion. Furthermore, the factors that we will consider under this criterion are directly related to the authorizing legislation and will therefore help ensure that applicants have described needs that are consistent with the intended purpose of the legislation.

*Changes:* None.

*Comment:* One commenter suggested that we give a 10-point competitive preference to each currently funded one-year PIRC grantee.

*Response:* We do not believe that giving a 10-point competitive preference to each currently funded one-year PIRC grantee is appropriate. Rather, we believe that the competitive preference that we proposed will help ensure that PIRC funds are distributed, to the extent practicable, to all regions of the country and that the highest quality applicants from each State will be funded.

*Changes:* None.

*Competitive Preference:* Under 34 CFR 75.105(c)(2), we give a competitive preference in the FY 2002 PIRC competition. To receive this preference, an applicant must—

(1) Be located and operate a PIRC in one of the following States: Alabama, Alaska, Arizona, Arkansas, American Samoa, Commonwealth of the Northern Mariana Islands, Connecticut, Delaware, the Federated States of Micronesia, Guam, Idaho, Illinois, Indiana, Kansas, Louisiana, Montana, Mississippi, Nebraska, New Mexico, North Dakota, Oregon, Puerto Rico, the Republic of the Marshall Islands, the Republic of Palau, Rhode Island, South Carolina, U.S. Virgin Islands, Utah, Virginia, West Virginia, and Wyoming; and

(2) Be the highest-scoring applicant from its State on the basis of the selection criteria for the competition.

We will award 10 points to any applicant that meets the priority. These points will be in addition to any points the applicant earns under the selection criteria.

*Selection Criteria:* We will use the following selection criteria to evaluate applications under the PIRC competition. The maximum points for each criterion is indicated in parentheses after the heading for that criterion.

(a) *Need for the project.* (20 points)

In evaluating the need for the proposed project, we consider the extent to which—

(1) The proposed project will provide services to, or otherwise address, the needs of parents who are educationally or economically disadvantaged;

(2) The training, information, and support services currently available inadequately address the needs of the parents the proposed project will serve; and

(3) The children of the parents the proposed project will serve are not meeting State or local academic achievement standards.

(b) *Quality of the design of the proposed project.* (25 points)

In evaluating the quality of the design of the proposed project, we consider the extent to which—

(1) The proposed project will be a school-based or school-linked center of adequate size, scope, and quality to serve effectively the parents in the area;

(2) The proposed project is designed to work in coordination with the SEA and affected LEAs (i) in determining the needs of the parents who will be targeted for assistance; and (ii) in developing an effective means for providing services to those parents;

(3) The proposed project is designed to coordinate and integrate activities funded under this grant with parental involvement activities funded from other sources, particularly Title I of the ESEA and the Individuals with Disabilities Education Act;

(4) The proposed project will support effective early childhood parent education programs that will enhance school readiness;

(5) The proposed project includes multiple strategies for providing direct and indirect services for parents targeted for assistance; and

(6) The proposed project will implement a management plan that includes clearly defined responsibilities, timelines, and milestones for achieving the objectives of the project.

(c) *Quality of the services.* (20 points)

In evaluating the quality of the services to be provided by the proposed project, we consider—

(1) The quality and sufficiency of strategies for ensuring equal access by, and treatment of, eligible project participants who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability; and

(2) The extent to which the proposed project will—

(i) Provide comprehensive training, information, and support services to develop and strengthen the relationship between parents and their child's school;

(ii) Assist parents in understanding the student academic achievement standards to which their child is being held and the measures of student and school academic achievement;

(iii) Assist parents in becoming involved in their child's education in meaningful ways that are likely to improve the child's academic achievement;

(iv) Provide services that reflect up-to-date knowledge from research and effective practices; and

(v) Provide to parents services that will likely improve the developmental progress of children, including children from birth through age five.

(d) *Quality of the PIRC personnel.* (10 points)

In evaluating the quality of the personnel who will carry out the PIRC activities, we consider—

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability;

(2) The qualifications, including relevant training and experience, of the PIRC director;

(3) The qualifications, including relevant training and experience, of key PIRC personnel; and

(4) The qualifications, including relevant training and experience, of PIRC consultants or subcontractors.

(e) *Evaluation.* (25 points)

In evaluating the quality of the evaluation the applicant proposes to conduct of the proposed project, we consider the extent to which the methods of evaluation—

(1) Are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(2) Produce quantitative and qualitative data; and

(3) Will result in data on whether the policies and practices of the PIRC are effective in improving home-school communication, student academic achievement, school academic achievement, and parental involvement in school planning, review, and improvement.

*Eligibility Requirements:*

Organizations seeking funding under the PIRC Program, either individually or in consortia with one or more LEAs, must demonstrate that they are nonprofit organizations under section 501(c)(3) of the Internal Revenue Code. For purposes of the PIRC Program, the term "nonprofit organization" does not include institutions of higher education, SEAs, LEAs, intermediate school districts, schools, government entities, or hospitals.

*Intergovernmental Review:* This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. Intergovernmental review instructions are contained in the application package.

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CFDA No.: 84.310A.

**Program Authority:** Subpart 16 of title V of the Elementary and Secondary Education

Act, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107-110), 20 U.S.C. 7273 *et seq.*

Dated: May 23, 2002.

**Susan B. Neuman,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 02-13369 Filed 5-24-02; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

[CFDA No. 84.310A]

### Parental Information and Resource Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purposes of Program:* To support school-based and school-linked parental information and resource centers (PIRCs) that—

(1) Implement effective parental involvement policies, programs, and activities that will improve children's academic achievement;

(2) Develop and strengthen partnerships among parents (including parents of children from birth through age five), teachers, principals, administrators, and other school personnel in meeting the educational needs of children;

(3) Develop and strengthen the relationship between parents and their child's school;

(4) Further the developmental progress of children assisted under the program;

(5) Coordinate activities funded under the program with parental involvement initiatives funded under section 1118 and other provisions of the Elementary and Secondary Education Act (ESEA); and

(6) Provide a comprehensive approach to improving student learning, through coordination and integration of Federal, State, and local services and programs.

*Eligible Applicants:* Non-profit organizations, or consortia of non-profit organizations and local educational agencies (LEAs). We have published elsewhere in this issue of the **Federal Register** eligibility requirements that clarify the meaning of the term "non-profit organization" for purposes of this competition. LEAs alone are *not* eligible to apply for funding.

*Applications Available:* May 28, 2002.

*Deadline for Transmittal of Applications:* June 27, 2002.

*Deadline for Intergovernmental Review:* September 10, 2002.

*Notification of Intent to Apply for Funding:* We will be able to develop a more efficient process for reviewing grant applications if we have a better

understanding of the number of entities that intend to apply for funding. Therefore, we strongly encourage each potential applicant to send, by June 12, 2002, a notification of its intent to apply for funding to the following address: [daisy.greenfield@ed.gov](mailto:daisy.greenfield@ed.gov).

The notification of intent to apply for funding is *optional* and should not include information regarding the proposed application. Eligible applicants that fail to provide the notification may still submit an application by the application deadline.

*Estimated Available Funds:* \$20 million.

*Estimated Average Size of Awards:* \$570,000.

Funding of continuation awards after the initial year of funding is contingent upon future Congressional appropriations for the program. The Administration has not requested funding for this program in its FY 2003 budget proposal.

*Estimated Number of Awards:* 35.

These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 85, 97, 98, and 99; (b) The regulations in 34 CFR part 80 also apply to an LEA that is part of a consortium receiving assistance; and (c) The Notice of Final Priority, Selection Criteria, and Eligibility Requirements as published elsewhere in this issue of the **Federal Register**.

*Competitive Preference:* We have published elsewhere in this issue of the **Federal Register** a competitive preference for the FY 2002 PIRC competition. Applicants that meet this competitive preference will receive 10 additional points in the competition. These points are in addition to the points an applicant receives under the selection criteria.

*Selection Criteria:* We have published elsewhere in this issue of the **Federal Register** the selection criteria that will govern this competition.

*For Applications and Further Information Contact:* Daisy Greenfield, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E307, FOB-6, Washington, DC 20202-6400. Telephone: (202) 401-0039 or via Internet: [daisy.greenfield@ed.gov](mailto:daisy.greenfield@ed.gov).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1-888-877-8339.

Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above. Please note, however, that the Department is not able to reproduce in an alternative format the standard forms included in the notice.

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To use PDF, you must have the 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) at (202) 512-1530 or, (toll free, at 1-888-293-6498), or in the Washington, DC, area at (202) 512-1530.

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**Program Authority:** 20 U.S.C. 7273 *et seq.*

Dated: May 23, 2002.

**Susan B. Neuman,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 02-13370 Filed 5-24-02; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.011]

### Title I, Part C—Education of Migratory Children

**ACTION:** Notice of proposed requirements and minimum data elements for an electronic system of records transfer and request for comment.

**SUMMARY:** We announce proposed requirements for the minimum data elements that a State must collect and maintain for the purpose of electronically exchanging, among the States and their schools and local educational agencies, educational and health information for all migratory students.

**DATES:** Please send your comments on or before Monday, July 8, 2002.

**ADDRESSES:** Please address your comments to Alex Goniprow, Office of Elementary and Secondary Education, U.S. Department of Education, using one of the following methods:

1. *Internet.* We encourage you to send your comments through the Internet to the following address:

*alex.goniprow@ed.gov.* You should use the term Minimum Data Elements in the subject line of your electronic message.

2. *Fax Machine.* You may also submit your comments by fax at (202) 205-0089.

3. *Surface Mail.* You may submit your comments via surface mail addressed to: Alex Goniprow, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E333, Washington, DC 20202-6400.

**FOR FURTHER INFORMATION CONTACT:** Alex Goniprow, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E333, Washington, DC 20202-6400. Telephone (202) 260-1205.

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

**SUPPLEMENTARY INFORMATION:** The children of migratory agricultural workers and migratory fishers present unique challenges for educators and our Nation's schools. Migratory workers travel from community to community in search of temporary and seasonal work. Given the nature of their employment, migratory workers and their families often settle in a single community for a short period of time. One consequence of this lifestyle and mobility is that the children of migratory workers often enter new schools without adequate, and in many cases any, documentation of their educational and health history.

At present, no national system exists to support the timely transfer of migratory students' educational and health information. For school-aged migratory children, this lack of educational and health information may cause delays in receiving needed services, lead to inappropriate classroom and course placements, complicate the accrual of high school course credits, and result in duplicated services, such as multiple assessments and immunizations.

It is widely believed that educators could better serve migratory children if basic information on prior schooling was more readily available. Most States currently have electronic data bases that include migrant student records. Yet,

these data bases are not able to share information on a national basis, nor do they contain even all of the basic information that schools need to make the best decisions about the education of migratory children.

### Background

Section 1308 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB), Public Law 107-110, substantially revises requirements in Title I, Part C for the Migrant Education Program (MEP) that govern the interstate transfer of migrant student education and health records. In particular, section 1308(b)(1) requires the Secretary to assist the States in developing effective methods for the electronic interstate transfer of migrant student records. Section 1308(b)(2) requires the Secretary, in consultation with the States, to ensure that migrant student record systems used by the States are linked so that States may electronically exchange health and educational information regarding all migratory students. This provision also requires the Secretary to—

1. Consult with States regarding (a) The minimum data elements that each State receiving MEP funds would have to collect and maintain, and (b) the requirements the Department would establish for immediate electronic access to this information, and then

2. Publish a notice in the **Federal Register** seeking public comment on these proposed data elements, and proposed requirements States would meet for immediate access to these data elements.

The remainder of this notice describes the Department's proposal for required data elements and procedures that States would implement for immediate electronic access of an interstate system of records transfer. As explained in the following discussion, the proposal was developed by a group of local and State practitioners with the support and encouragement of the Department's Office of Migrant Education (OME). While the proposal reflects our best thinking to date on what the requirements of this electronic data system would be, we want to receive the reactions of State and local educators, including MEP staff and administrators, as well as the general public, to this proposal, as well as specific recommendations for how it can be improved. Please refer to the "Invitation to Comment" section of this notice for instructions on how to provide your comments.

Finally we note that ESEA section 9531 expressly exempts section 1308(b)

from the general prohibition that nothing in the ESEA "shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data" under the ESEA. In addition, the Department will not have access to the personally identifiable migrant student education and health records contained in the database that is the subject of ESEA section 1308(b) and this notice.

### Development of This Proposal

In the spring of 1999, over a year before enactment of NCLB, the Department began consulting with States on the development of minimum data elements that should be included in any subsequently created, electronic migrant student records system. As a first step, it asked a group of State MEP program directors to develop a set of principles to guide the effort to improve access to migrant student records. The group recommended a set of nine guiding principles, which all State MEP directors adopted in June 1999.

The Department then asked a group of migrant education practitioners to develop and recommend a set of minimum data elements that, based on these principles, seemed essential to exchanging migratory students' education and health data. Focusing on interstate secondary migratory students, this working group first established the key users and uses of migrant student data. It identified guidance counselors, school registrars, and migrant education specialists as the primary users of these data, and concluded that they needed these data for purposes of "enrollment," "placement," and "academic counseling." In particular, these individuals would need the data to ensure:

(1) Timely and efficient enrollment of migratory students in a school in the community in which the children reside;

(2) Proper placement of migratory students into courses and programs at the appropriate grade level; and

(3) Provision of academic counseling that helps migratory students to complete courses and accrue credits that they need to graduate from high school.

Over the course of its meetings between April and September 2000, the working group then developed a preliminary set of minimum data elements needed to accomplish these three tasks. To the extent possible, the working group aligned these preliminary data elements and definitions with terms and definitions recommended in the "Student Data

Handbook for Elementary, Secondary, and Early Childhood Education," which the Department's National Center for Education Statistics (NCES) had developed.

Finally, the working group proposed a set of deadlines for the submission and entry of the minimum data elements into State electronic migrant student records systems to ensure timely access to the data.

OME distributed and discussed the group's list of preliminary minimum data elements at a February 2002 meeting of MEP State directors. It also solicited questions and feedback on the proposed minimum data elements and timely access requirements during two sessions at the National Migrant Education Conference on April 8 and 9, 2002.

While the working group has focused on minimum data elements needed primarily to support the education of interstate secondary migratory children, we believe that these minimum data elements apply equally to the needs of *all* other migratory children, i.e., intrastate secondary migrant children, pre-school migratory children, elementary grade migratory students, and migratory youth who are not currently enrolled in school.

#### **Proposed Minimum Data Elements for the Title I, Part C Migrant Education Program**

The appendix to this notice contains the Department's proposal for the minimum data elements that all States would be required to collect and maintain for the purpose of electronically exchanging, among the States, educational and health information for all migratory students. The appendix reflects our review of the working group's proposal and our consultations to date with State MEP directors. Although data elements are listed once, a migrant student record would use a number of these elements on multiple occasions (*e.g.*, "course title" will be used for each course in which a migratory student is enrolled).

#### **Proposed Requirements for Immediate Electronic Access to the Minimum Data Elements**

Following up on the working group's recommendation, the Department would require each State receiving Title I, Part C funds to maintain the minimum data elements in an electronic data base of student records. The Department will develop the technical specifications that these data bases and student data would need to meet in order to permit the exchange of migrant student records at a later date.

The Department proposes that, *within four days* of each migratory child's enrollment in a migrant education program or project, or enrollment in a school, whichever comes first, all States, would have to submit and enter into their electronic data base the data elements for that child that are used for "enrollment" and "placement" purposes. They could do so either on their own, or operating through local educational agencies or other local operating agencies. States also would be required to submit and enter data used for "academic counseling" purposes into their electronic data base within four days of a child's withdrawal from school or migrant education program or project, whichever comes first. The appendix provides information that explains which data elements would be needed for each purpose.

Enrollment and placement information must be available to schools who are receiving migratory children upon their arrival at the school door so that counselors, school registrars, and migrant education specialists can use the data to take appropriate actions and make informed decisions. Consequently, we believe that timelines for data submission and data entry like those we have proposed are absolutely critical to the successful exchange of migrant students records.

#### **Invitation To Comment**

The Secretary invites interested members of the public to comment on this proposal for: (1) The minimum data elements to be collected and maintained in the migrant student records systems used by the States, and (2) the requirements for immediate electronic access to such information.

We are interested in receiving public comment on, and reaction to, all aspects of these proposed requirements. However, in formulating your comments, we ask that you pay particular attention to the following questions:

1. Will the collection and timely sharing of the minimum data elements significantly improve enrollment, placement, and graduation support services to students? If so, how?
2. Is the set of recommended minimum data elements the "right" set of data elements for the three purposes (*i.e.*, enrollment, placement, and graduation support)? Are any of the proposed elements unnecessary? Should any additional elements be added?
3. What will be the burden of collecting the data? Will the value of sharing the data outweigh the burden of data collection?

4. What are your suggestions for ensuring the *use* of the data elements by counselors and migrant specialists? What forces or factors will work to support the *use* of the minimum data elements? What forces or factors will hinder their use?

5. Are there ways to create linkages of migrant student record data systems that will ensure that the right information on an individual migratory student is available to school and LEA staff without assigning to each migratory student a unique migrant student record number?

6. What are your suggestions for increasing State compliance with requirements for collecting and maintaining up-to-date data elements? What are the forces and factors that will work to support the collection and maintenance of the data? What are the forces and factors that will hinder the collection and maintenance of the data?

After we have reviewed the comments received in response to this notice, we will decide what, if any, further discussion with State and local practitioners is necessary to improve these data system requirements. Before the Department issues any final requirements that govern the collection and maintenance of these data elements, the Department will (1) provide an opportunity for further public comment, and (2) advise all States of the technical specifications for the collection and maintenance of student data that their migrant student record systems will need to meet.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3E333, 400 Maryland Avenue, SW., Washington, DC 20202-6400 between the hours of 9 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

#### **Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/legislation/FedRegister](http://www.ed.gov/legislation/FedRegister).

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: <http://www.access.gpo.gov/nara/index.html>.

**Program Authority:** 20 U.S.C. 6398.

Dated: May 22, 2002.

**Susan B. Neuman,**

*Assistant Secretary for Elementary and Secondary Education.*

**Appendix A: Minimum Data Elements**

The following table presents the proposed requirements for the minimum data elements that a State shall collect and maintain for the purpose of electronically exchanging, among the States, educational and health information for all migratory students.

The table lists the data elements by: (1) a data element identification number, (2) a

code that identifies the primary user function(s) for which the data element is required, (3) the name of the data element, and (4) a data element definition.

In regard to the primary user functions for which a data element is required, the letter "E" indicates that the data element is required to help guidance counselors, school registrars, or migrant education specialists with the timely and efficient enrollment of migratory students in a school in the community in which the children currently reside. The letter "P" indicates that the data element is required to help guidance counselors or migrant education specialists with the proper placement of migratory students into courses and/or programs at the appropriate grade level. The letter "G" indicates that the data element is required to help guidance counselors or migrant

education specialists with the provision of academic counseling that supports the completion of courses and the accrual of credits needed for graduation.

In addition, the data elements are grouped into one of five categories of data: (1) data elements that describe a student, (2) data elements that describe a school or project, (3) data elements that describe the student's graduation plan, (4) data elements that describe a student's course history, and (5) data elements that describe a student's assessment information.

Finally, although the data elements are listed once, a number of the data elements will be used for multiple entries in a migrant student record (e.g., "course title" will be used for each course in which a migratory student is enrolled).

**MINIMUM DATA ELEMENTS**

No.	Use(s)	Data element	Definition
<b>Student Information</b>			
1	E	National Student Identification Number	A unique national identification number assigned to a student.
2	E	State Student Identification Number	An alternate identification number assigned to a student by a State.
3	E	Last Name <sup>1</sup>	Student's legal last name (paternal).
4	E	Last Name <sup>2</sup>	If appropriate, student's legal last name (maternal). [Note: Provides an option for a hyphenated or double last name.]
5	E	First Name	A name given to a student at birth, baptism, or during another naming ceremony, or through legal change.
6	E	Middle Name	A secondary name given to a student at birth, baptism, or during another naming ceremony, or through legal change.
7	E	Generation	An appendage, if any, used to denote a student's generation in his family (e.g., Jr., Sr., III).
8	E	Gender	A student's gender. 01 Female. 02 Male.
9	E	Birth Date	The month, day, and year on which a student was born.
10	E	Birth Certificate Flag	The evidence by which a student's date of birth is confirmed. 01 Birth certificate—A written statement or form issued by an Office of Vital Statistics verifying the name and birth date of the child as reported by the physician attending at the birth. 02 Other official document (i.e., baptismal or church certificate, physician/hospital certificate, passport, previously verified school record, State-issued ID, driver's license). 03 Self Report—Parent or student reports age, birth date, and place of birth.
11	E	Birth City	The name of the city in which the student was born.
12	E	Birth State	The postal abbreviation code for a State (within the United States), Outlying Area, or State (in another country) in which a student was born.
13	E	Birth Country	The name of the country in which a student was born.
14	E	Birth/Legal Parent <sup>1</sup> Last Name	The last/surname of the natural or adoptive male parent having legal responsibility for a student.
15	E	Birth/Legal Parent <sup>1</sup> First Name	The first name of the natural male parent having legal responsibility for a student.
16	E	Birth/Legal Parent <sup>2</sup> Last Name	The last/surname of the natural or adoptive female parent having legal responsibility for a student.
17	E	Birth/Legal Parent <sup>2</sup> First Name	The first name of the natural or adoptive female parent having legal responsibility for a student.
18	E	Current Parent/ Guardian Last Name	The last/surname of the adult serving as the student's <i>local</i> guardian. [Note: Provides an option for a hyphenated or double last name.]
19	E	Current Parent/ Guardian First Name	The first name of the adult serving as the student's <i>local</i> guardian.
20	P, G	Grade Level	The grade level in which a school/project enrolls a student.

MINIMUM DATA ELEMENTS—Continued

No.	Use(s)	Data element	Definition
			01 Ungraded. 02 Pre-school. 03 Kindergarten. 04 Grade 1 05 Grade 2 06 Grade 3 07 Grade 4 08 Grade 5 09 Grade 6 010 Grade 7 011 Grade 8 012 Grade 9 013 Grade 10 014 Grade 11 015 Grade 12 016 Out-of-School
21	E, P, G	Withdrawal Date	The month, day, year on which a student withdrew from a school or project.
22	E	Ed Alert Flag	Alert for a special need/educational condition linked with a contact person.
23	E	Ed Alert Contact	The full, legally accepted, proper name of the contact person.
24	E	Ed Alert Phone	The telephone number—for a telephone—including the area and extension, if applicable.
25	E	Med Alert	Alert for a medical/health condition
26	E	Med Alert Date	Month, day, and year the alert was issued
27	E	Med Alert Contact	The full, legally accepted, proper name of the contact person.
28	E	Med Alert Phone	The telephone number—for a telephone—including the area and extension, if applicable.
29	E	Immunization Date	The month, day, and year on which a student receives an immunization.
30	E	Immunization Type	The name of immunization that a student has received.
31		QAD (Qualifying Arrival Date)	The month, day, and year on which the family unit or the student (where the student is the worker) arrived at the place where the qualifying work was sought.
32		QAD From City	The name of the city in which the previous school district is located.
33		QAD From State	The postal abbreviation code for a State (within the United States) or Outlying Area in which the previous school district is located.
34		QAD From Country	The abbreviation code for a country (other than the US) area in which the previous school district is located.
35		QAD To City	The name of the city in which the new school district is located.
36		QAD To State	The postal abbreviation code for a State (within the United States) or Outlying Area in which the new school district is located.
37		Residency Date	The month, day, and year on which the family unit or the student (where the student is the worker) establishes residency in a school district within a State.
38		Termination Date	The month, day, and year on which the student is no longer eligible for the Migrant Education Program.
39		Terminating Flag	The reason for the end of student eligibility. 01 Non-migrant status, eligibility expired 02 Graduated. 03 GED. 04 Dropout. 05 Deceased.
<b>School/Project Information</b>			
40	E, P, G	School/Facility Identification Code	A unique national code assigned to each school, site, or facility providing educational and/or educationally-related services.
41	E, P, G	School Name	The full legally or popularly accepted name of a school (or project providing educational and/or educational-related services).
42	E, P, G	Address1	Line 1 of the mailing address. The street number and name or post office box number of a school's address.

## MINIMUM DATA ELEMENTS—Continued

No.	Use(s)	Data element	Definition
43 .....	E, P, G	Address2 .....	Line 2 of the mailing address. The building, office, department, room, suite number of a school's address.
44 .....	E, P, G	Address3 .....	Line 3 of the mailing address.
45 .....	E, P, G	City .....	The name of the city in which a school is located.
46 .....	E, P, G	District .....	The full legally or popularly accepted name of a local educational agency (i.e., school district or local operating agency).
47 .....	E, P	State .....	The postal abbreviation code for a State (within the United States) or Outlying Area in which a school or other facility is located.
48 .....	E, P, G	Zip .....	The five or nine digit zip code portion of a school or other facility's address.
49 .....	G	Contact Name .....	The full, legally accepted, proper name of the contact person.
50 .....	G	Contact Title/Position .....	The common title or job position of the contact person (i.e., Principal, Guidance Counselor, Federal Program Coordinator, Migrant Specialist, etc).
51 .....	E, G	Phone .....	The number—for a telephone—including the area code and extension, if applicable. Allow for an optional alternate phone number.
52 .....	E, G	Fax .....	The number—for a facsimile machine—including the area code and extension, if applicable. Allow for an optional alternate fax number.
53 .....	E	Email .....	The electronic mail (email) address of the organization or contact person.
54 .....	E, P, G	Enrollment Date .....	The month, day, and year on which a student enrolls in a school, project, or State and is eligible to receive instructional or support services during a given session.
55 .....	P	Enrollment Type .....	The type of school/migrant education project in which instruction and/or support services are provided. 01 Regular School. 02 Regular Term MEP-Funded Supplemental Program. 03 Summer/Intersession MEP-Funded Project. 04 Year Round MEP-funded Project. 05 Residency Only.
56 .....	P, G	Designated School for Graduation Flag .....	An indicator that designates the school or facility from which a student expects to graduate and is linked with associated school or facility identification fields (i.e., district, city, state, zip code). Only one school may be designated for graduation at any one point in time.

**Graduation Plan Information (Secondary Students Only)**

57 .....	G	Graduation Year .....	The year the student is projected to graduate from high school. [Provided by Designated School of Graduation].
58 .....	G	Type of Credential .....	The type of credential that the student expects to receive in recognition of his/her completion of curricular requirements. . [Provided by Designated School of Graduation]. 01 Regular diploma. 02 Certificate of attendance/completion. 03 General Educational Development (GED) credential. 04 State-specific diploma (e.g., New York Regents, Texas Minimum Program, etc.)
59 .....	G	Subject Area Requirements .....	Number of credits (Carnegie units) required in individual subject areas for graduation in the State from which the student is projected to graduate.
60 .....	G	Test .....	The name of the test the student will have to pass to graduate.
61 .....	P,G	Subject Area .....	The name of a subject area (e.g., History, English).

**Course History Information (Secondary Students Only)**

62 .....	P,G	Course Title .....	The name of a course (e.g., Algebra III, American History, Art I, English III, English-10).
63 .....	G	Course Type .....	An indication of the general nature and difficulty of instruction provided throughout a course. 01 Regular (Default)—A course providing instruction (in a given subject matter area) that focuses primarily on general concepts for the appropriate grade level. 02 Honors—An advanced level course designed for students who have earned honors status according to educational requirements.



MINIMUM DATA ELEMENTS—Continued

No.	Use(s)	Data element	Definition
		.....	03 Pre-Advanced—A course in preparation to admission to an AP Program.
		Course Type (continued) .....	04 Advanced Placement—An advanced, college-level course designed for students who achieve specific level of academic performance. Upon successful completion of the course and a standardized Advanced Placement examination, a student may receive college credit. 05 International Baccalaureate—A program of study, sponsored and designed by International Baccalaureate Organization, that leads to examinations and meets the needs of secondary students between the ages of 16 and 19 years. 06 Accepted as a high school equivalent—A secondary-level course offered at an education institution other than a secondary school (such as adult learning center or community college) or through correspondence or distance learning. 07 Not Applicable. 07 Not Applicable.
64 .....	G	Course Year .....	Calendar year in which the course was taken.
65 .....	P, G	Course Section .....	The prescribed duration of course taken. 01 Full year. 02 Section A—One of two equal segments into which the course is divided. 03 Section B—One of two equal segments into which the course is divided.
66 .....	P, G	Term Type .....	The prescribed span of time that a course is provided, and in which, students are under the direction and guidance of teachers and/or an educational institution. 01 Full year. 02 Semester—A designation for the segment of a school year that is divided into two equal parts. 03 Trimester—A designation for the segment of a school year that is divided into three equal parts. 04 Quarter—A designation for the segment of a school year that is divided into four equal parts. 05 Quinmester—A designation for the segment of a school year that is divided into five equal parts.
67 .....	P, G	Grade-to-date .....	For courses that have NOT been completed (or credit granted), a numerical grade (percentage) of student performance for the grade-to-date that the student has completed at the time of withdrawal.
68 .....	P	Clock Hours .....	For courses that have NOT been completed (or credit granted), the number of clock hours to date that the student has completed.
69 .....	P	Final Grade .....	For courses that have NOT had credit granted, a final indicator of student performance in a class at the time of withdrawal as submitted by the instructor.
70 .....	P	Credits Granted .....	The credits granted in Carnegie units for a given course or a section of a course (e.g., 1.0, .50, .33, .25, .20).

Assessment Information

71 .....	G	Assessment Name .....	The title or description, including a form number, if any, that identifies a particular assessment.
72 .....	G	Assessment Type .....	The category of an assessment based on format and content. 01 Achievement Test/State Assessment—An assessment to measure a student's present level of knowledge, skill, or competence in a specific area or subject. 02 Advanced placement test—An assessment to measure the achievement of a student in a subject matter area, taught during high school, which may qualify him or her to bypass the usual initial college class in this area and begin his or her college work in the area at a more advanced level and possibly with college credit. 03 Language proficiency test—An assessment used to measure a student's level of proficiency (i.e., speaking, writing, reading, and listening) in either a native language or an acquired language. 04 Exit Exam. 05 GED.
		Assessment Type (continued) .....	

MINIMUM DATA ELEMENTS—Continued

No.	Use(s)	Data element	Definition
73	G	Assessment Date	06 Special Education Assessment. 07 Early Childhood Development Assessment. Other. The month and year on which an assessment is administered.
74	G	Assessment Result	A score or statistical expression of the performance of a student on an assessment.
75	G	Type of Result	The metric in which results are presented. 01 Proficiency level. 02 Percentile rank. 03 Pass/Fail (if failed enter numerical score). 04 Normal curve equivalent. 05 Sections that have been successfully completed (e.g., GED).

[FR Doc. 02-13275 Filed 5-24-02; 8:45 am]  
BILLING CODE 4000-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. CP00-166-002]

**Williams Gas Pipelines Central, Inc.; Notice of Application**

May 21, 2002.

On May 9, 2002, Williams Gas Pipelines Central, Inc. (Williams), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and the Federal Energy Regulatory Commission's (the Commission) Rules and Regulations thereunder. Williams requests authorization to further amend the certificate of public convenience and necessity issued on December 30, 1963, authorizing the Webb Storage Field in Grant County, Oklahoma, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection. Further, Williams requests expedited approval of the amendment so work can commence by July 15, 2002. This filing may be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance).

Williams requests authority to: (1) Place into service as part of its Webb Storage Field facilities, an existing gathering system which it has acquired in acquisition of additional buffer zone; and, (2) install a 60-Horsepower gas compressor, one measurement station, and certain related pipeline in the Webb Storage Field, in place of the facilities originally proposed by Williams and approved in the February 8, 2001

Commission Order Amending Certificate, 94 FERC ¶ 61,120. The cost of these modifications is estimated to be approximately \$ 553,000.

Questions regarding the application may be directed to David N. Roberts, Manager of Tariffs and Regulatory Analysis, P.O. Box 20008, Owensboro, Kentucky 42304, or call (270) 688-6712.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 6, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project

provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

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.

**Magalie R. Salas,**  
Secretary.

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BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EC02-69-000, et al.]

**Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings**

May 20, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Louisville Gas and Electric Company, Kentucky Utilities Company, LG&E Capital Trimble County LLC**

[Docket No. EC02-69-000]

Take notice that on May 16, 2002, Louisville Gas and Electric Company (LG&E), Kentucky Utilities Company (KU) and LG&E Capital Trimble County LLC (LCTC) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities in connection with a Proposed Transaction whereby LCTC will make an intra-corporate transfer of its generating facilities to its affiliates LG&E and KU. Specifically, LCTC will transfer two 152 MW [summer rated] turbines located in Trimble County, Kentucky. The jurisdictional facilities that are the subject of the Section 203 request consist of LCTC's rate schedules on file with the Commission.

*Comment Date:* June 6, 2002.

**2. Duquesne Light Company**

[Docket No. ER02-1776-000]

Take notice that on May 9, 2002, Duquesne Light Company (DLC) filed a Service Agreement with UBS AG, London Branch under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds UBS AG, London Branch as a customer under the Tariff. DLC requests an effective date of May 9, 2002 for the Service Agreement.

*Comment Date:* May 30, 2002.

**3. Duquesne Light Company**

[Docket No. ER02-1777-000]

Take notice that May 9, 2002, Duquesne Light Company (DLC) filed a Service Agreement with UBS AG, London Branch under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds UBS AG, London Branch as a customer under the Tariff. DLC requests an effective date of May 9, 2002 for the Service Agreement.

*Comment Date:* May 30, 2002.

**4. Tucson Electric Power Company**

[Docket No. ER02-1778-000]

Take notice that on May 9, 2002, Tucson Electric Power Company tendered for filing the 1990-2011 Power Sale Agreement between Tucson Electric Power Company and Salt River Project Agricultural Improvement and Power District as revised by the May 1, 2002, Amended and Restated Exhibit A.

*Comment Date:* May 30, 2002.

**5. PECO Energy Company**

[Docket No. ER02-1779-000]

Take notice that on May 9, 2002, PECO Energy Company (PECO) submitted for filing an Interconnection Agreement between PECO, and Rock Springs Generation LLC and CED Rock Springs, Inc. (Rock Springs/CED) related to the interconnection of Rock Springs/CED's transmission facilities with PECO's transmission facilities, together with a request for deferral of Commission action on a disputed provision of the Interconnection Agreement subject to the resolution of a related PJM proceeding. The Interconnection Agreement has been designated as Service Agreement No. 669 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1. PECO has requested the Commission to accept the undisputed provisions of the Interconnection Agreement and to permit an effective date of May 10, 2002. Copies of this filing were served on Rock Springs/CED and PJM.

*Comment Date:* May 30, 2002.

**6. Entergy Services, Inc.**

[Docket No. ER02-1780-000]

Take notice that on May 9, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Entergy-Koch Trading, LP.

*Comment Date:* May 30, 2002.

**7. Entergy Services, Inc.**

[Docket No. ER02-1781-000]

Take notice that on May 9, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a

Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Split Rock Energy LLC.

*Comment Date:* May 30, 2002.

**8. Entergy Services, Inc.**

[Docket No. ER02-1782-000]

Take notice that on May 9, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and UBS AG, London Branch.

*Comment Date:* May 30, 2002.

**9. Entergy Services, Inc.**

[Docket No. ER02-1783-000]

Take notice that on May 9, 2002, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively the Entergy Operating Companies), tendered for filing its 2002 Annual rate redetermination update (Update) in accordance with the Open Access Transmission Tariff filed in compliance with FERC Order No. 888 in Docket No. OA96-158-000. Entergy Service states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7.

*Comment Date:* May 30, 2002.

**10. NorthWestern Energy, L.L.C.**

[Docket No. ER02-1784-000]

Take notice that on May 9, 2002, NorthWestern Energy, L.L.C. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession adopting all applicable rate schedules, service agreement, tariffs and supplements thereto previously filed with the Commission by The Montana Power Company.

*Comment Date:* May 30, 2002.

**11. Thermo Cogeneration Partnership, L.P.**

[Docket No. ER02-1785-000]

Take notice that on May 9, 2002, Thermo Cogeneration Partnership, L.P. (Thermo Cogeneration) tendered for

filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting Thermo Cogeneration's FERC Electric Rate Schedule No. 1. Thermo Cogeneration requests waiver of the 60-day prior notice requirement to permit Thermo Cogeneration's Rate Schedule to be effective July 1, 2002, and requests expeditious Commission approval of this Application prior to that date.

Thermo Cogeneration intends to engage in electric power and energy transactions through power purchase agreements with Public Service Company of Colorado. In transactions where Thermo Cogeneration sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. Thermo Cogeneration's proposed Rate Schedule also permits it to reassign transmission capacity.

*Comment Date:* May 30, 2002.

#### 12. Kentucky Utilities Company

[Docket No. ER02-1786-000]

Take notice that on May 10, 2002, Kentucky Utilities Company tendered for filing an executed Amendment to the interconnection agreement between Kentucky Utilities Company and East Kentucky Power Cooperative, Inc. The agreements provides for the construction of facilities to add an additional interconnection point on Kentucky Utilities Company's Taylor County to Lebanon 69kV transmission line to serve the new load area referred to as the East Campbellsville load station. The Amendment is numbered 19.

*Comment Date:* May 31, 2002.

#### 13. American Electric Power

[Docket No. ER02-1787-000]

Take notice that on May 10, 2002, American Electric Power Service Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), a Facilities, Operation and Maintenance Agreement (Facility Agreement) dated January 31, 2002, between Ohio Power Company (d/b/a AEP), Paulding-Putnam Electric Cooperative, Inc (hereinafter called Paulding Putnam) and Buckeye Power, Inc. (hereinafter called Buckeye).

The Facility Agreement provides for the establishment of a new delivery point, pursuant to the provisions of the Power Delivery Agreement between Ohio Power, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company,

Columbus Southern Power Company and Toledo Edison Company, dated January 1, 1968. AEP requests an effective date of May 31, 2002 for the Facility Agreement.

AEP states that copies of its filing were served upon Paulding-Putnam, Buckeye and the Public Utilities Commission of Ohio.

*Comment Date:* May 31, 2002.

#### 14. Vandolah Power Company, L.L.C.

[Docket No. ER02-1788-000]

Take notice that on May 10, 2002, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and its market based rate authority, Vandolah Power Company, L.L.C. (Vandolah) submitted for filing a power purchase agreement (designated as Service Agreement No. 1) between itself and Reliant Energy Services, Inc. Vandolah seeks an effective date for the service agreement of April 18, 2002.

*Comment Date:* May 31, 2002.

#### 15. Puget Sound Energy, Inc.

[Docket No. ER02-1789-000]

Take notice that on May 10, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement for Long-Term Firm Point-To-Point Transmission Service acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer. A copy of the filing was served upon Bonneville.

*Comment Date:* May 31, 2002.

#### 16. San Diego Gas & Electric Company

[Docket No. ER02-1790-000]

Take notice that on May 10, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing Amendment No. 1 to Interconnection Facilities Agreement between SDG&E and Otay Mesa Generating Company, LLC, designated as First Revised Service Agreement Number 1 to FERC Electric Tariff, Volume No. 6.

Amendment No. 1, dated April 23, 2002, implements Internal Revenue Service Notice 2001-82, "Expansion of Safe Harbor Provisions Under Notice 88-129", which provides in certain circumstances, regulated public utilities, such as SDG&E will not realize income upon contributions by interconnecting electric generators of certain interconnection facilities. This amendment further clarifies terms pertaining to creditworthiness requirements of OMG and the guarantor of OMG's financial obligations as contemplated by Section 10.22. SDG&E requests an effective date of May 10, 2002.

SDG&E states that copies of the amended filing have been served on Otay Mesa Generating Company, LLC and on the California Public Utilities Commission.

*Comment Date:* May 31, 2002.

#### Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

*Secretary.*

[FR Doc. 02-13188 Filed 5-24-02; 8:45 am]

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#### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

[Docket No. ER99-1712-003, et al.]

#### Somerset Power LLC, et al.; Electric Rate and Corporate Regulation Filings

May 21, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

##### 1. Somerset Power LLC

[Docket No. ER99-1712-003]

Take notice that on May 3, 2002, Somerset Power LLC (Somerset) tendered for filing with the Federal Energy Regulatory Commission (Commission), its triennial review in compliance with the Commission's

order in Rockingham Power, L.L.C., Docket No. ER99-1567-000.

*Comment Date:* May 31, 2002.

## 2. American Electric Power Service Corp.

[Docket No. ER02-371-005]

Take notice that on May 15, 2002, American Electric Power Service Corporation (AEP), on behalf of its public utility operating companies, submitted for filing with the Federal Energy Regulatory Commission (Commission), revised pages to the AEP open access transmission service tariff and to the Transmission Coordination Agreement in compliance with the Commission's April 15, 2002 order in the above-captioned proceeding.

AEP states that a copy of the transmittal letter has been served on all parties to this proceeding, all customers under the tariff and a copy of the complete filing has been served upon each of the affected state commissions.

*Comment Date:* June 5, 2002.

## 3. PJM Interconnection, L.L.C.

[Docket No. ER02-1205-001]

Take notice that on May 13, 2002, in compliance with the Federal Energy Regulatory Commission's April 30, 2002 order in Docket No. ER02-1205 (PJM Interconnection, L.L.C., 99 FERC ¶ 61,139), PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated PJM Operating Agreement (Operating Agreement) to provide a termination date of December 1, 2004 for PJM's Emergency Load Response Program. PJM also resubmitted all of the amended PJM Tariff and Operating Agreement sheets establishing the Emergency Load Response Program redesignated as part of the PJM Tariff and Operating Agreement implementing PJM West that became effective April 1, 2002.

Copies of this filing were served upon all parties listed on the official service list in Docket No. ER02-1205, all PJM members and each state electric utility regulatory commission in the PJM region.

PJM requests an effective date of June 1, 2002 for the amendments and redesignated sheets, consistent with the effective date in PJM Interconnection L.L.C., 99 FERC ¶ 61,139 (2002).

*Comment Date:* June 3, 2002.

## 4. The Detroit Edison Company

[Docket No. ER02-1791-000]

Take notice that on May 10, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing a revised

Power Supply Agreement (the PSA) between Detroit Edison and the City of Detroit, Michigan, to designate additional points of delivery.

*Comment Date:* May 31, 2002.

## 5. Dayton Power and Light Company

[Docket No. ER02-1792-000]

Take notice that on May 10, 2002, Dayton Power and Light Company (DP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission), service agreements between DP&L and Dominion Energy Marketing Inc. under DP&L's filed Open Access Transmission Tariff.

Copies of this filing were served upon Dominion Energy Marketing Inc. and the Public Utilities Commission of Ohio.

*Comment Date:* May 31, 2002.

## 6. Dayton Power and Light Company

[Docket No. ER02-1793-000]

Take notice that on May 10, 2002, Dayton Power and Light Company (DP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission), service agreements between DP&L and Dominion Energy Marketing Inc. under DP&L's filed Open Access Transmission Tariff.

Copies of this filing were served upon Dominion Energy Marketing Inc. and the Public Utilities Commission of Ohio.

*Comment Date:* May 31, 2002.

## 7. Dayton Power and Light Company

[Docket No. ER02-1794-000]

Take notice that on May 10, 2002, Dayton Power and Light Company (DP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission), service agreements establishing UBS AG, London Branch as customers under the terms of Dayton's Open Access Transmission Tariff.

Copies of this filing were served upon UBS AG, London Branch and the Public Utilities Commission of Ohio.

*Comment Date:* May 31, 2002.

## 8. Dayton Power and Light Company

[Docket No. ER02-1795-000]

Take notice that on May 10, 2002, Dayton Power and Light Company (DP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission), service agreements between DP&L and UBS AG, London Branch under DP&L's filed Open Access Transmission Tariff.

Copies of this filing were served upon UBS AG, London Branch and the Public Utilities Commission of Ohio.

*Comment Date:* May 31, 2002.

## 9. Duke Electric Transmission

[Docket No. ER01-1797-000]

Take notice that on May 13, 2002, Duke Electric Transmission (Duke) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement for Non-Firm Point-to-Point Transmission Service between Duke and Northern States Power.

Duke requests that the Service Agreement become effective on May 6, 2002. A copy has been served on the North Carolina Utilities Commission.

*Comment Date:* June 3, 2002.

## 10. Huntley Power LLC

[Docket No. ER02-1798-000]

Take notice that on May 13, 2002, Huntley Power LLC filed under section 205 of the Federal Power Act, Part 35 of the regulations of the Federal Energy Regulatory Commission (Commission), and Commission Order No. 614, a request that the Commission (1) accept for filing a revised market-based rate tariff; (2) waive any obligation to submit a red-lined version of the currently effective tariff; and (3) grant any waivers necessary to make the revised tariff sheets effective as soon as possible, but no later than 60 days from the date of this filing. Huntley's proposed tariff revisions merely seek to properly designate, update and conform the tariff to a format like those that the Commission has approved for Huntley's affiliates.

*Comment Date:* June 3, 2002.

## 11. Arthur Kill Power LLC

[Docket No. ER02-1799-000]

Take notice that on May 13, 2002, Arthur Kill Power LLC (Arthur Kill) filed under section 205 of the Federal Power Act, Part 35 of the regulations of the Federal Energy Regulatory Commission (Commission), and Commission Order No. 614, a request that the Commission (1) accept for filing a revised market-based rate tariff; (2) waive any obligation to submit a red-lined version of the currently effective tariff; and (3) grant any waivers necessary to make the revised tariff sheets effective as soon as possible, but no later than 60 days from the date of this filing. Arthur Kill's proposed tariff revisions merely seek to properly designate, update and conform the tariff to a format like those that the Commission has approved for Arthur Kill's affiliates.

*Comment Date:* June 3, 2002.

**12. Dunkirk Power LLC**

[Docket No. ER02-1800-000]

Take notice that on May 13, 2002, Dunkirk Power LLC (Dunkirk) filed under section 205 of the Federal Power Act, Part 35 of the regulations of the Federal Energy Regulatory Commission (Commission), and Commission Order No. 614, a request that the Commission (1) accept for filing a revised market-based rate tariff; (2) waive any obligation to submit a red-lined version of the currently effective tariff; and (3) grant any waivers necessary to make the revised tariff sheets effective as soon as possible, but no later than 60 days from the date of this filing. Dunkirk's proposed tariff revisions merely seek to properly designate, update and conform the tariff to a format like those that the Commission has approved for Dunkirk's affiliates.

*Comment Date:* June 3, 2002.**13. Astoria Gas Turbine Power LLC**

[Docket No. ER02-1801-000]

Take notice that on May 13, 2002, Astoria Gas Turbine Power LLC (Astoria) tendered for filing with the Federal Energy Regulatory Commission (Commission), under section 205 of the Federal Power Act, Part 35 of the Commission's regulations and Commission Order No. 614, a request that the Commission (1) accept for filing a revised market-based rate tariff; (2) waive any obligation to submit a red-lined version of the currently effective tariff; and (3) grant any waivers necessary to make the revised tariff sheets effective as soon as possible, but no later than 60 days from the date of this filing. Astoria's proposed tariff revisions merely seek to properly designate, update and conform the tariff to a format like those that the Commission has approved for Astoria's affiliates.

*Comment Date:* June 3, 2002.**14. Conectiv Bethlehem, Inc.**

[Docket No. ER02-1802-000]

Take notice that on May 13, 2002, Conectiv Bethlehem, Inc. (CBI) tendered for filing with the Federal Energy Regulatory Commission (Commission), a revised transaction agreement between itself and Conectiv Energy Supply, Inc. The revised transaction agreement is First Revised Service Agreement No. 2 under CBI'S market-based rate tariff, FERC Electric Tariff, Original Volume No. 1. CBI requests that the Service Agreement No. 2 become effective on May 20, 2002, the effective-date of the original Service Agreement No. 2.

*Comment Date:* June 3, 2002.**15. Duke Electric Transmission**

[Docket No. ER02-1803-000]

Take notice that on May 13, 2002, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement with Northern States Power, for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement become effective on May 7, 2002. Duke states that this filings has been served on the North Carolina Utilities Commission.

*Comment Date:* June 3, 2002.**16. PacifiCorp**

[Docket No. ER02-1804-000]

Take notice that PacifiCorp on May 13, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission), in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Cancellation of Service Agreement No. 20 under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12 for the Long Term Service Agreement entered on March 23, 1998 between Citizens Power Sales and PacifiCorp. Copies of this filing were supplied to Citizens Power Sales and the Public Utility Commission of Oregon.

*Comment Date:* June 3, 2002.**17. Xcel Energy Services, Inc.**

[Docket No. ER02-1805-000]

Take notice that on May 13, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company and Northern States Power Company (Wisconsin) (collectively, NSP), submitted for filing a Form of Service Agreement with Southern Indiana Gas and Electric Company d/b/a Vectren Power Supply, Inc. (Southern Indiana), which is in accordance with NSP's Rate Schedule for Market-Based Power Sales (NSP Companies FERC Electric Tariff, Original Volume No. 6).

XES requests that this agreement become effective on April 15, 2002.

*Comment Date:* June 3, 2002.**18. Xcel Energy Services, Inc.**

[Docket No. ER02-1806-000]

Take notice that on May 13, 2002, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing a Form of Service Agreement with Southern Indiana Gas and Electric Company d/b/a Vectren Power Supply, Inc. (Southern Indiana), which is in accordance with Public Service's Rate Schedule for Market-Based Power Sales

(Public Service FERC Electric Tariff, First Revised Volume No. 6).

XES requests that this agreement become effective on April 15, 2002.

*Comment Date:* June 3, 2002.**19. Oleander Power Project, LP**

[Docket No. ER02-1807-000]

Take notice that on May 13, 2002, Oleander Power Project, LP (Oleander) tendered for filing with the Federal Energy Regulatory Commission (Commission), two executed service agreements with Florida Power & Light Company designated as Service Agreement Nos. 1 and 2 under Oleander's FERC Electric Tariff, Original Volume No. 1. Oleander respectfully requests an effective date of April 13, 2002.

*Comment Date:* June 3, 2002.**20. Sierra Pacific Power Company, Nevada Power Company**

[Docket No. ER02-1808-000]

Take notice that on May 14, 2002 Sierra Pacific Power Company and Nevada Power Company (jointly Operating Companies) tendered for filing with the Federal Energy Regulatory Commission (Commission), Service Agreements with FPL Energy Power Marketing, Inc. for Non-Firm and Short-Term Firm Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff, First Revised Volume No. 1, Open Access Transmission Tariff (Tariff):

The Operating Companies are filing the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. The Operating Companies also submitted revised Sheet No. 195A (Attachment E) to the Tariff, which is an updated list of current subscribers. The Operating Companies request waiver of the Commission's notice requirements to permit an effective date of May 15, 2002 for Attachment E, and to allow the Service Agreement to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

*Comment Date:* June 4, 2002.**21. Aquila, Inc.**

[Docket No. ES02-40-000]

Take notice that on May 10, 2002, Aquila, Inc. (Aquila) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue (1) guarantees in an amount not to exceed \$645 million

and (2) no more than \$425 million of short-term debt securities, in connection with the indirect acquisition of Cogentrix Energy, Inc.

Aquila also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

*Comment Date:* June 11, 2002.

#### Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-13238 Filed 5-24-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 11588-001, Alaska]

#### Alaska Power & Telephone Company; Notice of Availability of Final Environmental Assessment

May 21, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for Alaska Power and Telephone Company's proposed

Otter Creek Hydroelectric Project, and has prepared a Final Environmental Assessment (FEA). The proposed project would be located on Kasidaya Creek, at Taiya Inlet, 3 miles south of the City of Skagway, and 12 miles southwest of the City of Haines, Alaska. The proposed project would occupy approximately 6.0 acres of land within the Tongass National Forest, administered by the U.S. Forest Service (Forest Service).

On December 26, 2001, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 45 days. Comments on the DEA were filed by the Forest Service, the United States Department of the Interior, State of Alaska Department of Fish and Game, and Alaska Power & Telephone Company and are addressed in the FEA.

This FEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). For further information, contact Gaylord Hoisington, Project Coordinator, at (202) 219-2756.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-13236 Filed 5-24-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PF01-1-000]

#### Dominion Transmission, Inc.; Notice of Public Scoping Meetings and Site Visit for the Greenbrier Pipeline Project and Request for Comments on Environmental Issues

May 21, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is sending out this notice to announce the dates and locations of the Greenbrier Pipeline Project's public

scoping meetings, and is continuing our<sup>1</sup> request to receive comments on environmental issues. We are in the process of preparing an environmental impact statement (EIS) for Dominion Transmission, Inc.'s (Dominion)<sup>2</sup> project in West Virginia, Virginia, and North Carolina.<sup>3</sup> The planned facilities consist of about 278.3 miles of mainline and lateral pipelines, two compressor stations, up to four meter stations, and related facilities. This EIS will be used by the Commission in its decision-making process to determine whether or not the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative for permission to survey across your land or to obtain an easement to construct, operate, and maintain the planned facilities on your property. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is filed and subsequently approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with applicable state law.

A fact sheet prepared by the FERC staff entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. The fact sheet is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

This notice is being mailed to landowners who are within a surveyed 100-foot-wide corridor; landowners within a 400-foot-wide corridor that is

<sup>1</sup> "We", "us" and "our" refer to the environmental staff of the Office of Energy Projects (OEP), part of the Commission staff.

<sup>2</sup> The Greenbrier Pipeline Company, L.L.C. (GPC) will actually file the application to construct the Greenbrier Pipeline Project. GPC will be an equity venture between Dominion Greenbrier, Inc. and Piedmont Greenbrier Pipeline Company, L.L.C. Dominion Greenbrier, Inc. is a wholly owned subsidiary of Dominion Resources, Inc. Piedmont Greenbrier Pipeline Company, L.L.C. is a wholly owned subsidiary of Piedmont Natural Gas Company, Inc. These companies will have 67 and 33 percent equity owner interest, respectively, in the project. This notice will refer to Dominion in lieu of GPC since it initiated Docket No. PF01-1-000. After the certificate application is filed, we will refer to the proponent of the projects as GPC.

<sup>3</sup> Dominion's application for this project, now in Docket No. PF01-1-000, will be given a "CP" filing designation when it is formally filed with the Commission. This application should fall under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations.

under consideration but has not yet been surveyed; landowners along alternative alignments that are being considered by Dominion; landowners who have property crossed by access roads, pipe yards, or other off-right-of-way potentially affected property; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes that might attach religious and cultural significance to historic properties in the area of potential effect; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned action and encourage them to comment on their areas of concern.

With this notice, we are also asking other Federal and state agencies with jurisdiction and/or special expertise with respect to environmental issues in the project area to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated Dominion's proposal relative to their responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described later in this notice. See appendix 1.

#### Summary of the Project

Dominion states that its project would transport up to 600,000 dekatherms per day (Dth/day) of natural gas to serve a growing demand for gas in southern West Virginia, southwestern Virginia, and North Carolina. Dominion seeks authority to construct and operate the Greenbrier Pipeline Project as follows:

- a. About 215.7 miles of 30-inch-diameter pipeline from its existing Cornwell Compressor Station in Kanawha County, West Virginia, to Rockingham County, North Carolina;
- b. About 41.4 miles of 24-inch-diameter pipeline from Rockingham to Person Counties, North Carolina;
- c. About 17.4 miles of 20-inch-diameter pipeline from Person to Granville Counties, North Carolina;
- d. About 1.0 mile of 12-inch-diameter lateral in Person County, North Carolina (DG-2);
- e. About 2.1 miles of 10-inch-diameter lateral in Granville County, North Carolina (DG-3);
- f. About 0.7 mile of 30-inch-diameter lateral in Rockingham County, North Carolina (DG-4);
- g. Two new compressor stations, one in Kanawha County, West Virginia, (the Elk River Compressor Station) and the other in Rockingham County, North Carolina (Eden Compressor Station), totaling about 41,000 horsepower;
- h. Up to four meter stations in Henry County, Virginia, and Rockingham,

Person, and Granville Counties, North Carolina; and

f. Associated mainline valves, piping, and other appurtenant pipeline facilities.

Items a., b., and c. would collectively form a new mainline pipeline (DG-1).

**Nonjurisdictional Facilities**  
—Virginia Power Energy Marketing, Inc. and Mountain Creek Development, L.L.C. are planning to construct power plants in Person and Granville Counties, North Carolina.

A general location map of the project facilities is shown in appendix 2.<sup>4</sup> If you are interested in obtaining a detailed map of a specific portion of the project, you may send in your request using the form in appendix 4. Dominion has indicated that most of the pipeline route is firming up. However, it is still looking at an alternative alignment in the vicinity of the Hawks Nest State Park in Fayette County, West Virginia, and at the Henry County Alternative that is generally east of Martinsville, Virginia. See appendix 2 for the general location of these alternatives. The Hawks Nest State Park reroute would seek to avoid impact on the view shed of the park. In general, the Henry County Alternative follows a power line corridor. Whereas, the "original" alignment examined on the east side of Martinsville follows a products pipeline corridor.

#### Land Requirements

The planned construction and permanent right-of-way (ROW) widths for the pipelines are as follows:

Name P	Pipe diameter (inches)	Construction ROW (feet)	Permanent ROW (feet)
DG-1 ....	30	100	75
DG-1 ....	24	75	50
DG-1 ....	20	75	50
DG-2 ....	12	75	50
DG-3 ....	10	75	50
DG-4 <sup>6</sup> ...	30	100	75

<sup>6</sup>The DG-1 and DG-4 ROWs would overlap.

Construction of the planned pipelines would require about 3,500 acres

<sup>4</sup>The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208-1371. For instructions on connecting to RIMS, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

<sup>5</sup>The Commission is in the process of replacing RIMS and CIPS with the Federal Energy Regulatory Records Information System (FERRIS). If RIMS or CIPS cannot be found at the identified Commission web sites, FERRIS can be used to access information.

(including pipeline ROWs and additional temporary work spaces). Following construction, about 2,334 acres would be retained as new permanent ROW for the pipelines. The 1,166 acres of temporary work space would be restored and allowed to revert to its former use.

Construction of the Elk River Compressor Station would disturb about 20.1 acres within the existing Cornwell Compressor Station. Six acres would be permanently used. The Eden Compressor Station would be located within a 79.9-acre property. About 38.0 acres would be disturbed by construction, and 6.3 acres would be permanently used. Dominion would construct the Transco Meter Station at the end of DG-4 using 1.85 acres. The rest of the meter stations would be constructed by the customers.

#### The EIS 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 solicit and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the EIS on the important environmental issues. With this notice, the Commission is continuing to seek public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this planned project and encourage them to comment on their areas of concern.

#### Currently Identified Environmental Issues

The public has already identified numerous issues that they want addressed in our review of the proposed facilities. These scoping letters can be examined at the Commission's Web site under Docket No. PF01-1-000. These comments fall under the following general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use, recreation, and visual resources.
- Socioeconomics.
- Air and noise quality.
- Pipeline safety.
- Alternatives.

We will also evaluate possible alternatives to the proposed project or



portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas. We have identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Dominion. This preliminary list of issues may be changed based on our analysis.

- Federally listed endangered or threatened species may occur in the project area.
- Hawks Nest State Park is near the project.
- Blue Ridge Parkway is crossed.
- Jefferson National Forest is crossed.
- Appalachian Trail is crossed.
- Numerous streams and wetlands are crossed.
- Homes and schools are near the pipelines.

Our independent analysis of the issues will result in the publication of a draft EIS that will be mailed to Federal, state, and local government agencies; Native American tribes; elected officials; public interest groups; interested individuals; interested affected landowners; newspapers; libraries; and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. The final EIS will include our response to comments received on the draft EIS and will be used by the Commission in its decision-making process to determine whether or not to approve the project.

To ensure your comments are considered, please carefully follow the instructions in the "Public Participation" or "Public Scoping Meetings" sections of this notice.

#### *Public Participation*

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory

Commission, 888 First St., NE, Room 1A, Washington, DC 20426;

- Refer to Docket No. PF01-1-000;
- Label one copy of the comments for the attention of Gas Branch 2, PJ-11.2; and
- Mail your comments so that they will be received in Washington, DC on or before June 20, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Mailing List Retention Form included in appendix 4. If you do not return the form, you will be taken off the mailing list.

#### *Public Scoping Meetings*

In addition to or in lieu of sending written comments, we invite you to attend any or all of the public scoping meetings that we will conduct in the area of the Greenbrier Pipeline Project. All of these meetings will start at 7 p.m. The locations for these meetings are listed below.

Monday, June 10, 2002, Roxboro, North Carolina—Person County Office Building, 304 South Morgan Street, Roxboro, North Carolina 27573, (336) 597-1720

Tuesday, June 11, 2002, Bassett, Virginia—Bassett High School, 85 Riverside Drive, Bassett, Virginia 24055, (276) 629-1731

Wednesday, June 12, 2002, Riner, Virginia—Auburn High School, 4163 Riner Road, Riner, Virginia 24149, (540) 382-5160

Thursday, June 13, 2002, Mt. Hope, West Virginia—Mt. Hope Middle School, 510 Main Street, Mt. Hope, West Virginia 25880, (304) 877-6641

The public scoping meetings provide you another opportunity to offer your comments on the project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the draft EIS. A transcript of each meeting

will be made so that your comments will be accurately recorded.

#### *The Pre-Filing NEPA Process*

At the present time, Dominion has not filed an application with the FERC for the Greenbrier Pipeline Project. However, FERC has initiated work on evaluating the project using the Pre-Filing NEPA Process. FERC has assigned a Pre-Filing Docket Number (PF01-1-000). When Dominion files a formal application, it will be assigned a "CP" docket number, and all information filed under Docket No. PF01-1-000 will become part of the record for the "CP docket". All comments received during the pre-filing period will be considered during the preparation of the EIS. An EIS will not be issued until Dominion has filed an acceptable application at the FERC.

#### *Becoming an Intervenor*

Once Dominion formally files a CP application at the FERC for the Greenbrier Pipeline Project, you may want to become an official party to the proceeding, known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).<sup>7</sup> Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered. Parties cannot intervene in this project until a "CP" application is filed at the FERC. The company will mail a notice of this filing to affected landowners shortly after it occurs.

<sup>7</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

*Availability of Additional Information*

Additional information about the proposed project is available from the Commission's Office of External Affairs (202) 208-1088 or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. Please note that you must enter PF01-1 as the docket number, and 000 as the subdocket number.

For assistance with access to RIMS, the RIMS help line can be reached at (202) 208-2222. Similarly, the "CIPS" link on the FERC Internet Web site provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings. From the FERC Internet Web site, click on the "CIPS" link, select "Docket #" from the CIPS Menu, and follow the instructions. For assistance with access to CIPS, the CIPS help line can be reached at (202) 208-2222.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-13235 Filed 5-24-02; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project Nos. 11834-000 and 4026-033—Maine]

**FPL Energy Maine Hydro, LLC, Androscoggin Reservoir Company; Notice of Availability of Environmental Assessment**

May 21, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Upper and Middle Dam Storage Project located on the Rapid River, in Oxford and Franklin Counties, Maine, and has prepared an Environmental Assessment (EA) for the project. In addition, the EA analyzes the proposed permanent flow pursuant to Article 32 of the existing license for the Azischohos Project, located on the Magalloway River, in Oxford County, Maine. In the EA, the Commission's staff has analyzed the potential environmental effects of the project, and permanent minimum flow and has concluded that approval of the project, with appropriate environmental

measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions. Please call (202) 208-2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1-A, Washington, DC 20426. Please affix "Upper and Middle Dam Storage Project No. 11834-000 and Azischohos Hydroelectric Project No. 4026-033" to all comments. For further information, contact Mark Pawlowski at (202) 219-2795 or e-mail [mark.pawlowski@ferc.gov](mailto:mark.pawlowski@ferc.gov). Comments 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.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-13237 Filed 5-24-02; 8:45 am]

BILLING CODE 6717-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7218-5]

**Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)**

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

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held June 11-13, 2002 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

**DATES:** Tuesday, June 11, Science/Regulatory Work Group will meet; plenary sessions Wednesday, June 12 and Thursday, June 13, 2002.

**ADDRESSES:** Hotel Washington, 515 15th Street, NW., Washington, DC.

*Agenda Items:* The meetings of the CHPAC are open to the public. The

Science/Regulatory Work Group will meet Tuesday, June 11, from 9:00 a.m. to 5:30 p.m. The plenary CHPAC will meet on Wednesday, June 12, from 9:00 a.m. to 5:30 p.m., with a public comment period at 5:00 p.m., and on Thursday, June 13, from 9:00 a.m. to 12:30 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and a report from the Science and Regulator Work Group and the Smart Growth Ad Hoc Work Group. Other potential agenda items include an informational panel on Children's Environmental Health from an Environmental Justice Perspective.

**FOR FURTHER INFORMATION CONTACT:** Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564-2188, [rodman.joanne@epa.gov](mailto:rodman.joanne@epa.gov).

Dated: May 22, 2002.

**Elizabeth Blackburn,**

*Acting Designated Federal Official.*

[FR Doc. 02-13343 Filed 5-24-02; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7218-3]

**Notification of Public Advisory NACEPT Standing Committee on Compliance Assistance Meeting; Open Meeting**

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

**ACTION:** Notification of public advisory NACEPT standing committee on compliance assistance meeting; open meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Standing Committee on Compliance Assistance will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be on a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below. National Advisory Council for Environmental Policy and Technology (NACEPT) Standing Committee on Compliance Assistance; June 4-5, 2002. Notice is hereby given that the U.S. Environmental Protection Agency (EPA)

will hold an open meeting of the NACEPT Standing Committee on Compliance Assistance (Committee) on Tuesday, June 4, 2002 from 12:30 p.m. to 5:30 p.m., and Wednesday, June 5, 2002 from 8 a.m.–3 p.m. The meeting will be held at the Hyatt Arlington at 1325 Wilson Boulevard, Arlington, VA 22209. The agenda for both days of the meeting will be focused primarily on introducing new Committee members to their role in contributing to the Agency's compliance assistance program, discussing work currently underway, identifying areas for future discussion and recommendations, and reaching consensus on organizational structure, including work plans and communication. A formal agenda will be available at the meeting.

**SUPPLEMENTARY INFORMATION:** NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92–463. NACEPT provides advice and recommendations to the EPA Administrator and other EPA officials on a broad range of domestic and international environmental policy issues.

NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies. Over the last two years, EPA has undertaken a number of actions to improve our compliance assistance activities. To ensure that the Agency efforts to improve compliance assistance are implemented in a way that continues to reflect stakeholder needs, NACEPT created a new Standing Committee on Compliance Assistance. This will provide a continuing Federal Advisory Committee forum from which the EPA can continue to receive valuable stakeholder advice and recommendations on compliance assistance activities. For further information concerning the NACEPT Standing Committee on Compliance Assistance, including the upcoming meeting, contact Joanne Berman, Designated Federal Officer (DFO), on (202) 564–7064, or E-mail: [berman.joanne@epa.gov](mailto:berman.joanne@epa.gov).

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting.

Dated: May 22, 2002.

**Lisa Lund,**

*Acting Director, Office of Compliance.*

[FR Doc. 02–13251 Filed 5–24–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0020; FRL–7181–9]

### Endocrine Disruptor Method Validation Subcommittee under the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** There will be a meeting, via teleconference, of the Endocrine Disruptor Methods Validation Subcommittee (EDMVS), a subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT), a Federal Advisory Committee, on June 11, 2002, to discuss the steroidogenesis detailed review paper. The meeting is open to the public. Due to limited phone lines, we encourage all local participants to join us at RESOLVE. Seating will be on a first-come basis. The EDMVS meeting originally scheduled for June 10–12, 2002, has been postponed. That meeting will be rescheduled for late July.

**DATES:** The teleconference will be held on June 11, 2002, from 10 a.m. to noon (eastern daylight time). Requests to participate and make public comment in the meeting must be received on or before June 6, 2002.

**ADDRESSES:** The teleconference will originate at RESOLVE, 1255 23rd St., NW., Suite 275, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jane Smith, Designated Federal Official, Office of Science Coordination and Policy (7201), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8476; fax number: (202) 564–8483; e-mail address: [smith.jane-scott@epa.gov](mailto:smith.jane-scott@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, potentially affect you if you produce, manufacture, use, consume, work with, or import pesticide chemical substances that may have an effect cumulative to an effect of a pesticide, or substances found in sources of drinking water. To determine whether you or your business may be affected by this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food

Quality Protection Act of 1996 (Public Law 104–170), 21 U.S.C. 346A(p), and amendments to The Safe Drinking Water Act (Public Law 104–182), 42 U.S.C. 300j-17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Additional Information, Including Copies of the Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page search for “Endocrine Disruptor” which will take you to the OSCP Endocrine Disruptor web site. You can also look up the entry for this document under the **Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

A meeting agenda, a list of EDMVS members and information from previous meetings is available electronically, from the EPA Internet Home Page at <http://www.epa.gov/scipoly/oscpendo>.

2. *In person.* The Agency has established an official record for this meeting under docket ID number OPPT–2002–0020. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to Endocrine Disruptor Method Validation, including any information claimed as Confidential Business Information (CBI). The public version of the official record is available for inspection in the TSCA Nonconfidential Information Center, North East Mall, Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

###### C. How Can I Request to Participate in this Meeting?

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on this detailed review paper. The EDMVS will have a brief period (no more than 15 minutes) available during the teleconference for public comment. It is the policy of the

EDMVS to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EDMVS expects that public statements presented at its meetings will be on the meeting topic and not be repetitive of previously submitted oral or written statements.

You may submit a request to participate in the meeting by e-mail, telephone, fax, or in person. We would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, we cannot assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before June 6, 2002. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT-2002-0020 in the subject line on the first page of your request.

1. *Electronically.* You may submit your request electronically by e-mail to Jane Smith at: smith.jane-scott@epa.gov or to the docket at: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPPT-2000-0020. You may also file a request online at many Federal Depository Libraries.

2. *By telephone or fax.* Contact Jane Smith, by telephone at (202) 564-8476 or by fax number at (202) 564-8483.

3. *In person or by courier.* You may deliver a request to: OPPT Docket Control Office, North East Mall, Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Docket Office is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Office is (202) 260-7099.

## II. Background

In 1996, through enactment of the Food Quality Protection Act, which amended the Federal Food, Drug, and Cosmetic Act, Congress directed EPA to develop a screening program to determine whether certain substances may have hormonal effects in humans. EPA formed a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under FACA to advise it on establishing a program to carry out the Congressional directive. EDSTAC recommended a multi-step approach including a series of screens (Tier I Screens), and tests (Tier II Tests), because there were no validated test systems for determining whether a

chemical may be an endocrine disruptor. To ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests for the EDSP, EPA recently created the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) of the National Advisory Council for Environmental Policy and Technology (NACEPT). EDMVS, a group of subject-matter experts, provides independent advice and counsel to the Agency through NACEPT, on scientific and technical issues related to validation of the EDSP Tier I screens and Tier II tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate. More information is available on the website: <http://www.epa.gov/scipoly/oscpendo>.

### List of Subjects

Environmental protection, Endocrine disruptor screening program, Endocrine disruptors.

Dated: May 23, 2002.

**Andy Privee,**

*Acting Director, Office of Science Coordination and Policy.*

[FR Doc. 02-13344 Filed 5-24-02; 8:45 am]

**BILLING CODE 6560-50-S**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Meeting of the President's Council of Advisors on Science and Technology

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

**DATES AND PLACE:** June 12, 2002, Washington, DC. This meeting will take place in the Colonial Room of the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC.

**TYPE OF MEETING:** Open.

**PROPOSED SCHEDULE AND AGENDA:** The President's Council of Advisors on Science and Technology is tentatively scheduled to meet in open session on Wednesday, June 12, 2002, at approximately 9 a.m., to discuss: (1) The science and technology of combating terrorism; (2) policies and technologies to improve energy efficiency; (3) the

federal investment in science and technology research and development; and (4) demand issues that can speed the deployment of a 21st Century broadband infrastructure. One or more of the PCAST panels on these topics will discuss the status of their work. This session will end at approximately 12:30 p.m.

**PUBLIC COMMENTS:** There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are welcome at any time prior to or following the meeting. Please notify Stan Sokul, PCAST Executive Director, at (202) 456-6070, or fax your request/comments to (202) 456-6021.

**FOR FURTHER INFORMATION CONTACT:** For information regarding time, place and agenda, please call Cynthia Chase at (202) 456-6010, prior to 3:00 p.m. on Friday, June 7, 2002. Information may also be available at the PCAST Web site at: <http://www.ostp.gov/PCAST/pcast.html>. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

**Barbara Ann Ferguson,**

*Assistant Director for Budget and Administration, Office of Science and Technology Policy.*

[FR Doc. 02-13054 Filed 5-24-02; 8:45 am]

**BILLING CODE 3170-01-P**

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****[FEMA-1414-DR]****Kentucky; Amendment No. 3 to Notice  
of a Major Disaster Declaration****AGENCY:** Federal Emergency  
Management Agency (FEMA).**ACTION:** Notice.**SUMMARY:** This notice amends the notice  
of a major disaster declaration for the  
Commonwealth of Kentucky, (FEMA-  
1414-DR), dated May 7, 2002, and  
related determinations.**EFFECTIVE DATE:** May 14, 2002.**FOR FURTHER INFORMATION CONTACT:**Madge Dale, Readiness, Response and  
Recovery and Directorate, Federal  
Emergency Management Agency,  
Washington, DC 20472, (202) 646-2705  
or [madge.dale@fema.gov](mailto:madge.dale@fema.gov).**SUPPLEMENTARY INFORMATION:** The notice  
of a major disaster declaration for the  
Commonwealth of Kentucky is hereby  
amended to include Public Assistance  
in the following areas among those areas  
determined to have been adversely  
affected by the catastrophe declared a  
major disaster by the President in his  
declaration of May 7, 2002:Breckinridge, Grayson, Laurel, Letcher,  
Marion, Pike, Rockcastle and Webster  
Counties for Public Assistance  
(already designated for Individual  
Assistance).Breathitt, Edmondson, Green and  
Owsley Counties for Public  
Assistance.All counties in the Commonwealth of  
Kentucky are eligible to apply for  
assistance under the Hazard  
Mitigation Grant Program.(The following Catalog of Federal Domestic  
Assistance Numbers (CFDA) are to be used  
for reporting and drawing funds: 83.537,  
Community Disaster Loans; 83.538, Cora  
Brown Fund Program; 83.539, Crisis  
Counseling; 83.540, Disaster Legal Services  
Program; 83.541, Disaster Unemployment  
Assistance (DUA); 83.542, Fire Suppression  
Assistance; 83.543, Individual and Family  
Grant (IFG) Program; 83.544, Public  
Assistance Grants; 83.545, Disaster Housing  
Program; 83.548, Hazard Mitigation Grant  
Program.)**Joe M. Allbaugh,***Director.*

[FR Doc. 02-13204 Filed 5-24-02; 8:45 am]

**BILLING CODE 6718-02-P****FEDERAL EMERGENCY  
MANAGEMENT AGENCY****[FEMA-1413-DR]****Michigan; Amendment No. 1 to Notice  
of a Major Disaster Declaration****AGENCY:** Federal Emergency  
Management Agency (FEMA).**ACTION:** Notice.**SUMMARY:** This notice amends the notice  
of a major disaster for the State of  
Michigan (FEMA-1413-DR), dated May  
6, 2002, and related determinations.**EFFECTIVE DATE:** May 9, 2002.**FOR FURTHER INFORMATION CONTACT:**Madge Dale, Readiness, Response and  
Recovery Directorate, Federal  
Emergency Management Agency,  
Washington, DC 20472, (202) 646-2705  
or [madge.dale@fema.gov](mailto:madge.dale@fema.gov).**SUPPLEMENTARY INFORMATION:** Notice is  
hereby given that the incident period for  
this disaster is closed effective May 9,  
2002.(The following Catalog of Federal Domestic  
Assistance Numbers (CFDA) are to be used  
for reporting and drawing funds: 83.537,  
Community Disaster Loans; 83.538, Cora  
Brown Fund Program; 83.539, Crisis  
Counseling; 83.540, Disaster Legal Services  
Program; 83.541, Disaster Unemployment  
Assistance (DUA); 83.542, Fire Suppression  
Assistance; 83.543, Individual and Family  
Grant (IFG) Program; 83.544, Public  
Assistance Grants; 83.545, Disaster Housing  
Program; 83.548, Hazard Mitigation Grant  
Program.)**Joe M. Allbaugh,***Director.*

[FR Doc. 02-13203 Filed 5-24-02; 8:45 am]

**BILLING CODE 6718-02-P****FEDERAL EMERGENCY  
MANAGEMENT AGENCY****[FEMA-1411-DR]****Virginia; Amendment No. 2 to Notice of  
a Major Disaster Declaration****AGENCY:** Federal Emergency  
Management Agency (FEMA).**ACTION:** Notice.**SUMMARY:** This notice amends the notice  
of a major disaster declaration for the  
Commonwealth of Virginia, (FEMA-  
1411-DR), dated May 5, 2002, and  
related determinations.**EFFECTIVE DATE:** May 15, 2002.**FOR FURTHER INFORMATION CONTACT:**Madge Dale, Readiness, Response and  
Recovery and Directorate, Federal  
Emergency Management Agency,  
Washington, DC 20472, (202) 646-2705  
or [madge.dale@fema.gov](mailto:madge.dale@fema.gov).**SUPPLEMENTARY INFORMATION:** The notice  
of a major disaster declaration for the  
Commonwealth of Virginia is hereby  
amended to include the following areas  
among those areas determined to have  
been adversely affected by the  
catastrophe declared a major disaster by  
the President in his declaration of May  
5, 2002: Bedford, Campbell,  
Cumberland, Greensville, Prince  
Edward, Shenandoah and the  
independent City of Bedford for  
Individual Assistance.(The following Catalog of Federal Domestic  
Assistance Numbers (CFDA) are to be used  
for reporting and drawing funds: 83.537,  
Community Disaster Loans; 83.538, Cora  
Brown Fund Program; 83.539, Crisis  
Counseling; 83.540, Disaster Legal Services  
Program; 83.541, Disaster Unemployment  
Assistance (DUA); 83.542, Fire Suppression  
Assistance; 83.543, Individual and Family  
Grant (IFG) Program; 83.544, Public  
Assistance Grants; 83.545, Disaster Housing  
Program; 83.548, Hazard Mitigation Grant  
Program.)**Joe M. Allbaugh,***Director.*

[FR Doc. 02-13202 Filed 5-24-02; 8:45 am]

**BILLING CODE 6718-02-P****FEDERAL MEDIATION AND  
CONCILIATION SERVICE****Proposed Agency Information  
Collection Activities; Comment  
Request****AGENCY:** Federal Mediation and  
Conciliation Service (FMCS).**ACTION:** Notice of Forms R-22, R-19,  
and F-7 submitted for revision,  
extension and review to the Office of  
Management and Budget.**SUMMARY:** This notice announces that  
three information collection requests  
contained in the Federal Mediation and  
Conciliation Service (FMCS) agency  
forms have come up for renewal. FMCS  
submitted to the Office of Management  
and Budget (OMB) a request for review  
of three FMCS forms: FMCS Arbitrator's  
Report and Fee Statement (Agency Form  
R-19), the Arbitrator's Personal Data  
Questionnaire (Agency Form R-22), and  
the Notice to Mediation Agencies  
(Agency Form F-7). The request seeks  
OMB approval for a three-year  
expiration date of Forms R-19, R-22  
and F-7 until December 2005. FMCS is  
soliciting comments on specific aspects  
of the collections as described below.**DATES:** Comments must be submitted  
within 60 days from the date of this  
publication in the **Federal Register**.**ADDRESSES:** Submit written comments  
identified by the appropriate agency

form number by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Office for the Federal Mediation and Conciliation Service, Room 10235, Washington, DC 20503. Copies of complete agency forms may be obtained from the Office of Arbitration Services, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427 or by contacting the person whose name appears under the section headed, **FOR FURTHER**

**INFORMATION CONTACT.**

Comments and may be submitted also by fax at (202) 606-3749 or electronic mail (e-mail) to [arbitration@fmcs.gov](mailto:arbitration@fmcs.gov). All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as "CBI". Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential publicly without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 am to 4:30 pm, Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606-5111; Fax (202) 606-3749.

**SUPPLEMENTARY INFORMATION:** Copies of each of the agency forms are available from the Office of Arbitration Services and the Notice Processing Unit, by calling, faxing or writing, Ms. Vella M. Traynham at the address above. Please ask for the form by title and agency form number.

**1. Information Collection Requests**

FMCS is seeking comments on the following Information Collection Requests (ICRs).

*Title:* Arbitrator's Personal Data Questionnaire; Form R-22; OMB No. 3076-001.

*Type of Request:* Revision and extension of expiration date of a currently approved collection with change in the substance.

*Affected Entities:* Parties affected by this information collection are individuals who apply for admission to the FMCS Roster of Arbitrators.

*Frequency:* Individuals complete this form once, which is at the time of

application to the FMCS roster of Arbitrators.

*Abstract:* Title II of the Labor Management Relations Act of 1947 (Pub. L. 90-101) as amended in 1959 (Pub. L. 86-257) and 1974 (Pub. L. 93-360), states that it is the labor policy of the United States that "the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to encourage employers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes." Under its regulations at 29 CFR part 1404, FMCS has established policies and procedures for its arbitration function dealing with all arbitrators listed on the FMCS Roster or Arbitrators, all applicants for listing on the Roster, and all person or parties seeking to obtain from FMCS either names or panels of names of arbitrators listed on the Roster in connection with disputes which are to be submitted to arbitration or fact-finding. FMCS strives to maintain the highest quality of dispute resolution experts on its roster. To ensure that purpose, it asks all candidates to complete an application form.

The purpose of this collection is to gather information about applicants for inclusion in the FMCS Roster of Arbitrators. This questionnaire is needed in order that FMCS may select highly qualified individuals for the arbitrator roster. The respondents are private citizens who make application for appointment to FMCS Roster. This obligation is pursuant to 29 U.S.C. 171(b), 29 CFR part 1404. This notice is a request to revise the existing form, which is currently approved collection with change in the substance, but not in the method of collection.

*Burden Statement:* The number of respondents is approximately 250 individuals per year; the approximate number of individuals who request membership on the FMCS Roster. The time required to complete this questionnaire is approximately one hour. Each respondent is required to respond only once per application, and updating the information as necessary.

*Title:* Arbitrator's Report and Fee Statement. Form R-19; OMB No. 3076-

0003, Expiration Date: November 30, 2001.

*Type of Request:* Revision and extension of expiration date a currently approved collection with change in the substance.

*Affected Entities:* Individual arbitrators who render decisions under FMCS arbitration policies and procedures.

*Abstract:* Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS assumes a responsibility to monitor the work of the arbitrators who serve on its roster. This is satisfied by requiring the completion and submission of a Report and Fee Statement, which indicates when the arbitration award was rendered, the file number, the company and union, the issues, whether briefs were filed and transcripts taken, if there were any waivers by parties on the date the award was due, and the fees and days for services as an arbitrator. This information is then contained in the agency's annual report to indicate the types of arbitration issues, the average or median arbitration fees and days spent on cases. This notice request is for a revision of the form that is currently approved for collection; no change in the substance or method of collection is involved.

*Frequency:* This form is completed each time an arbitrator hears an arbitration case and issues a decision.

*Burden Statement:* FMCS receives approximately 2500 responses per year. The form is only filled out each time an arbitrator hears a case and the time required is approximately ten minutes. FMCS uses this form to review arbitrator conformance with its fee and expense reporting requirements. This information is then contained in the agency's annual report to indicate the types of arbitration issues, the average or median arbitration fees and days spent on cases.

*Title:* Notice to Mediation Agencies, FMCS Form F-7, OMB No. 3076-0004, Expiration date: November 31, 1998.

*Type of Request:* Revision and extension of expiration date of a currently approved collection with no major changes in the substance.

*Affected Entities:* Parties affected by this information collection are private sector employers and labor unions involved in interstate commerce who file notices for mediation services to the FMCS and state, local and territorial agencies, who receive copies of these notice filed.

*Frequency:* Individuals complete this form once, which is at the time of an impending expiration of a collective bargaining agreement.

*Abstract:* Under the National Labor Management Relations Act, 1947, 29 U.S.C. 158(d)(3), Congress listed specific notice provisions creating a duty to bargain collectively so that no party to a collective bargaining agreement could terminate or modify that contract, unless the party wishing to terminate or modify the contract is sent a written notice to the other party, sixty days prior to the expiration date (section 8(d)(1) and offered to meet and confer with the other party for the purpose of negotiating a new or modified contract (section 8(d)(2)). Furthermore, the Act requires that the party notify the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute and simultaneously notify any State or Territory where the dispute occurred (section 8(d)(3)). The 1974 amendments to the NLRA, which extended coverage to nonprofit health care institutions, also created a notification procedure in the health care industry requiring parties to notify each other 90 days in advance of termination and 60 days to the mediation service. This amendment also required notification of initial bargaining situations (notification of the existence of a dispute) to the FMCS, within 30 days.

To facilitate handling of more than 18,000 such notices a year, FMCS created a specific information collection form. The purpose of this information collection activity is for FMCS' Notice Processing Unit (NPU) to comply with FMCS' statutory duty to receive these notices, to facilitate assignment of mediators to assist in labor disputes, and to assist the parties in knowing whether or not proper notice was given. The information from these notices is sent electronically to the appropriate field manager who assigns the cases to the mediator so they may contact labor and management quickly, efficiently, and offer their dispute resolution services, where applicable.

Either party to a contract may make a request in writing for a copy of the notice filed with FMCS. These notices are critical to the function of FMCS and fulfill a statutory purpose as well.

The F-7 form was created to establish conformity throughout interstate commerce and to allow FMCS to gather desired information in a uniform manner. The collection of such information, including the name of the employer or employer association, address and phone number, e-mail address, official contact, bargaining unit and establishment size, location of affected establishment and negotiations, industry or type of business, principal product or service, union address,

phone number, e-mail address and official contact, contract expiration date or renewal date, whether the notice is on file on behalf of the employer or the union, and whether this is a health care industry notice for initial contracts, is critical for reporting and medication purposes.

*Burden Statement:* The current annual respondent burden estimate is approximately 18,000 respondents. This one-page form takes about 10 minutes to complete, for a total of 180,000 minutes or 166 annual hours.

## II. Request for Comments

FMCS solicits comments to:

(i) 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.

(ii) Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, e.g., permitting electronic and fax submission of responses.

## III. The Official Record

The official record is the paper electronic record maintained at the address at the beginning of this document. FMCS will transfer all electronically received comments into printed-paper form as they are received.

Dated: May 20, 2002.

**C. Richard Barnes,**

*Director.*

[FR Doc. 02-13037 Filed 5-24-02; 8:45 am]

**BILLING CODE 6372-01-M**

## 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 June 11, 2002.

**A. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *George Richard Dill*, Fife, Washington, to acquire additional voting shares of Puget Sound Financial Services, Inc., Fife, Washington, and thereby indirectly acquire additional voting shares of Fife Commercial Bank, Fife, Washington.

Board of Governors of the Federal Reserve System, May 21, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02-13179 Filed 5-24-02; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 2002.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. *First Security Bancorp, Inc.*, Chattanooga, Tennessee; to acquire 100 percent of the voting shares of First State Bank, Maynardville, Tennessee.

**B. Federal Reserve Bank of Minneapolis** (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *State Bank of Hawley, Inc.*, Hawley, Minnesota; to acquire an additional 6 percent, for a total of 38.8 percent of the voting shares of Bankshares of Hawley, Inc., Hawley, Minnesota, and thereby indirectly acquire State Bank of Hawley, Hawley, Minnesota.

**C. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *ITLA Capital Corporation*, La Jolla, California; to become a bank holding company by acquiring 100 percent of the voting shares of Imperial Capital Bank, Encino, California.

In connection with this application, Applicant also has applied to acquire ITLA Capital Real Estate Investment Trust, La Jolla, California, and thereby engage in lending activities, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02-13180 Filed 5-24-02; 8:45 am]

BILLING CODE 6210-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Secretary's Advisory Committee on Regulatory Reform

**AGENCY:** Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given of a public meeting of the Department of Health and Human Services (HHS) Secretary's Advisory Committee on Regulatory Reform. As governed by the Federal Advisory Committee Act in accordance with Section 10(a)(2), the Secretary's Advisory Committee on Regulatory Reform is seeking guidance

for the Department's efforts to streamline regulatory requirements. The Advisory Committee will advise and make recommendations for changes that would be beneficial in four broad areas: health care delivery, health systems operations, biomedical and health research, and the development of pharmaceuticals and other products. The Committee will review changes identified through regional public hearings, written comments from the public, and consultation with HHS staff.

All meetings and hearings of the Committee are open to the general public. During each meeting, invited witnesses will address how regulations affect health-related issues. Meeting agendas will also allow some time for public comment. Additional information on each meeting's agenda and list of participating witnesses will be posted on the Committee's Web site prior to the meetings (<http://www.regreform.hhs.gov>).

**DATES:** The third full meeting of the Secretary's Advisory Committee on Regulatory Reform will be held on Monday, June 10, from 8 a.m. to 6 p.m. and on Tuesday, June 11, from 8 a.m. to 6 p.m.

**ADDRESSES:** The hearing will be held at the Hyatt Regency Minneapolis, 1300 Nicollet Mall, Minneapolis, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** Margaret P. Sparr, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW, Room 344G, Washington, DC, 20201, (202) 401-5182.

**SUPPLEMENTARY INFORMATION:** The Hyatt Regency Minneapolis is in compliance with the Americans with Disabilities Act. Anyone planning to attend the meeting who requires special disability-related arrangements such as sign-language interpretation should provide notice of their need by Thursday, June 6, 2002. Please make any request to Dianne Norcutt—phone: 301-628-3146; fax: 301-628-3101; email: [dnorcutt@s-3.com](mailto:dnorcutt@s-3.com).

On June 8, 2001, HHS Secretary Thompson announced a Department-wide initiative to reduce regulatory burdens in health care, to improve patient care, and to respond to the concerns of health care providers and industry, State and local Governments, and individual Americans who are affected by HHS rules. Common sense approaches and careful balancing of needs can help improve patient care. As part of this initiative, the Department is establishing the Secretary's Advisory Committee on Regulatory Reform to

provide findings and recommendations regarding potential regulatory changes. These changes would enable HHS programs to reduce burdens and costs associated with departmental regulations and paperwork, while at the same time maintaining or enhancing the effectiveness, efficiency, impact, and access of HHS programs.

Dated: May 21, 2002.

**William Raub,**

*Deputy Assistant Secretary for Planning and Evaluation.*

[FR Doc. 02-13182 Filed 5-24-02; 8:45 am]

BILLING CODE 4151-05-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

#### Statement of Organization, Functions, and Delegations of Authority

This notice amends Part B of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration on Aging (AoA) as follows: Part B, Administration on Aging (60 FR 65338-65346), as last amended, December 19, 1995—continues the Office of the Assistant Secretary for Aging (OASA), abolishes the Congressional and White House Liaison, and establishes the Office of Evaluation Staff within the OASA, moving evaluation responsibilities from the Division of Personnel and Planning to this Office; establishes the Center for Communication and Consumer Services; establishes the Center for Planning and Policy Development (CPPD) and moves all planning and policy responsibilities from the Executive Secretariat and Policy Coordination Office and the Division of Personnel and Planning to CPPD; retitles the Office of Management as the Center for Management (CM), moves the Executive Secretariat from OASA to CM, retitles the Division of Personnel and Planning as the Office of Administrative Services, retitles the Division of Grants and Contracts as the Office of Grants Management, retitles the Division of Budget and Finance as the Office of Budget and Finance, and retitles the Division of Information Resources Management as the Office of Information Resources Management; retitles the Office of Program Operations and Development as the Center for Wellness and Community-Based Services (CWCBS), moves the function of the Office of Governmental Affairs and Elder Rights (OGAER) to CWCBS,



retitles the subordinate Office of Elder Rights Programs in OGAER as the Office of Consumer Choice and Protection in CWCBS, retitles the Office of State and Community Programs as the Office of Community-Based Services, retains the Office of American Indian, Alaskan Native, and Native Hawaiian Programs, and retitles the Regional Offices on Aging as the Administration on Aging Regional Support Centers. This reorganization of AoA offices will achieve several important objectives: it will streamline the organization; consolidate and elevate AoA's external communications functions; focus AoA's programmatic efforts on those areas of greatest importance to older Americans; and strengthen and centralize its analytic and policy development activities.

This Part is amended as follows:

I. Delete Part B, "The Administration on Aging" in its entirety and replace with the following:

B.00 Mission  
B.10 Organization  
B.20 Functions

**B.00 Mission.** The Administration on Aging (AoA) is the principal agency designated to carry out the provisions of the Older Americans Act ("OAA" or "The Act") of 1965, as amended, 42 U.S.C. 3001 et seq., and the Alzheimer's Disease Demonstration Grants to States Program, established under section 398 of the Public Health Service Act (PHSA) as amended by Public Law 101-157, and by Public Law 105-379, the Health Professions Education Partnerships Act of 1998. AoA serves as the effective and visible advocate for older persons within the Department of Health and Human Services (DHHS), and other Federal agencies. AoA assists the Secretary in all matters pertaining to opportunities and challenges of the elderly. It advocates for the needs of older persons in program planning and policy development within the Department and in other Federal agencies.

**B.10 Organization.** The Administration on Aging is a principal operating division of the Department of Health and Human Services, which is headed by the Assistant Secretary for Aging who reports directly to the Secretary. In addition to the Assistant Secretary, the AoA consists of the Principal Deputy Assistant Secretary and Staff and Program Offices. AoA is organized as follows:

Office of the Assistant Secretary for Aging (BA)  
Center for Management (BE)  
Center for Wellness and Community Based Services (BF)

Center for Communication and Consumer Services (BG)  
Center for Planning and Policy Development (BH)

**B.20 Functions.** The Administration on Aging develops, recommends and issues policies, procedures and interpretations to provide direction to the programs it administers. It develops standards and issues best practice guidelines; disseminates information; provides technical assistance; and initiates policy related to services funded by the Department and provided to older persons. Advises the Secretary, Departmental components and other Federal departments and agencies on the characteristics, circumstances and needs of older people and develops policies, plans and programs designed to promote their welfare; under Title III of the Act administers a program of formula grants to States to establish State and community programs for older persons; administers a program of grants to American Indians, Alaskan Natives and Native Hawaiians to establish programs for older Native Americans under Title VI of the Act. Provides policy and procedural direction, advice and assistance to States and Native American grantees to promote the development of State and Native American-administered, community-based service systems of comprehensive social services for older persons.

Administers long-term care ombudsman and protective services programs and legal services development programs for older people under Title VII of the Act. Approves or disapproves State plans and Native American funding applications. Administers programs of training, research and demonstration under Title IV of the Act and section 398 of the Public Health Service Act as amended. Administers national centers for service development and assistance, and information dissemination benefiting older persons.

Promotes through the State and Area Agencies on Aging and Indian Tribal Organizations a national community-based long-term care program for older persons. Develops and issues program designs, guidelines, standards and assistance to State and Area Agencies, Indian Tribal Organizations and nutrition providers to support Titles III and VI nutrition services and disseminate nutrition education material.

The functions of the organizational units of AoA are described in detail in the succeeding Parts.

II. Establish Part BA, the Office of the Assistant Secretary for Aging, as follows:

BA.00 Mission  
BA.10 Organization  
BA.20 Functions

**BA.00 Mission.** The Office of the Assistant Secretary for Aging provides executive direction, leadership, and guidance for OAA programs and the PHSA Alzheimer's Program, and serves as the focal point for the development, coordination and administration of those programs nationwide. The Office advises the Secretary on issues affecting America's elderly population.

**BA.10 Organization.** The Office of the Assistant Secretary for Aging is headed by an Assistant Secretary, who reports to the Secretary and consists of:

The Office of the Assistant Secretary (BA)  
Office of Evaluation Staff (BA-1)

**BA.20 Functions.** A. The Office of the Assistant Secretary is responsible to the Secretary for carrying out AoA's mission and provides executive supervision to the major components of AoA. The Office serves as the effective and visible advocate within the Federal government to ensure the rights and entitlements of the elderly.

Sets national policies, establishes national priorities, ensures policy consistency, and directs plans and programs conducted by AoA. Advises the Secretary, HHS agencies, and other Federal agencies on the characteristics, circumstances, and needs of older people, and on policies, plans and programs designed to promote their welfare. The Principal Deputy Assistant Secretary serves as the Assistant Secretary's primary associate in carrying out the mission of the agency.

In collaboration with other Federal agencies, develops and implements interagency agreements to assist older persons. Provides liaison with other Federal advisory committees focused on the aging. Works with national aging organizations, professional societies, and academic organizations to identify mutual interests and plan voluntary and funded approaches to meet the needs of older persons. Ensures affirmative action throughout the Aging Network in employment and service delivery.

B. The Office of Evaluation implements, oversees and manages responsibilities assigned by the Government Performance and Results Act of 1993 (GPRA). Interprets AoA goals, priorities, and strategies for consistency with AoA long-range GPRA goals and strategies, and adjusts GPRA goals and strategies accordingly. Provides guidance and technical assistance to AoA organizational units in developing operational plans, particularly in developing measurable objectives and indicators reflecting

program and organizational performance. Prepares AoA's annual GPRA plan and report.

Develops AoA plans and priorities for evaluation of AoA formula grant programs, with subject matter input from appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA, with technical input from other AoA units. Provides technical guidance on evaluation activities conducted as part of AoA's discretionary grants programs.

Coordinates AoA activities related to the collection, analysis, and dissemination of national and program data on older individuals. Develops and manages all aspects of data requirements associated with home and community-based services programs under Title III of the OAA.

Develops and designs the criteria for collecting, analyzing and disseminating program performance data on State and Area Agencies' implementation of OAA programs, and prepares that data for reporting to Congress and the public. Designs, implements and provides guidance and technical assistance to State and Area Agencies on Aging and service providers on data collection and analysis (Section 202(b)(28)) and on uniform data collection procedures for State Units on Aging (Section 202(b)(29)).

Develops and operates a National Aging Program Information System focused on the information needs of AoA and the Network on Aging to both manage and advocate for the delivery of effective and efficient services to the elderly. Provides liaison with the Federal Task Force on Aging Statistics; in support of planning and program requirements; performs routine and special statistical analyses of data for AoA offices, other Federal and non-Federal organizations, and the general public.

III. Establish Part BE, Center for Management, as follows:

BE.00 Mission  
BE.10 Organization  
BE.20 Functions

*BE.00 Mission.* The Center for Management (CM) advises the Assistant Secretary for Aging on financial, grants, information resources, procurement, administrative and human resources management activities of AoA.

*BE.10 Organization.* The Center for Management is headed by a Director who reports directly to the Assistant Secretary for Aging. The Center is organized as follows:

Office of the Director (BE)  
Executive Secretariat (BE-0)  
Office of Budget and Finance (BE1)  
Office of Administrative Services (BE2)  
Office of Grants Management (BE3)  
Office of Information Resources Management (BE4)

*BE.20 Functions.* A. The Office of the Director directs and coordinates all activities of the Center for Management (CM). The Director serves as the AoA's Chief Financial Officer (CFO); Chief Grants Management Officer; Federal Managers' Financial Integrity Act (FMFIA) Management Control Officer; Chief Information Resources Management Official; and Reports Clearance Officer. The Director serves as principal advisor and counsel to the Assistant Secretary for Aging on all aspects of internal administration and management of AoA, and serves as the AoA liaison with the Assistant Secretary for Administration and Management, the Assistant Secretary for Budget, Technology and Finance, the Office of the General Counsel, the Office of the Inspector General, the General Accounting Office, and the Office of Management and Budget for areas under CM purview. The Office advises the Assistant Secretary for Aging on financial, grants, information resources, procurement, administrative and human resources management activities. The Office develops, administers, and coordinates financial, operational, and budgetary policies, processes, and controls necessary to administer AoA programs and financial resources; directs discretionary and formula grants activities; oversees the utilization of information resources, information systems and telecommunications management in AoA; and coordinates AoA's internal control activities.

B. The Executive Secretariat (ES) coordinates essential policy and program concerns and ensures that issues requiring the attention of the Assistant Secretary, Deputy Assistant Secretary, and/or executive staff are addressed on a timely and coordinated basis. It serves as the AoA liaison with the HHS Executive Secretariat. ES receives, assesses, and controls incoming correspondence and assignments to the appropriate AoA component(s) for response and action; provides assistance and advice to AoA staff on the development of responses to correspondence and on the controlled correspondence system; and tracks development of periodic reports and facilitates departmental clearance. Maintains official copies of all policy and information issuances and data collection instruments, ensuring proper clearance before issuance and annually

reviews for accuracy and compliance with laws and regulations; reviews all materials for **Federal Register** publication, ensuring compliance with guidelines; serves as records manager providing assistance to both Headquarters and Regional Support Centers staff regarding filing practices, retention and disposition of records. The Director of the Executive Secretariat Office serves as liaison with the Office of the **Federal Register** on regulatory actions and the Office of the Inspector General and the General Accounting Office on all program matters other than those related to grants or procurement management; and serves as the Freedom of Information Act (FOIA) Officer for AoA, reviews FOIA requests, and arranges for appropriate responses in coordination with the DHHS FOIA Officer.

C. The Office of Budget and Finance (OBF) supports the Director for the Center for Management in fulfilling AoA's Chief Financial Officer and Management Control Officer responsibilities including preparation of the CFO 5 Year Plan, and oversees and coordinates AoA's FMFIA activities.

OBF is responsible for budget formulation and execution and financial management. In coordination with AoA program offices, formulates and presents budget estimates; executes apportionment documents; plans, directs, and coordinates financial and budgetary programs of AoA. Provides guidance to AoA program offices in preparing budgets, justifications, and other budgetary materials. Solicits, obtains and consolidates information and data from other AoA offices, and prepares budget documents on behalf of the Assistant Secretary for presentation to the Department, the Office of Management and Budget (OMB), and Congress. Analyzes the budget as approved by the Congress and apportioned by OMB, obtains input from program offices and recommends for the Assistant Secretary's approval a financial plan for its execution. Makes allowances to AoA offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both program—including all formula discretionary grant accounts—and Salaries and Expense funds; maintains administrative control of funds against allotments and allowances; certifies funds availability for all AoA accounts; and coordinates the management of AoA's interagency agreement activities. Prepares requests for apportionment of appropriated funds; maintains separate financial operating plans for each of the

Regional Support Centers; and prepares spending plans and status-of-funds reports for the Assistant Secretary. Develops financial operating procedures and manuals; coordinates the preparation of AoA's financial audits; and provides analysis on financial issues. Serves as the AoA liaison with the Office of the Secretary and OMB on all budgetary matters. Acts as AoA's coordination point for all travel management activities; provides technical assistance and oversight on the use of the Travel Management System; manages employee participation in the Travel Charge Card program, and coordinates Travel Management Center services for AoA.

D. The Office of Administrative Services (OAS) provides support to AoA in the areas of personnel, management analysis, facilities, acquisitions, and other human resources and administrative services. Prepares, coordinates and disseminates information, policy and procedural guidance on human resource and administrative management issues on an agency-wide basis. Plans, organizes and conducts management studies of organizational structures, functional statements, job structure, staffing patterns, management and administrative information systems. Develops and maintains organizational functional statements and delegations of authority for AoA.

Provides direction to meet the human resource management needs within AoA. The Office is responsible for providing leadership, guidance, oversight and liaison functions for personnel related issues and activities as well as other administrative functions. Coordinates with the Department to provide staff with personnel services including position management, performance management, employee recognition, staffing, recruitment, employee and labor relations, employee assistance, payroll liaison, staff development and training, and special hiring and placement programs. Provides oversight and direction to meet the administrative needs of AoA components. Serves as liaison with the Office of the Secretary, the General Services Administration (GSA), and outside vendors to plan, develop and coordinate guidelines and activities for space and facilities services. Serves as the lead for AoA in coordination and liaison with Departmental, GSA, Federal Protective Service, and other Federal agencies for planning and executing the Agency's environmental health, safety and physical security programs.

The Office assists other AoA components in securing contractor assistance by advising on appropriate acquisition vehicles, developing statements of work, and managing the technical aspects of contracts. Monitors the use of credit cards for small purchases and establishes and manages contracts and/or blanket purchase agreements for administrative support and facilities management services.

The Office of Grants Management (OGM) serves as AoA's focal point for management, leadership and administration of discretionary and formula grants, and cooperative agreements. Provides national policy oversight and development for grants management and administration matters. Ensures that all grant awards conform to applicable statutory, regulatory, and administrative policy requirements, both before and following award. Maintains liaison and coordination with appropriate AoA and HHS organizations to ensure consistency between AoA discretionary and formula grant award activities, and the Department's payment systems for grants.

Ensures that the administrative business and financial management aspects of discretionary grants administration are carried out and grantee performance is monitored. Performs cost analysis/budget analysis for all discretionary grant award documents and negotiates grant budgets, executing all awards for AoA Headquarters. Advises and assists management and program officials in developing, implementing and evaluating program plans, strategies, regulations, announcements, guidelines and procedures. Recommends approval or disapproval of any grant applications based on programmatic considerations. Only the Office of Grants Management has the authority to obligate the Government to the expenditure of funds for grants and cooperative agreements. Serves as liaison with other offices in the Department.

Issues and maintains control over formula grant awards under the OAA, and makes adjustments to previously issued formula grant awards. In coordination with all AoA Headquarters and Regional Support Centers having grant administrative responsibilities: reviews and assesses AoA formula grant award procedures; directs and/or coordinates management initiatives to improve formula grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among AoA programs; establishes priorities and develops

procedures for grantee financial monitoring; and, reviews activities at the field level for all AoA discretionary and formula grant programs. For formula grant activities, develops financial management standards for State and Area Agencies and provides guidance on and interpretation of applicable federal regulations to AoA staff. Based on formula grants management policies and procedures approved by the Department, reprograms formula grant funds as required under the OAA. Following consultation with all Headquarters and Regional Support Centers having grant administrative responsibilities, and with the approval of the Assistant Secretary: develops AoA instructions and procedures for the administration of the business aspects of all discretionary and formula grants, including those approved in AoA Regional Support Centers. Provides training, technical assistance, overall guidance, monitoring and assistance to AoA staff in all areas of administrative and financial management of grants. Has primary responsibility for developing grants management policy issuances, and ensuring consistent policy interpretation within AoA concerning grants management. Serves as AoA liaison with the General Accounting Office (GAO), the HHS Office of the Inspector General and the Department's Office of Grants and Acquisition Management on grant matters. Assists at discretionary and formula grant hearings, before the Departmental Appeals Board, in response to disallowances and other financial claims by AoA, State Agencies on Aging, and other grantees. Responds to Departmental and General Accounting Office audit reviews, ensuring proper analysis and resolution of audit findings by Regional Support Centers for final action by the Assistant Secretary. Coordinates receipt and processing of all grant and contract related materials.

F. The Office of Information Resources Management (OIRM) provides information technology services to AoA and develops policies, standards, guidelines, and procedures. The OIRM Director serves as the principal OIRM Official, responsible for delegations of procurement authority and the annual five-year long-range plan. The Office provides or contracts for the management, maintenance and operation of AoA's automated information system, including the LAN, personal computers, software, and support systems and services; provides or contracts for training and technical assistance in all AoA systems, hardware

and software; coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the system; develops and implements procurement strategies for ADP support services; reviews all ADP acquisition documentation for compliance with applicable laws and regulations as well as for procurement strategy, assessing the need for and defining the specifications for procurement of all hardware and software for AoA; recommends and defines the need to share ADP services through inter-government, inter-departmental and interagency agreements; directs and coordinates AoA's systems security and privacy responsibilities, including protection, security and integrity of AoA data; in coordination with the Executive Secretariat coordinates mandated OMB approvals required under the Paperwork Reduction Act of 1980, as amended; represents AoA on the Department's IRM Policy and Planning Board.

The Office is responsible for establishing and maintaining a secure Inter- and intranet presence. It provides telecommunications planning, budgeting and management for AoA, including procurement, installation, alterations, and maintenance of telecommunications equipment and services such as telephones, pagers, cellular phone service, cable TV service, and audio conferencing equipment and services; provides liaison with HHS and GSA on telecommunications matters; and provides assistance to AoA components to identify telecommunications needs and use of communications equipment and systems.

IV. Establish Part BF, Center for Wellness and Community-Based Services, as follows:

BF.00 Mission  
BF.10 Organization  
BF.20 Functions

**BF.00 Mission.** The Center for Wellness and Community-Based Services (CWCBS) advises the Assistant Secretary for Aging on and provides leadership related to programs under the OAA.

**BF.10 Organization.** A Director who reports directly to the Assistant Secretary for Aging heads the Center for Wellness and Community-Based Services. The Center is organized as follows:

Office of the Director (BF)  
Office for Community-Based Services (BF1)  
Office for American Indian, Alaskan Native, and Native Hawaiian Programs (BF2)

Office for Consumer Choice and Protection (BF3)  
AoA Regional Support Centers (BD1 to BD10)

**BE.20 Functions.** A. The Office of the Director provides program expertise on program development, advocacy and initiatives within assigned areas. Provides leadership on behalf of Titles III, VI and VII of the OAA, and those parts of Title II and Title IV of the OAA for which the Office is responsible. Works in conjunction with the Office of Evaluation to plan, direct and evaluate the programs under the OAA designed to provide planning, coordination and services to older Americans through grant programs authorized under Titles II, III, IV, VI, and VII of the OAA.

Consults with and provides technical assistance to and education for State and Area Agencies on Aging, Tribal grantees, and local community service providers in the development of plans, goals, and system development activities. Ensures that statutory requirements, regulations, policies, and instructions are implemented for Titles III, VI and VII, and for the functions under Title II and Title IV for which the Office is responsible. In addition, the Director provides oversight and leadership to the Nutrition Officer established in Title II of the OAA who provides technical assistance and guidance to Regional Support Centers, States, Area Agencies on Aging and community service providers.

The Director carries out the functions of the Office of Long-Term Care Ombudsman Programs established in Section 201(d)(1) of the OAA. Serves as the effective and visible advocate regarding Federal policies and laws that may adversely affect the health, safety, welfare, or rights of older residents of long-term care facilities; reviews Federal legislation, regulations, and policies regarding long-term care ombudsman programs and makes recommendations to the Secretary and Assistant Secretary; coordinates the activities of AoA with other Federal, State and local entities relating to long-term care ombudsman programs; prepares an annual report to Congress on the effectiveness of services provided by State long-term care ombudsman programs; and establishes standards for the training of State long-term care ombudsman staff.

Supervises and provides technical guidance to the Regional Support Centers as they implement the national programs of the OAA. Ensures that clear and consistent guidance is given on program and policy directives. Issues substantive operating procedures to guide Regional staff of AoA in the conduct of their responsibilities; establishes standards for performance

plans and regularly assesses the performance against the established standards.

B. The Office for Community-Based Services (OCBS) serves as the focal point within AoA for the operation, administration, management, and assessment of the programs authorized under Title III of the OAA. In addition, the Office performs the functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about aging services and programs in order to enhance service coordination and delivery.

Implements Title III of the OAA through the development of regulations, policies and guidance governing the development and enhancement of comprehensive and coordinated home and community-based care service delivery systems by State and Area Agencies on Aging. This includes implementing and enhancing systems for supportive services and the operation of multi-purpose senior centers, congregate and home-delivered nutrition services, health promotion and disease prevention services, and caregiver support and assistance services.

Provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III funds among States. Fosters, oversees, ensures accountability and assesses the implementation of Title III by States and Area Agencies through guidance and direction to Regional staff regarding program reviews, and program and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement.

Directs and assesses the development of State-administered, home and community-based long-term care systems, and social and supportive services for the elderly. Initiates and encourages expansion of the capacities of home and community-based social service and health care systems to deliver comprehensive services to the elderly. Provides technical and subject matter expertise for the development of these systems, targeted at enhancing the capabilities of State and Area Agencies and local community service delivery programs to improve their service to older people. Coordinates with the Center for Planning and Policy Development to achieve a fully

integrated approach for the enhancement of systems of care throughout the nation.

Provides specialized input on programs under the OAA to long-range planning, operational plans and the budget process.

Carries out the functions of the designated nutrition officer, who coordinates nutritional services under the Act and develops the regulations and guidelines, and provides technical assistance regarding nutrition to the AoA Regional Support Centers, State and Area Agencies, nutrition service providers, and other organizations; serves as the liaison to the United States Department of Agriculture and other Federal agencies and organizations related to nutrition policy and program issues.

Coordinates with the Office of Evaluation to conduct operational studies, program analyses, and evaluations on special issues of concern to the Secretary, the Assistant Secretary, Regional Support Centers, and State and Area Agencies on Aging. Prepares reports on program operations under Title III for the Assistant Secretary, other AoA offices, the Secretary, the President, Congress and the public. Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential Title III program and management issues and develops recommendations to the Assistant Secretary on possible solutions.

C. The Office of American Indian, Alaskan Native, and Native Hawaiian Programs (OAIANNHP) administers programs authorized by Title VI of the Older Americans Act, including the Tribal Family Caregiver Support Program formula and discretionary grants. On behalf of individuals who are older Native Americans, serves as the effective and visible advocate within the Department, with other Departments and agencies of the Federal Government, and with State, local and tribal governments providing leadership and coordination of activities, services and policies affecting American Indians, Alaskan Natives and Native Hawaiian elders; advocates and promotes linkages among national Indian organizations, national aging organizations, and national provider organizations with the goal of enhancing the interests of and services to Native American elders. Recommends to the Assistant Secretary policies and priorities with respect to the development and operation of programs and activities relating to individuals who are older Native Americans. The Office coordinates activities among other Federal

departments and agencies to ensure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination. Carries out the following responsibilities of Title II: evaluates the outreach under Title III and Title VI and recommends necessary action to improve service delivery, outreach, and coordination between Title III and Title VI services; encourages and assists the provision of information to older Native Americans with need for Supplemental Security Income, Medicaid, food assistance, housing assistance, and transportation assistance; develops research plans, conducts and arranges for research in the field of Native American aging; collects, analyzes, and disseminates information related to problems experienced by older Native Americans, including information on health status of older individuals who are Native Americans, elder abuse, in-home care, and other problems unique to Native Americans; develops, implements, and oversees the uniform data collection procedures for Tribal and Native Hawaiian Organizations; and implements and oversees the consultation requirements of Title II as they apply to Native American issues.

Chairs the Interagency Task Force on Older Indians which is comprised of representatives from the Federal departments and agencies with an interest in the welfare of individuals who are older Indians and makes recommendations to the Assistant Secretary at six-month intervals, to facilitate coordination among Federally funded programs and improve services to older Indians.

Provides the Native American input to the Center for Planning and Policy Development for inclusion in AoA's research plan. In addition, collaborates with the Center for Community-Based Services on Title VI—Title III coordination.

Provides input and feedback to the Center for Planning and Policy Development for the development and operation of Resource Centers on Native American Elders, which gather information, perform research, provide for dissemination of results of the research, and provide technical assistance and training to those who provide services to Native American elders.

Provides specialized input on Title VI programs and the Native American components of Title II and Title VII—B programs to other Offices for long-range planning, operational plans, research and training, and the budget process. Determines the Title VI grant amounts from annual appropriations. Develops

testimony and background documents concerning Native Americans for use by the Assistant Secretary.

Serves as the AoA focal point for the administration and assessment of the programs authorized under Title VI and the Native American Organization provisions of Title VII—B of the OAA, including administering grants, cooperative agreements and contracts. Implements the American Indian, Alaskan Native, and Native Hawaiian programs in the field through provision of program and policy direction, training and oversight to the Regional Support Centers in the execution of the Native American components of their Title II, Title VI and Title VII—B responsibilities. Oversees the Regional Support Centers' monitoring of Title VI grantees. Arranges for and manages ongoing training and technical assistance for Title VI grantees. Coordinates additional training and technical assistance with other projects managed by the Center for Planning and Development.

D. The Office for Consumer Choice and Protection (OCCP) develops and carries out the ombudsman, elder abuse prevention, legal assistance development, and pension counseling provisions of Titles II and VII of the OAA throughout the Aging Network, including administration of the National Ombudsman Resource Center and the National Center on Elder Abuse, and advising the Assistant Secretary on the operation of those Centers. In addition, OCCP administers the Senior Medicare Patrol projects under Title IV of the OAA and the Health Insurance Portability and Accountability Act of 1997.

Reviews State Plans to determine eligibility for funding under the OAA and recommends approval or disapproval to the Assistant Secretary. Implements Title VII in the field through provision to Regional Support Centers guidance and information concerning AoA programs, and the development and interpretation of Title VII program regulations and policy. Ensures the implementation of guidance and instructions concerning long-term care ombudsman, prevention of elder abuse, and elder rights and legal assistance development programs. Provides guidance and leadership in the development of the pension counseling program and effective models for nationwide replication.

Fosters, oversees, ensures accountability and assesses the implementation of Title VII by States through guidance and direction to Regional staff regarding program reviews, and program and system

development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement.

Conducts staff functions and responsibilities for the operation of the Long-Term Care Ombudsman Program and makes recommendations to the Director of the Center for Wellness and Community-Based Services for program and policy enhancement.

Serves as the agency's focal point for coordinating, implementing, monitoring, expanding, evaluating, and promoting efforts to provide consumer information, education and protection designed to detect, prevent and report error, fraud and abuse in the Medicare and Medicaid programs. Provides in-depth expertise, information, leadership and technical assistance through the Regional Support Centers to the Senior Medicare Patrol network and serves as a reliable clearinghouse of information for the aging network, older persons and their families. Provides specialized input on Title VII and consumer protection programs to long-range planning, operational plans and the budget process. Develops program plans and instructions for AoA Regional Support Centers and State and Area Agencies to improve the Title VII protection and representational programs funded under the OAA.

E. The AoA Regional Support Centers report to the Director, CWCBS and are headed by a Regional Administrator (RA).

The Regional Support Centers serve as the focal point for the development, coordination and administration of OAA programs within the designated HHS region. Represent the Assistant Secretary for Aging within the region, providing information for, and contributing to the development of, national policy dealing with the elderly. Based on national policy and priorities, establish field program goals and objectives. Serve as the effective and visible advocates for the elderly to Federal agencies in their geographic jurisdiction to ensure the rights and entitlement of the elderly; advise, consult and cooperate with each Federal agency proposing or administering programs or services related to the aging; coordinate and assist in the planning and development by public (including Federal, State, Tribal and local agencies) and private organizations of comprehensive and coordinated services and opportunities for older individuals in each community of the nation; conduct active public education of officials and citizens and the aged to

ensure broad understanding of the needs and capabilities of the aged.

Monitor, assist and evaluate State Agencies on Aging administering programs supported under Titles II, III and VII of the OAA, and Indian Tribal Organizations administering projects under Title VI. Review OAA State Plans on Aging and recommend approval or disapproval to the Assistant Secretary for Aging, as appropriate. Review applications and recommend approval or disapproval of Title VI applications to the Assistant Secretary.

Advise the Assistant Secretary of problems and progress of programs through the Director, CWCBS; recommend to the Assistant Secretary changes that would improve OAA operations; evaluate the effectiveness of OAA and related programs in the Regions and recommend to the Assistant Secretary or take positive action to gain improvement; and guide agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional Support Center, State and Tribal levels to enhance resources and assistance available to the elderly. Disseminate and provide technical assistance regarding program guidelines and developments to State and Area Agencies, Indian Tribal Organizations and local community service providers.

V. Establish a new Part BG as follows:  
The Center for Communication and Consumer Services.

BG.00 Mission  
BG.10 Organization  
BG.20 Functions

**BG.00 Mission.** The Center for Communication and Consumer Services (CCCS) provides leadership and a central strategic focus for AoA's public information, education, consumer services, and outreach activities.

**BG.10 Organization.** A Director who reports to the Assistant Secretary for Aging heads the Center for Communication and Consumer Services.

**BG.20 Functions.** The Center for Communication and Consumer Services is responsible for developing information dissemination and outreach strategies for AoA and the National aging network and for coordinating the development of information materials, both printed and electronic. In coordination with the Department, CCCS manages AoA's media relations and legislative liaison activities.

CCCS coordinates the development of legislative proposals, testimony, background statements, and other policy documents for use by the Assistant

Secretary in activities related to legislation. In coordination with the DHHS Office of the Assistant Secretary for Legislation, analyzes proposed and enacted legislation related directly or indirectly to older people, including legislation directly affecting OAA programs. Through automated legislative information systems tracks bills related to the aging. Develops and issues status reports regarding key legislative developments to Headquarters and Regional Support Centers staff, the network of State and Area Agencies on Aging, and Indian Tribal Organizations.

Coordinates with the Office of the Assistant Secretary for Public Affairs, including planning and implementing strategy for relations with the news and other information media; initiates media outreach activities and responds to all media inquiries concerning AoA programs and related issues.

Oversees the international liaison functions of AoA, coordinating AoA international activities with Departmental as well as other Federal agencies, States and national organizations concerned with international aging matters. At all levels, from national to the local service delivery level, develops methods and collaborations to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age-related needs and issues.

Compiles, publishes, and disseminates information on programs funded under the Act, as well as demographic data on the elderly population and data from other Federal agencies on the health, social and economic status of older persons. Promotes information dissemination in professional fields. Ensures dissemination of information such as best practice models, to exchange program experience with the network of State and Area Agencies on Aging; works with organizations in the field of aging and with other organizations in fields that impact older persons to enhance the dissemination of consumer and technical information. Works with the Office of Evaluation to ensure the successful collection of data and its analysis to demonstrate the effectiveness of AoA dissemination activities. Ensures that program and service information and trends are disseminated to advocates for older persons.

Responds to written, phone and personal inquiries from all sources

dealing with services and needs of the aging.

VI. Establish a new Part BH as follows:

Center for Planning and Policy Development.

BH.00 Mission

BH.10 Organization

BH.20 Functions

*BH.00 Mission.* The Center for Planning and Policy Development (CPPD) advises and supports the Assistant Secretary for Aging in serving as the visible and effective advocate for older people within the Federal government, and in promoting an effective Federal policy and program response to address the aging of the population, as mandated under Title II and Title IV of the Older Americans Act. Serves as the focal point within AoA for identifying and analyzing emerging policy and program issues and trends related to the aging population, identifying appropriate Federal responses, and formulating an agency-wide policy and program development strategy consistent with the priorities established by the Assistant Secretary for Aging. Is responsible for leading the agency's strategic planning, policy development and program development functions, including the formulation of short and long-term strategies for advancing the Assistant Secretary for Aging's policy and program priorities.

*BH.10 Organization.* A Director and reports to the Assistant Secretary for Aging head the Center for Planning and Policy Development.

*BH.20 Functions.* The Center for Planning and Policy Development is responsible for analyzing trends in demographics, service needs, public policy and program development, and translating those trends into new policies and programs to assist the elderly. CPPD develops and maintains effective relationships with government and private sector entities and their representatives at the Federal, State and local levels to develop a unified policy toward, and promote the aims of the Older Americans Act; oversees development of more responsive service systems through intergovernmental and private sector initiatives and partnerships to address age-related issues and concerns.

CPPD coordinates the development and implementation of the agency's strategic plan that establishes long and short-range goals; objectives, strategies and action plan for advancing the agency's policy and program agenda. Reviews and coordinates all policy and program development documents and activities to ensure consistency with

AoA's strategic plan; adjusts goals and strategies as appropriate.

The Center directs intergovernmental affairs activities as it relates to the agency's policy and program development agenda, and develops and maintains effective relationships with other governmental departments and agencies. Plans, negotiates, facilitates and updates, as appropriate, memoranda of understanding with other departments and agencies to promote agreements and cooperative relationships and ventures that address policies and services affecting the aging population.

Maintains information on, and pursues collaborative opportunities with, other Federal agencies, non-profit organizations and private corporations that have the potential to contribute to AoA's policy and program development priorities.

Supports the Assistant Secretary for Aging in implementing Section 203(1) of the OAA by coordinating, advising, consulting with and cooperating with the head of each department, agency and instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of the OAA. Oversees the consultation process by which agency heads must consult with AoA before establishing programs or services related to the OAA. Plans and implements the process for the collaboration of all Federal agencies with AoA in the execution by those agencies of programs and services related to the OAA.

Provides technical, program and policy development input on legislative activities and the annual budget development cycle. Participates in Departmental and inter-departmental activities that concern health and social services; reviews and comments on Departmental regulations and policies regarding health programs and institutional and non-institutional long term care services. Provides agency-wide leadership on the programmatic functions of AoA's discretionary grant programs. Plans and directs activities authorized under Title IV of the OAA and section 398 of the Public Health Service Act as amended. Conducts activities for the development of adequate knowledge for improving the circumstances of older people. Develops a knowledge base for policy decisions and program development and coordination through support of a wide range of research, demonstration, and training activities.

Prepares the planning documents for, and coordinates the development of, annual discretionary funds program

announcements. Provides technical input for Congressional and budget presentations related to research and demonstration programs. Evaluates research, demonstration and training grant and contract proposals; and recommends approval/disapproval, monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors. Develops standards and identifies successful service and systems development strategies and best practice models for use by the Aging Network. Develops technical assistance material and dissemination strategies for these strategies, models, and best practice suggestions, in coordination with the other AoA Centers.

Conducts relevant policy research and program demonstrations to inform policy and program development; undertakes qualitative and quantitative analyses to develop policy options and recommendations for the Assistant Secretary for Aging. Develops policy reports based on the needs and circumstances of older people, their family members and the aging population. Manages a program for the collection, analysis, and dissemination of information related to the needs and problems of older persons. Develops and coordinates initiatives with other Federal agencies, national aging organizations and universities to fill gaps in information in the field of aging. Reviews research findings from the literature and products from AoA, the Aging Network, and other sources regarding information on aging to identify new findings that will be useful to older people and professionals operating in the field of aging. Determines the relative utility of such products, and in collaboration with the Center for Communications and Consumer Services, their potential users and the most effective way to disseminate the information to users.

Promotes coordination of AoA's research and demonstrations with other national, field and local programs related to aging. Within overall AoA strategy and long-range plans, conducts continuing studies and periodic reviews of needs and resources in the field of aging, and makes recommendations for action to the Assistant Secretary for Aging.

Dated: May 20, 2002.

**Josefina G. Carbonell,**

*Assistant Secretary for Aging.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

[Document Identifier: CMS-10064]

#### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with the BBA. We cannot reasonably comply with the normal clearance procedures because \* \* \*

- The integration of the swing bed hospitals into the SNF PPS is mandated under the BBA. The FY 2002 final rule implementation date is the last possible date to introduce this program within the legislated time frames. Any delay past July 1, 2002 will put us out of compliance with the statutory requirements.

- Rural swing bed hospitals have already incurred costs to implement the

SNF PPS. Postponing the implementation at this point would cause harm to the swing bed hospitals which have hired staff and purchased equipment in the expectation of higher reimbursement rates under the SNF PPS.

- The SB-MDS has already been reviewed by OMB as part of the regulatory review of the July 31, 2001 Update Rule. At that time, OMB concurred with the decision to replace the 6-page MDS with the customized 2-page SB-MDS. All the items included on the SB-MDS were included in Appendix B of that rule, and were reviewed and approved by OMB at that time. There was general consensus among CMS, the department and OMB that the use of the SB-MDS significantly reduces the burden of swing bed providers in complying with the BBA requirements.

CMS is requesting OMB review and approval of this collection by June 17, 2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by June 13, 2002. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

*Type of Information Collection Request:* New collection; *Title of Information Collection:* Minimum Data Set (MDS) for Swing Bed Hospitals and Supporting Regulations in 42 CFR, Sections 413.337 and 483.20; *Form No.:* CMS-10064 (OMB# 0938-NEW); *Use:* We are requesting approval of resident assessment information that swing bed hospitals are required to submit as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337; *Frequency:* Other: Days 5, 14, 30, 60 & 90 of stay; *Affected Public:* Not-for-Profit Institutions, and State, Local or Tribal Government; *Number of Respondents:* 1,250; *Total Annual Responses:* 156,480; *Total Annual Hours:* 132,360.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your

request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by June 13, 2002:

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850. Fax Number: (410) 786-0262, Attn: Dawn Willingham, CMS-10064

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395-6974 or (202) 395-5167, Attn: Allison Eydt, CMS Desk Officer.

Dated: May 16, 2002.

**Julie Brown,**

*Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02-13183 Filed 5-24-02; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

[Document Identifier: CMS-10014]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this



collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Informatics, Telemedicine, and Education Demonstration Project; *Form No.:* CMS-10014 (OMB# 0938-0806); *Use:* Section 4207 of the Balanced Budget Act of 1997 mandated CMS to conduct a demonstration project to evaluate the effectiveness of advanced computer and telecommunications technology ("telemedicine") to manage the care of people with diabetes. CMS issued a request for proposals and, after review of the responses, selected a consortium led by Columbia University to conduct this project; *Frequency:* Semi-annually; *Affected Public:* Business or other for profit, individuals or households; *Number of Respondents:* 5,550; *Total Annual Responses:* 10,043; *Total Annual Hours:* 19,999.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 15, 2002.

**John P. Burke III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.* [FR Doc. 02-13184 Filed 5-24-02; 8:45 am]

**BILLING CODE 4120-03-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**Privacy Act of 1974; Report of New System**

**AGENCY:** Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

**ACTION:** Notice of new system of records (SOR).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called the "Non-Medicare Beneficiary Workers' Compensation (WC) Set-aside File (WCSAF)," HHS/CMS/CMM No. 09-70-0537. The primary purpose of the non-Medicare beneficiary WCSAF is to maintain a file of individuals who were injured while employed, are not currently Medicare beneficiaries, and received a WC Set-aside Arrangement, as part of a WC settlement, that is intended to pay for future medical expenses in place of future Medicare benefits. The information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; to another Federal or State agency to contribute to the accuracy of CMS' proper payment of Medicare benefits, to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; and support research, evaluation, and for payment related projects; and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS.

We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section, below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

**EFFECTIVE DATES:** CMS filed a new system report with the Chair of the House Committee on Government

Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 8, 2002. In any event, we will not disclose any information under a routine use until forty (40) calendar days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

**ADDRESSES:** The public should address comments to: Director, Division of Data Liaison and Distribution (DDL), CMS, Room N2-04-27, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Donna Kettish, Division of Benefit Coordination, Benefits Operations Group, Center for Medicare Management, CMS, S1-05-06, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. The telephone number is (410) 786-5462.

**SUPPLEMENTARY INFORMATION:**

**I. Description of the New System of Records**

*A. Statutory and Regulatory Basis for System of Records*

Section 1862 (b) (2) of the Social Security Act (the Act), requires that Medicare payment may not be made for any item or service to the extent that payment has been made under a WC law or plan. This section of the Act and 42 CFR 411.46 require CMS to exclude payments once the injured individual becomes a Medicare beneficiary when payment should be made from WC funds which are always primary to Medicare payment.

*B. Background*

CMS is responsible for safeguarding the fiscal integrity of the Medicare Program. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established the "Medicare Integrity Program," enabling CMS to competitively award contracts with entities to promote the integrity of the Medicare Program. The Coordination of Benefit Contractor (COBC) is one of those specialized contractors hired to increase efficiency and effectiveness by ensuring that benefit payments are made by the appropriate payer by coordinating Medicare and other benefit payments.

The Electronic Correspondence Referral System (ECRS) is currently used to transfer data between CMS's Medicare contractors and the COBC to establish Medicare Secondary Payer periods of coverage on CMS's Common Working File (CWF). The CWF is a CMS system, containing Medicare beneficiary eligibility information, that is used for verification and validation purposes to ensure Medicare claims are paid properly and by the appropriate payer. ECRS is being enhanced to transfer WC Set-aside Arrangement data from CMS Regional Offices (RO) to the COBC for Medicare beneficiaries and non-Medicare beneficiaries who have an approved WC Set-aside Arrangement to cover future medical costs resulting from an injury incurred while employed. If the injury results in disability payments from the Social Security Administration (SSA), there is a reasonable expectation that the injured individual will also be eligible for Medicare benefits some time after the WC settlement is made.

The ROs will transfer the WC Set-aside Arrangement information via ECRS for non-Medicare beneficiaries once they approve the arrangement. The COBC will maintain ECRS transferred data in the WCSAF for future matching purposes. The COBC will "match" non-beneficiary WCSAF data against the file it receives each month of new Medicare eligibles to identify any non-beneficiaries with impending Medicare entitlement. Once a match occurs, the existence of a WC Set-aside Arrangement will be reflected on the new beneficiary's CWF record and a Lead Medicare Contractor will be assigned for coordination of the expenditures from the WC Set-aside Arrangement.

CMS is drawn into a civil action resulting from a WC claim in a consulting position to ensure that a legal settlement involving an injured worker considers Medicare's interest with respect to future claims. CMS RO approval of a Medicare Set-aside Arrangement helps direct the treatment of future disorders or health claims by the injured worker, ensuring he/she is adequately covered for long-term care resulting from their WC injury, first by the Medicare Set-aside Arrangement and then by Medicare if necessary.

## II. Collection and Maintenance of Data in the System

### A. Scope of the Data Collected

The WCSAF includes standard data for identification including the name, address, date of birth, Social Security Number, date of the WC injury/incident,

injury diagnosis code(s), effective date and amount of the WC Set-aside Arrangement. In addition, data will be included to enable CMS to manage the WC Set-aside Arrangement information when it becomes part of the beneficiary's record on the CWF. These data include the WC carrier, the administrator of the Set-aside Arrangement, and the attorney that prepared the arrangement.

### B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release WCSAF information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with WCSAF information and identifiers. Non-identifiable data includes individual records with WCSAF information and masked identifiers or WCSAF information with identifiers stripped out of the file.

CMS will only disclose the minimum personal data necessary to achieve the purpose of the WCSAF. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data are being collected; e.g., ensuring that benefit payments are made by the appropriate payer by coordinating Medicare and other benefit payments.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would, in fact, accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually, identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

## III. Proposed Routine Use Disclosures of Data in the System

### A. Entities That May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the WCSAF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

CMS proposes to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To the agency of a State government, or established by State law,

for purposes of ensuring that benefit payments are made by the appropriate payer by coordinating Medicare and other benefit payments.

WCSAF data may be released to the State only on those injured individuals who are not currently Medicare beneficiaries but receive a WC Set-aside Arrangement that is intended to pay for future medical expenses in place of future Medicare benefits.

3. To another Federal or State agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

Other Federal or State agencies in their administration of a Federal health program may require WCSAF information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper payment for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

4. To an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for understanding and improving payment projects.

The WCSAF data will provide the research and evaluations a broader, longitudinal, national perspective of the status of injured individuals that are not currently Medicare beneficiaries but receive a WC Set-aside Arrangement that is intended to pay for future medical expenses in place of future Medicare benefits

5. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

7. To a CMS contractor (including, but not necessarily limited to intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards (like ensuring that the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring and those stated in II.B, above), are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State

or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other State agencies in their administration of a Federal health program may require WCSAF information for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remediating, or otherwise combating such fraud and abuse in such programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

#### *B. Additional Provisions Affecting Routine Use Disclosures*

In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

#### **IV. Safeguards**

The WCSAF system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: The Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A-130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by

OMB Circular A-130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800-18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A-C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

#### A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- ▶ Database Administrator class owns the database objects (e.g., tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- ▶ Quality Control Administrator class has read and write access to key fields in the database;
- ▶ Quality Index Report Generator class has read-only access to all fields and tables;
- ▶ Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- ▶ Submitter class has read and write access to database objects, but no database administration privileges.

#### B. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a

specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- ▶ User Log-on—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- ▶ Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- ▶ Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.
- ▶ Inactivity Lockout—Access to the NT workstation is to be automatically locked after a specified period of inactivity.
- ▶ Warnings—Legal notices and security warnings are to be displayed on all servers and workstations.
- ▶ Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

#### C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A-130, revised; Information Resource Management Circular #10; HHS AIS Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and

magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

#### V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of WCSAF data. WCSAF information is submitted to CMS through standard systems. CMS will use a variety of onsite and offsite edits and audits to increase the accuracy of WCSAF data.

CMS will take precautionary measures (see item IV., above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: May 9, 2002.

**Thomas A. Scully,**  
Administrator, Centers for Medicare & Medicaid Services.

#### 09-70-0537

##### SYSTEM NAME:

Non-Medicare Beneficiary Workers' Compensation (WC) Set-aside File, (WCSAF).

##### SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

##### SYSTEM LOCATION:

Group Health Incorporated, 25 Broadway, NY, NY 10004.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will contain data on non-Medicare beneficiaries that receive a WC Set-aside Arrangement, as part of a WC settlement, that is intended to pay for future medical expenses in place of future Medicare benefits.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system of records will contain the individual-level identifying data including such as the name, address, date of birth, Social Security Number (SSN), date of the WC injury/incident, injury diagnosis code(s), effective date and amount of the WC Set-aside Arrangement. In addition, data will be included to enable CMS to manage the WC Set-aside Arrangement information when it becomes part of a beneficiary's record on the Common Working File (CWF). These data include the WC carrier, the administrator of the WC Set-aside Arrangement, and the attorney that prepared the arrangement.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 1862(b)(2) of the Social Security Act (the Act) and 42 CFR 411.46.

**PURPOSE(S):**

The primary purpose of the non-Medicare beneficiary WCSAF is to maintain a file about individuals who were injured while employed, are not currently Medicare beneficiaries, and received a WC Set-aside Arrangement, as part of a WC settlement, that is intended to pay for future medical expenses in place of future Medicare benefits. The information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; to another Federal or State agency to contribute to the accuracy of CMS' proper payment of Medicare benefits, to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; and support research, evaluation, and for payment related projects; and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the WCSAF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be

evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' (HHS) regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

1. To agency contractors or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

2. To the agency of a State government, or established by State law, for purposes of ensuring that benefit payments are made by the appropriate payer by coordinating Medicare and other benefit payments.

3. To another Federal or State agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

4. To an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, or for understanding and improving payment projects.

5. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

7. To a CMS contractor (including, but not necessarily limited to intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

All records are stored on magnetic media.

**RETRIEVABILITY:**

The Social Security Number retrieves the records.

**SAFEGUARDS:**

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees

to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A-130 (revised) Appendix III.

#### RETENTION AND DISPOSAL:

CMS will retain identifiable WCSAF data for a period of 6 years and 3 months unless the injured individual becomes a Medicare beneficiary prior to that period of time. When either of these criteria is met, the information stored on the injured individual will be deleted from the WCSAF.

#### SYSTEM MANAGER(S) AND ADDRESS:

CMS, Center for Medicare Management, Benefits Operations Group, Director, Division of Benefit Coordination, S1-05-06, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

#### NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), address, date of birth, date of WC injury/incident, diagnosis, effective date and amount of the WC Set-aside Arrangement. (Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

#### RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

#### CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

#### RECORD SOURCE CATEGORIES:

The Electronic Correspondence Referral System (ECRS), Medicare contractors and the Coordination of Benefit Contractor (COBC), Common Working File, CMS Regional Offices (RO), Medicare beneficiaries and non-Medicare beneficiaries that have an approved WC Set-aside Arrangement to cover future medical costs resulting from an injury incurred while employed and the Social Security Administration (SSA).

#### SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02-13190 Filed 5-24-02; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 99E-1086]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; ENBREL

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for ENBREL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Claudia Grillo, Office of Regulatory Policy (HFD-007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4565.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product ENBREL (etanercept). ENBREL is indicated for the reduction in signs and symptoms of moderately to severely active rheumatoid arthritis in patients who have had an inadequate response to one or more disease-modifying antirheumatic drugs. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ENBREL (U.S. Patent No. 5,712,155) from Immunex Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 7, 2000, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of ENBREL represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office

requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ENBREL is 2,322 days. Of this time, 2,143 days occurred during the testing phase of the regulatory review period, while 179 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* June 26, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 26, 1992.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act:* May 8, 1998. The applicant claims March 9, 1998, as the date the product license application (BLA) for ENBREL (BLA 98-0286) was initially submitted. However, FDA records indicate that BLA 98-0286 was submitted on May 8, 1998.

3. *The date the application was approved:* November 2, 1998. FDA has verified the applicant's claim that BLA 98-0286 was approved on November 2, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 240 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may, on or before July 29, 2002, submit to the Dockets Management Branch (see ADDRESSES) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on

or before November 25, 2002, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday

Dated: April 17, 2002.

**Jane A. Axelrad,**  
*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 02-13227 Filed 5-24-02; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**Medical Device Public Workshop**

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

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Southwest Region (SWR), Dallas District Office, in collaboration with the FDA Medical Device Industry Coalition (FMDIC), is announcing a public workshop entitled "Medical Device Workshop." This public workshop is intended to provide information about FDA's medical device quality systems regulation (QSR) to

regulated industry and, in particular, to small businesses.

*Date and Time:* The public workshop will be held on July 19, 2002, from 8:30 a.m. to 5 p.m.

*Location:* The public workshop will be held at the Texas A&M University Health Science Center, Baylor College of Dentistry, 3302 Gaston Ave., sixth floor, Dallas, TX 75246. Directions to the facility are available on the Internet at the Texas A&M University Health Science Center, Baylor College of Dentistry at <http://www.tambcd.edu/>.

*Contact:* David Arvelo or Sue Thomason, Southwest Regional Office (HFR-SW16), Food and Drug Administration, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247, 214-655-8100, ext. 130 or 128, FAX 214-655-8114, or e-mail: [oraswrsbr@ora.fda.gov](mailto:oraswrsbr@ora.fda.gov).

*Registration:* Preregistration by June 7, 2002, is encouraged. FMDIC has a \$150 preregistration fee. To preregister, please complete the form provided in this document and send it along with a check or money order for \$150 payable to the FMDIC, c/o FDA/SWR/Small Business Representative, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247. As an alternative, the registration form can also be obtained on the Internet at <http://www.geocities.com/Eureka/Suite/3316/>. Seats are limited. Please submit registration forms as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive written confirmation. Registration will close once the course is filled. Onsite registration will be done on a space-available basis on the day of the public workshop beginning at 8:30 a.m. The cost of registration at the site is \$175, payable to the FMDIC. If you need special accommodations due to a disability, please contact David Arvelo or Sue Thomason at least 7 days in advance.

The following information is requested for registration purposes:

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Mailing address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip code: \_\_\_\_\_

Phone: \_\_\_\_\_

FAX: \_\_\_\_\_

E-mail: \_\_\_\_\_

**SUPPLEMENTARY INFORMATION:** The workshop is being held in response to the interest that small medical device manufacturers in the Dallas District area have expressed in the topics that will be addressed at the workshop. FMDIC and FDA will present this workshop to help achieve objectives set forth in section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This workshop is also consistent with the purposes of FDA's Regional Small Business Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), because it is an outreach activity by a government agency directed at small businesses.

The goal of the workshop is to present information that will enable manufacturers and regulated industry to better comply with the QSR (21 CFR part 820). Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Analysis of FDA 483s, (2) analysis of FDA warning letters, (3) how corrective and preventive actions (CAPA) relates to QSR and the Quality System Inspection Technique, (4) designing and implementing a CAPA system, and (5) the role of complaint files in a CAPA system.

*Transcripts:* Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, starting approximately 15 working days after the public workshop at a cost of 10 cents per page.

Dated: May 22, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02-13282 Filed 5-22-02; 3:52 pm]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Submission for OMB review; Comment Request; Retrovirus Epidemiology Donor Study (REDS): A Study of Motivations and Deterrents to Blood Donation in the United States

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 29, 2001, pages 29, 152-29, 153 and allowed 60-days for public comment. The Institute mailed a summary of the protocol and copies of the survey instrument in response to a request. Additionally, the Institute received two comments. A professional association applauded the agency's efforts and urged the Institute to consider future population based studies that would account for views of those who never donate blood. The second comment was from an individual representing biomedical services of a national blood banking institution. This individual stressed the need to build upon previous research conducted by this blood banking organization. The Institute responded to both comments via letter. To the first the Institute replied that they were discussing future studies to assess reasons that some people never donate blood. To the second they responded that while it would be beneficial to build upon this previous data, published literature on this blood collection organization's research was not available. No further responses to the Institute were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection:* Title: Retrovirus Epidemiology Donor Study (REDS): A Study of Motivations and Deterrents to

Blood Donation in the United States. Type of Information Collection Request: NEW. Need and Use of Information Collection: There are serious blood shortages in the U.S. and the situation is predicted to worsen unless corrective measures are initiated. Through a randomized mail survey of individuals who have donated blood at one of the blood centers participating in the NHLBI Retrovirus Epidemiology Donor Study (REDS), this study will examine the personal, or intrinsic reasons for choosing to donate blood, as well as external influences for choosing to donate blood. Donors will be given the option to respond via a mailed survey or a secured website. Comparisons will be made between lapsed and repeat donors with the premise that repeat donors may have a stronger altruistic impetus for donating than donors who donate less frequently or discontinue donating. Donors will be asked about factors influencing them to donate, the donation experience, and questions addressing accessibility to donate. Additionally, the study will examine possible barriers to donation, such as inconvenience, discomfort, and confidentiality. With the majority of the blood supply coming from committed, repeat donors, information regarding why an individual decides to donate, and more importantly, what motivates them to come back, will provide valuable insight on possible strategies to encourage increased donation frequency among the current blood donor population. Assessment of possible barriers to donation will provide areas for focusing improvement in the blood donation process. Data from this survey will provide a valuable perspective for devising strategies to increase blood donation the U.S., thus helping insure that there is an adequate supply to meet the needs of the American public. Frequency of Response: Once. Affected Public: Individuals. Type of Respondents: Adult Blood Donors. The annual reporting burden is as follows: Estimated Number of Respondents: 40,000; Estimated Number of Responses per Respondent: 1; Average Burden Hours Per Response: 0.25; and Estimated Total Annual Burden Hours Requested: 10,000. The annualized cost to respondents is estimated at: \$157,000. There are no Capital Costs, Operating Cost, and/or Maintenance Costs to report.



Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adult Blood Donors .....	40,000	1	0.25	10,000

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB**

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. George J. Nemo, Group Leader, Transfusion Medicine, Scientific Research Group, Division of Blood Diseases and Resources, NHLBI, NIH, Two Rockledge Center, Suite 10042, 6701 Rockledge Drive, MSC 7950, Bethesda, MD 20892-7950, or call non-toll free number 301-435-0075, or e-mail your request, including your address to: [nemo@nih.gov](mailto:nemo@nih.gov).

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received *within 30-days* of the date of this publication.

Dated: May 10, 2002.

**Donald Christoferson,**  
Executive Officer, NHLBI.

[FR Doc. 02-13195 Filed 5-24-02; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Submission for OMB Review; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial**

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 7, 2002, page 5834 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Proposed Collection**

*Title:* Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial. *Type of Information Collection Request:* Revision, OMB control number 0925-0407, expiration date October 31, 2002. *Need and Use of Information Collection:* This trial is designed to determine if screening for prostate, lung, colorectal and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 251,000 deaths annually in the U.S. The design is a two-armed randomized trial of men and women aged 55 to 74 at entry. The total sample size after more than 8 years of recruitment is 154,956. The primary endpoint of the trial is cancer-specific mortality for each of the four cancer sites (prostate, lung, colorectal, and ovary). In addition, cancer incidence, stage shift, and case survival are to be monitored to help understand and explain results. Biologic prognostic characteristics of the cancers will be measured and correlated with mortality to determine the mortality predictive value of these intermediate endpoints.

Basic demographic data, risk factor data for the four cancer sites and screening history data, as collected from all subjects at baseline, will be used to assure comparability between the screening and control groups and make appropriate adjustments in analysis. Further, demographic and risk factor information will be used to analyze the differential effectiveness of screening in high versus low risk individuals. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Adult men and women. The annual reporting burden is as follows: *Estimated Number of Respondents:* 150,598; *Estimated Number of Responses per Respondent:* 1.38; *Average Burden Hours Per Response:* 0.19; and *Estimated Total Annual Burden Hours Requested:* 39,597. The annualized cost to respondents is estimated at: \$395,970. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB**

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk

Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. John Gohagan, Chief, Early Detection Research Group, National Cancer Institute, NIH, EPN Building, Suite 3100, 6130 Executive Boulevard, MSC7346, Bethesda, MD 20892-7346-, or call non-toll-free number (301) 496-3982 or E-mail your request, including your address to: JG72P@NIH.GOV.

**Comments due Date:** Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 21, 2002.

**Reesa Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 02-13276 Filed 5-24-02; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Submission for OMB Review; Comment Request; Health Information National Trends Survey (HINTS)**

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in

the **Federal Register** on December 21, 2000, pages 80444-80445, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Proposed Collection**

**Title:** Health Information National Trends Survey (HINTS). **Type of Information Collection Request:** NEW. **Need and Use of Information Collection:** As a result of the ongoing changes in the communication environment, there is an unprecedented opportunity to communicate information about cancer and other health topics to the general public. Developing appropriate messages for the public about cancer prevention, detection, diagnosis, treatment, and survivorship requires an understanding of individuals' sources and access to cancer-related information, their knowledge about cancer and other health information, or the factors that enhance or may hinder access, use, or knowledge of health information.

The HINTS is a new telephone survey designed to provide nationally representative, population-based standardized data on health knowledge and health information for the United States. The survey will establish important baseline data about cancer communication practices, preferences

for information, and cancer knowledge across the country. This survey will provide data on the public's perceived needs for cancer information, sources and access to health information (e.g., health care providers, Internet, mass media), current knowledge and understanding about cancer prevention and detection, and the barriers to more effectively understanding and utilizing cancer-related information. The HINTS is intended to be conducted every 2 years, and data will be used to measure progress in improving cancer knowledge and communication among the general public. The survey will be administered to one sample adult in 8,000 households, and is intended to have an adequate sample size to produce stable estimates for racial and ethnic minority populations.

Data from this survey are essential for NCI to develop improved cancer-related messages and materials and to tailor these messages for different audiences, especially for cancer prevention and detection. Data will be used to help selecting the best means of communicating cancer-related messages to different audiences (communication channels) to reach the diverse audiences in the United States. Finally, information obtained in this survey data will be used to identify research gaps and to guide the direction and decisions about NCI's research efforts in health promotion and health communication. **Frequency of response:** One-time. **Affected public:** Individuals or households. **Type of Respondents:** U.S. adults. The annual reporting burden is as follows:

Type of respondent	Estimated number of respondents	Frequency of response	Average hours per response	Annual hour burden
Adult respondents to Dress Rehearsal Interview .....	150	1	.4509	68
Adult respondents to Main Study Household Screener .....	11,200	1	.0334	374
Adult respondents to Main Study Sample Person Interview .....	8,000	1	.4509	3607
Total .....				4049

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the

estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB**

Written comments and/or suggestions regarding the item(s) contained in the notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact David E.

Nelson, M.D., M.P.H., Project Officer, National Cancer Institute, NIH, 6130 Executive Boulevard, EPN 4068, MSC 7365, Bethesda, Maryland 20852-7365, or call non-toll-free number (301) 594-9904, or FAX your request to (301) 480-2087, or E-mail your request, including your address, to [dn83r@nih.gov](mailto:dn83r@nih.gov).

**Comments Due Date:** Comments regarding this information collection are best assured of having their full effect if received within 30 days of this publication.

Dated: May 21, 2002.

**Reesa L. Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 02-13277 Filed 5-24-02; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Opportunity for Cooperative Research and Development Agreement(s) (CRADAs) and/or License(s) for the Development and Commercialization of Nitric Oxide-Releasing Drugs and Biomaterials

**AGENCY:** National Institutes of Health, PHS, DHHS.

**ACTION:** Notice.

**SUMMARY:** The National Cancer Institute (NCI) seeks Licensee(s) and/or Cooperative Research and Development Agreement (CRADA) Collaborator(s) for the development and commercialization of Nitric Oxide (NO)-Releasing Drugs and Biomaterials as embodied in a variety of recent NCI publications, as well as, in the patents and patent applications listed below.

**DATES:** Confidential CRADA proposal summaries, preferably one page or less, and a signed Confidential Disclosure Agreement (CDA) (<http://ttb.nci.nih.gov/forms.html>) must be submitted to the NCI Technology Transfer Branch (TTB) on or before June 24, 2002, to take full advantage of this opportunity. CRADA proposal summaries submitted thereafter may be considered if a suitable CRADA Collaborator is not selected from among the timely responses. Guidelines for preparing a full CRADA proposal will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

Responsees interested in licensing the invention(s) should submit an

“Application for License to Public Health Service Inventions”. The licensing application, model licenses

and other information on licensing NIH technologies can be found at <http://ott.od.nih.gov> under Intramural Licensing Program.

**ADDRESSES:** CRADA information may be obtained by contacting Dr. Charmaine Richman, Technology Transfer Specialist, Technology Transfer Branch, National Cancer Institute, 1003 West Seventh Street, Suite 500, Frederick, Maryland 21701; telephone: 301-846-5465; fax 301-846-6820; e-mail: [richmanc@mail.nih.gov](mailto:richmanc@mail.nih.gov).

Licensing information and copies of the issued U.S. patents referenced below may be obtained by contacting Dr. Norbert Pontzer, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301-496-7057 ext. 284; fax 301-402-0220; e-mail: [PontzerN@od.nih.gov](mailto:PontzerN@od.nih.gov). A signed Confidential Disclosure Agreement will be required to receive copies of patent applications that have not yet issued.

Scientific inquiries may be directed to Dr. Larry Keefer, National Cancer Institute/Center for Cancer Research (CCR) at Frederick, Building 538, Room 205F, Frederick, MD 21702-1201; telephone : 301-846-1467; e-mail: [keefe@ncifcrf.gov](mailto:keefe@ncifcrf.gov).

**SUPPLEMENTARY INFORMATION:** NIH scientists are developing a variety of novel techniques for delivering nitric oxide (NO) to specific organs and cell types for therapeutic benefit. Methods for targeting lung, liver, and other tissues have been introduced to the literature, as have NO-releasing proteins and insoluble polymers. The compounds and drug delivery strategies developed thus far have shown promising activities that have been demonstrated in relevant experimental animal models. These include inhibition of thrombosis, treatment of vasospasm, relief of respiratory distress, protection against toxic liver injury, radiosensitization of hypoxic tumors, correction of genitourinary tract dysfunction, antimicrobial effects, protection against ischemia-reperfusion injury and whole-body radiation, and preservation of organ transplants. Inventions described in the patents are available for either exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR 404.

A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987, as amended. A CRADA

is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and it is not a contract for procurement of goods/services. The NCI is prohibited from transferring funds to a CRADA collaborator. Under a CRADA, NCI can contribute facilities, staff, materials, and expertise. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or nonexclusive commercialization license to subject inventions arising under the CRADA. CRADA applicants should be aware that a license to the above-mentioned patent rights may be necessary in order to commercialize products arising from a CRADA. The expected duration of the CRADA(s) would be for up to five (5) years. The goals of CRADAs include rapid publication of research results and timely commercialization of products, diagnostics, and treatments that result from the research.

#### Nitric Oxide Patents

**Patent Status:** Compositions and uses covered in:

1. Keefer, L.K., Wink, D.A., Dunams, T.M., and Hrabie, J.A.: Stabilized nitric oxide-primary amine complexes useful as cardiovascular agents. U.S. Patent 4,954,526, September 4, 1990.

2. Keefer, L.K., Wink, D.A., Dunams, T.M., and Hrabie, J.A.: Anti-hypertensive compositions of secondary amine-nitric oxide adducts and use thereof. U.S. Patent 5,039,705, August 13, 1991.

3. Keefer, L.K., and Hrabie, J.A.: Complexes of nitric oxides with polyamines. U.S. Patent 5,155,137, October 13, 1992.

4. Diodati, J.G., and Keefer, L.K.: Therapeutic inhibition of platelet aggregation by nucleophile-nitric oxide complexes and derivatives thereof. U.S. Patent 5,185,376, February 9, 1993.

5. Keefer, L.K., Wink, D.A., Dunams, T.M., and Hrabie, J.A.: Anti-hypertensive compositions of secondary amine-nitric oxide adducts and use thereof. U.S. Patent 5,208,233, May 4, 1993 (continuation in part of U.S. Patent 5,039,705).

6. Keefer, L.K., Wink, D.A., Dunams, T.M., and Hrabie, J.A.: Anti-hypertensive compositions and use thereof. U.S. Patent 5,212,204, May 18, 1993.

7. Keefer, L.K., and Hrabie, J.A.: Complexes of nitric oxide with polyamines. U.S. Patent 5,250,550, October 5, 1993 (continuation in part of U.S. Patent 5,155,137).

8. Keefer, L. K., Dunams, T.M., and Saavedra, J.E.: Oxygen-substituted

derivatives of nucleophile-nitric oxide adducts as nitric oxide donor prodrugs. U.S. Patent 5,366,997, November 22, 1994.

9. Christodoulou, D.D., Wink, D.A., and Keefer, L.K.: Mixed ligand metal complexes of nitric oxide nucleophile adducts useful as cardiovascular agents. U.S. Patent 5,389,675, February 14, 1995.

10. Keefer, L.K., and Hrabie, J.A.: Polymer-bound nitric oxide/nucleophile adduct compositions, pharmaceutical compositions incorporating same and methods of treating biological disorders using same. U.S. Patent 5,405,919, April 11, 1995.

11. Keefer, L.K., Hrabie, J.A., and Saavedra, J.E.: Polymer-bound nitric oxide/nucleophile adduct compositions, pharmaceutical compositions incorporating same and methods of treating biological disorders using same. U.S. Patent 5,525,357, June 11, 1996 (continuation in part of U.S. Patent 5,405,919).

12. Malinski, T., Wink, D.A., Younathan, J., Murray, R.W., Sullivan, M., Meyer, T.J., and Christodoulou, D.D. Nitric oxide sensor. U.S. Patent 5,603,820, February 18, 1997.

13. Saavedra, J.E., Keefer, L.K., Roller, P. P., and Akamatsu, M.: Bipolymer-bound nitric oxide-releasing compositions, pharmaceutical compositions incorporating same and methods of treating biological disorders using same. U.S. Patent 5,632,981, May 27, 1997 (continuation in part of U.S. Patent 5,525,357).

14. Mitchell, J.B., Russo, A., Krishna, M.C., Wink, D.A., and Liebmann, J.E. Use of nitric oxide releasing compounds as hypoxic cell radiation sensitizers. U.S. Patent 5,650,442, July 22, 1997.

15. Keefer, L.K., and Hrabie, J.A.: Implants, prostheses, and stents comprising polymer-bound nitric oxide-nucleophile adducts capable of releasing nitric oxide. U.S. Patent 5,676,963, October 14, 1997.

16. Hrabie, J.A., and Keefer, L.K.: Method of generating nitric oxide gas using nitric oxide complexes. U.S. Patent 5,683,668, November 4, 1997.

17. Smith, D.J., Chakravarthy, D., and Keefer, L.K.: Polysaccharide-bound nitric oxide-nucleophile adducts. U.S. Patent 5,691,423, November 25, 1997 (continuation in part of U.S. Patent 5,405,919).

18. Korthuis, R.J., Kong, L., and Keefer, L.K.: Use of nitric oxide-releasing agents for reducing metastasis risk. U.S. Patent 5,700,830, December 23, 1997.

19. Saavedra, J.E., Keefer, L.K., and Billiar, T.R.: Selective prevention of organ injury in sepsis and shock using

selective release of nitric oxide in vulnerable organs. U.S. Patent 5,714,511, February 3, 1998.

20. Keefer, L.K., and Hrabie, J.A.: Polymer-bound nitric oxide/nucleophile adduct compositions, pharmaceutical compositions incorporating same and methods of treating biological disorders using same. U.S. Patent 5,718,892, February 17, 1998 (divisional application of U.S. Patent 5,405,919).

21. Keefer, L.K., Saavedra, J.E., and Hrabie, J.A.: N-Substituted piperazine NONOates. U.S. Patent 5,721,365, February 24, 1998.

22. Keefer, L.K., Wink, D.A., Dunams, T.M., and Hrabie, J.A.: Anti-hypertensive compositions of secondary amine-nitric oxide adducts and use thereof. U.S. Patent 5,731,305, March 24, 1998.

23. Wink, D.A., Mitchell, J.B., Russo, A., Krishna, M.C., Hanbauer, I., Grisham, M.B., and Granger, D.N. Nitric oxide releasing compounds as protective agents in ischemia reperfusion injury. U.S. Patent 5,789,447, August 4, 1998.

24. Mitchell, J.B., Russo, A., Krishna, M.C., Wink, D.A., and Liebmann, J.E. Use of nitric oxide-releasing compounds as hypoxic cell radiation sensitizers. U.S. Patent 5,814,667, September 19, 1998 (divisional application of U.S. Patent 5,650,442).

25. Green, S.J., and Keefer, L.K.: Encapsulated and non-encapsulated nitric oxide generators used as antimicrobial agents. U.S. Patent 5,814,666, September 29, 1998.

26. Saavedra, J.E., and Keefer, L.K.: Selective prevention of organ injury in sepsis and shock using selective release of nitric oxide in vulnerable organs. U.S. Patent 5,814,656, September 29, 1998 (divisional application of U.S. Patent 5,714,511).

27. Keefer, L.K., Saavedra, J.E., Doherty, P.C., Hanamoto, M.S., and Place, V.A.: Use of nitric oxide-releasing agents to treat impotency. U.S. Patent 5,910,316, June 8, 1999 (continuation in part of U.S. Patent 5,525,357).

28. Keefer, L.K., and Hrabie, J.A.: Polymer-bound nitric oxide/nucleophile adduct compositions, pharmaceutical compositions incorporating same and methods of treating biological disorders using same. U.S. Patent 6,110,453, August 29, 2000 (divisional application of U.S. Patent 5,718,892).

29. Saavedra, J.E., Keefer, L.K., Roller, P.P., and Akamatsu, M.: Biopolymer-bound nitric oxide-releasing compositions, pharmaceutical compositions incorporating same and methods of treating biological disorders using same. U.S. Patent 6,200,558,

March 13, 2001 (continuation in part of U.S. Patent 5,525,357).

30. Hrabie, J.A., and Keefer, L.K.: Nitric oxide-releasing amidine- and enamine-derived diazeniumdiolates, compositions and uses thereof and methods of making same. U.S. Patent 6,232,336, May 15, 2001.

31. Keefer, L.K., Saavedra, J.E., Doherty, P.C., Hanamoto, M.S., Place, V. A.: Use of nitric oxide-releasing agents to treat impotency. U.S. Patent 6,290,981, September 18, 2001.

32. Saavedra, J.E., Srinivasan, A., and Keefer, L.K.: O2-Aryl substituted diazeniumdiolates. U.S. Patent Application 60/026,816, filed September 27, 1996.

33. Saavedra, J.E., Keefer, L.K., and Bogdan, C.: O2-Glycosylated 1-substituted diazen-1-ium-1,2-diolates and O2-substituted 1-[(2-carboxylato)pyrrolidin-1-yl]diazen-1-ium-1,2-diolates. U.S. Patent Application 60/051,696, filed July 3, 1997.

34. Saavedra, J.E., et al.: Nitric oxide-releasing 1-[(2 carboxylato)pyrrolidin-1-yl]diazen-1-ium-1,2,-diolates and composition comprising same. U.S. Patent Application 09/666,668, filed September 20, 2000.

#### *Party Contributions to CRADAs*

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with samples of the subject compounds for pharmacological evaluation.
3. Planning research studies and interpreting research results.
4. Providing support services at NCI/CCR.
5. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing support for ongoing CRADA-related research in the development of the particular application of nitric oxide-releasing drugs/biomaterials outlined in the Agreement:
  - a. Financial support to facilitate scientific goals;
  - b. Technical or financial support for further design of applications.
4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but are not limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

2. The demonstration of adequate resources to perform the research, development and commercialization of this technology (e.g., facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.

4. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.

5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

6. The willingness to cooperate with the NCI in the timely publication of research results.

7. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

8. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: May 17, 2002.

**Kathleen Sybert,**

*Chief, Technology Transfer Branch, National Cancer Institute, National Institutes of Health.*

Dated: May 13, 2002.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 02-13196 Filed 5-24-02; 8:45 am]

BILLING CODE 4140-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Government-Owned Inventions; Availability for Licensing**

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**MRP8, A Member of the ABC Transporter Superfamily Highly Expressed in Breast Cancer, and Uses Thereof**

Ira Pastan et al. (NCI)  
DHHS Reference No. E-225-01/0 12 Jul 2001

Licensing Contact: Richard Rodriguez; 301/496-7056 ext. 287; e-mail: rodrigur@od.nih.gov

MRP8 encodes an ATP-binding cassette transporter protein. Current data shows that it is expressed in a restrictive manner, and that it is highly expressed in breast cancer cells. This expression pattern makes it suitable as a molecular target, and MRP8-specific antibodies could be used to target MRP8-expressing cancer cells. Additionally, the MRP8-protein, immunogenic portions of said protein or nucleic acids encoding the protein, or immunogenic portions of said protein, could be used as immunogens to stimulate or to augment immune responses to MRP8-expressing cancer cells.

**The Ovachip: A Clinically Useful cDNA Array for Differential Diagnosis of Ovarian Cancer**

Morin et al. (NIA)

DHHS Reference No. E-344-01/0 filed 06 Mar 2002

Licensing Contact: Matthew Kiser; 301/496-7056 ext. 224; kiser@od.nih.gov

The present invention describes a specialized microarray that exclusively contains genes that are differentially expressed in ovarian cancer. The invention also provides for methods of generating an expression profile of multiple genes that are differentially expressed in ovarian cancer, methods of determining treatment for an ovarian tumor, and methods of identifying clusters of coordinately regulated genes that are differentially expressed in ovarian cancer.

Benefits of this invention include methods of predicting the response of a mammal to an anti-ovarian cancer therapeutic regimen, methods of monitoring cancer progression, methods of determining the efficacy of anti-cancer drugs, and methods of screening candidate anti-ovarian drugs for efficacy. All these applications hinge on the use of these ovarian cancer gene microarrays in generating gene expression profiles under various conditions and comparing them to each other and to standards.

**Method of Promoting Engraftment of a Donor Transplant in a Recipient Host**

William J. Murphy et al. (NCI)  
DHHS Reference No. E-151-01/0 filed 29 Jun 2001

Licensing Contact: Matthew Kiser; 301/496-7056 ext. 224; e-mail: kiser@od.nih.gov

This invention pertains to a method of using donor natural killer (NK) cells to promote engraftment of a donor transplant in a recipient host, wherein the donor NK cells have been treated *ex vivo*, such as with an antibody (or antigenically reactive fragment thereof), a major histocompatibility molecule (MHC), a small molecule, a blocker of cell-signaling or an enzyme, such that the ability of the donor NK cells to interact with MHC molecules in the recipient host is compromised.

The method comprises adoptively transferring to the recipient host donor NK cells, which have been treated *ex vivo* to interfere with the ability of inhibitory receptors on the donor NK cells to interact with MHC molecules in the recipient host, simultaneously with, or sequentially to, in either order, the donor transplant, whereupon the engraftment of the donor transplant in the recipient host is promoted.

The present inventive method has applications in the context of the transplantation of a variety of tissues from the donor to the recipient host. In

a preferred embodiment, the donor transplant is bone marrow. In an alternate embodiment, the donor transplant is an organ. Preferably, the donor or the recipient host is human.

#### **DNA Encoding CAI Resistance Proteins and Uses Thereof**

Elise Kohn et al. (NCI)

U.S. Patent 5,652,223 issued 29 Jul 1997; U.S. Patent 5,981,712 issued 09 Nov 1999; Serial No. 09/436,469 filed 08 Nov 1999

Licensing Contact: Jonathan Dixon; 301/496-7056 ext. 270; e-mail: dixonj@od.nih.gov

Novel targets for therapeutic intervention in cancer proliferation and invasion are needed. Calcium influx has been shown to be required for invasion. Carboxyamido-triazole (CAI), a synthetic blocker of calcium influx in nonexcitable cells, inhibits tumor and endothelial cell motility and decreases the expression of matrix metalloproteinases involved in invasion and angiogenesis. Thus, CAI plays a role in the inhibition of malignant proliferation, invasion, and metastasis of cancer cells. The effectiveness of CAI as a cancer therapeutic agent is currently being tested in clinical trials.

The technology which is available for licensing relates to the CAI resistance (CAIR-1) gene that encodes a protein identified in CAI conditioned cells. The CAIR-1 gene provides a potential source of information about the mechanism of drug conditioning and could also be useful as a marker for detecting the acquisition of a drug conditioned phenotype and/or as a target for intervention.

In addition, CAIR was also independently identified as BAG-3 and Bis. CAIR/BAG-3/Bis has been shown to play a role in protein folding inside the cell and to modulate programmed cell death (apoptosis). Thus, the CAIR/BAG-3/Bis protein serves as an important link between pathways regulating calcium influx, protein folding, and apoptosis and may be a valuable drug discovery target for therapeutic intervention in cancer proliferation and invasion.

Dated: May 20, 2002.

#### **Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 02-13279 Filed 5-24-02; 8:45 am]

**BILLING CODE 4140-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Institutes of Health**

#### **Prospective Grant of Exclusive License: Adult Human Dental Pulp Stem Cells In Vitro and In Vivo**

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 60/219,989, filed July 21, 2000, now converted into PCT application number PCT/US01/23053 filed July 23, 2001 entitled, "Adult Human Dental Pulp Stem Cells In Vitro and In Vivo," to Dentigenix, having a place of business in the state of Washington. The field of use may be limited to the treatment of dental regeneration. The United States of America is the assignee of the patent rights in this invention. This announcement is the first notice to grant an exclusive license to this technology.

**DATES:** Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before July 29, 2002 will be considered.

**ADDRESSES:** Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Marlene Shinn, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3821; Telephone: (301) 496-7056, ext. 285; Facsimile: (301) 402-0220; e-mail: [MS482M@NIH.GOV](mailto:MS482M@NIH.GOV).

**SUPPLEMENTARY INFORMATION:** This technology utilizes dental pulp stem cells wherein an adult individual's own dental pulp tissue (one or two wisdom teeth) can potentially be used to engineer healthy living teeth. Our scientists have isolated and characterized a subpopulation of cells within normal, human dental pulp tissue with the ability to grow and proliferate *in vitro*. These stem cells can be induced under defined culture conditions to form calcified nodules *in vitro* and have been shown to differentiate into specialized tissues.

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 60 days from the date of this published Notice, NIH receives written evidence and argument that 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.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 13, 2002.

#### **Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 02-13278 Filed 5-24-02; 8:45 am]

**BILLING CODE 4140-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Administration for Children and Families**

#### **Refugee Resettlement Program; Proposed Availability of Formula Allocation Funding for FY 2002 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need**

**AGENCY:** Office of Refugee Resettlement (ORR), ACF, HHS.

**ACTION:** Notice of proposed availability of and request for comments on formula allocation funding for FY 2002 targeted assistance grants to States for services to refugees<sup>1</sup> in local areas of high need.

**SUMMARY:** This notice and request for comments announces the proposed availability of funds and award procedures for FY 2002 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee

<sup>1</sup> Eligibility for targeted assistance includes refugees, asylees, Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, certain Amerasians from Vietnam who are U.S. citizens, and victims of a severe form of trafficking who receive certification or eligibility letters from ORR. (See section II of this notice on "Authorization," and refer to 45 CFR 400.43 and the ORR State Letter #01-13 on the Trafficking Victims Protection Act dated May 3, 2001.) The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

populations, high refugee concentrations, and high use of public assistance by refugees, and where specific needs exist for supplementation of currently available resources.

This notice proposes that the qualification of counties for funding be based on refugee and entrant arrivals during the five-year period from FY 1997 through FY 2001, and on the concentration of refugees and entrants as a percentage of the general population. Under this proposal, nine new counties would qualify for targeted assistance and five counties which previously received targeted assistance grants would no longer qualify for targeted assistance funding.

**DATES:** Comments on this notice must be received by June 27, 2002.

**ADDRESSES:** Address written comments, in duplicate, to:

Gayle Smith, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Due to delays in mail delivery to Federal offices, a copy of comments should also be faxed to: Gayle Smith at (202) 401-0981.

**APPLICATION DEADLINE:** The deadline for applications will be established by the final notice; applications should not be sent in response to this notice of proposed allocations.

**CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER:** 93.584.

**FOR FURTHER INFORMATION CONTACT:** Gayle Smith, Director, Division of Refugee Self-Sufficiency, (202) 205-3590, e-mail: [gsmith@acf.dhhs.gov](mailto:gsmith@acf.dhhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Purpose and Scope**

This notice announces the proposed availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available \$49,477,000 in FY 2002 funds for the targeted assistance program (TAP) as part of the FY 2002 appropriation for the Department of Health and Human Services (Pub. L. 107-116).

The Director of the Office of Refugee Resettlement (ORR) proposes to use the \$49,477,000 in targeted assistance funds as follows:

- \$44,529,300 will be allocated to States under the 5-year population formula, as set forth in this notice.
- \$4,947,700 (10% of the total) will be used to award discretionary grants to States under continuation grant awards.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

**II. Authorization**

Targeted assistance projects are funded under the authority of: (1) Section 412(c)(2) of the (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), 8 U.S.C. 1522(c); (2) section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; (3) section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100-202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100-461), 1990 (Pub. L. 101-167), and 1991 (Pub. L. 101-513); and (4) section 107(b)(1)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386), insofar as it states that a victim of a severe form of trafficking shall be eligible for federal and certain State benefits and services to the same extent as a refugee.

**III. Client and Service Priorities**

Targeted assistance funding must be used to assist refugee families to achieve economic independence. To this end, States and counties are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g).) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) A determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; (3) employability plans for every employable member of the family; and (4) a plan to address the family's social services needs that may be barriers to self-sufficiency. In local jurisdictions that have both targeted assistance and refugee social services programs, one family self-sufficiency plan may be developed for a family that incorporates both targeted assistance and refugee social services.

Services funded through the targeted assistance program are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In addition to the statutory requirement that TAP funds be used "primarily for the purpose of facilitating refugee employment" (section 412(c)(2)(B)(i) of the INA), funds awarded under this program are intended to help fulfill the Congressional intent that "employable

refugees should be placed in jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with 45 CFR 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with 45 CFR 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State. Refer to 45 CFR 400.316.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must "insure that women have the same opportunities as men to participate in training and instruction." In addition, in accordance with 45 CFR 400.317, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director of ORR also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit.

States and counties are expected to make every effort to obtain child care services, preferably subsidized child care, in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, child care may be treated as an employment-related service under the

targeted assistance program. Refugees who are participating in targeted assistance-funded or social services-funded employment services or have accepted employment are eligible for child care. States and counties are expected to use child care funding from other publicly-administered programs as a prior resource and are encouraged to work with service providers to ensure mainstream access to other publicly funded resources for child care. For an employed refugee, targeted assistance-funded child care should be limited to situations in which no other publicly funded child care funding is available. In these cases, child care services funded by targeted assistance should be limited to one year after the refugee becomes employed.

In accordance with 45 CFR 400.317, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

We strongly encourage States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of mutual assistance associations (MAAs), whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. We also strongly encourage MAAs to ensure that their management and board composition reflect the major target populations to be served.

ORR defines MAAs as organizations with the following qualifications:

- a. The organization is legally incorporated as a nonprofit organization; and
- b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

#### **IV. {Reserved for Discussion of Comments in the Final Notice}**

#### **V. Eligible Grantees**

Eligible grantees are: 1. Those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 2002 targeted assistance awards; and 2. those non-State agencies funded under the Wilson-Fish program which administer, in lieu of a State, a statewide refugee assistance program containing counties which qualify for FY 2002 targeted assistance formula funds.

The Director of ORR proposes to determine the eligibility of counties for inclusion in the FY 2002 targeted assistance program on the basis of the method described in section VI of this notice.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State/Wilson-Fish agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State/Wilson-Fish's agency application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State/Wilson-Fish agency.

A State with more than one qualified county is permitted, but not required, to



determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in the final notice, in accordance with 45 CFR 400.319, the FY 2002 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 2002 targeted assistance funds in a manner different from the formula set forth in the final notice, the FY 2002 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

Applications submitted in response to the final notice are not subject to review by State and area wide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

## VI. Qualification and Allocation

For FY 2002, ORR proposes to continue to use the formula that bases allocation of targeted assistance funds on the most current 5-year refugee/entrant arrival data. Targeted assistance services are limited to refugees residing in qualified counties who have been in the U.S. five years or less. The Director of ORR proposes to determine the qualification of counties for targeted assistance once every three years, as stated in the FY 1999 notice of proposed availability of targeted assistance allocations to States which was published in the **Federal Register** on March 10, 1999 (64 FR 11927). The FY 1999–FY 2001 three-year project cycle has expired. In preparation for re-qualifying counties for FY 2002, ORR has reviewed data on all counties that could potentially qualify for TAP funds on the basis of the most current 5-year refugee/entrant<sup>2</sup> arrival data.

### A. Qualifying Counties

In order to qualify for application for FY 2002 targeted assistance funds, a county (or group of adjacent counties with the same Standard Metropolitan Statistical Area, or SMSA) or independent city, would be required to either: (1) Rank above a selected cut-off

point of jurisdictions for which data were reviewed, based on two criteria: (a) The number of refugee/entrant arrivals placed in the county during the most recent five-year period (FY 1997–FY 2001); and (b) the five-year refugee/entrant arrival population as a percent of the county overall population; or (2) have received 3,000 or more refugee/entrant arrivals during this same 5-year period.

In regard to the first qualification criteria, each county would be ranked on the basis of its five-year arrival population and its concentration of refugees, with a relative weighting of two to one respectively, because we believe that large numbers of refugee/entrant arrivals into a county create a significant impact, regardless of the ratio of refugees to the county general population.

Each county would then be ranked in terms of the sum of a county's rank on refugee arrivals and its rank on concentration. To qualify for targeted assistance based on rank, a county would have to rank within the top 50 counties. ORR has decided to limit the number of qualified counties based on rank to the top 50 counties in order to target a sufficient level of funding to the most impacted counties.

A county could also qualify for targeted assistance based on resettling at least 3,000 refugee/entrant arrivals during the most recent five-year period. Three counties qualified according to this criteria. ORR decided that counties with 3,000 or more arrivals should qualify for targeted assistance after analyzing the arrival data and discovering that there were three counties which ranked high in arrival numbers (27, 29, and 38) but would not qualify for targeted assistance based solely on the sum of the ranks formula. ORR concluded that these counties which ranked high nationally in refugee population were impacted by high numbers of refugee arrivals, and thus should qualify for Targeted Assistance.

ORR has screened data on all counties that have received awards for targeted assistance since FY 1983 and on all other counties that could potentially qualify for TAP funds based on the criteria proposed in this notice. Analysis of these data indicates that: (1) 44 counties which have previously received targeted assistance would continue to qualify; (2) five counties which have previously received targeted assistance would no longer qualify; and (3) nine new counties would be qualified.

Table 1 provides a list of the counties that would remain qualified and the new counties that would qualify, the

number of refugee/entrant arrivals in those counties within the past five years, the percent that the five-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula described above.

Table 2 lists the counties that have previously received targeted assistance which would no longer qualify, the number of refugee/entrant arrivals in those counties within the past five years, the percent that the five-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula.

The proposed counties listed in this notice as qualified to apply for FY 2002 TAP funding would remain qualified for TAP funding through FY 2004. ORR does not plan to consider the eligibility of additional counties for TAP funding until FY 2005, when ORR will again review data on all counties that could potentially qualify for TAP funds based on the criteria contained in this proposed notice. We believe that a more frequent redetermination of county qualification for targeted assistance would not provide qualifying counties a sufficient period of time within a stable funding climate to adequately address the refugee impact in their counties, while a less frequent redetermination of county qualification would pose the risk of not considering new population impacts in a timely manner.

### B. Allocation Formula

Of the funds available for FY 2002 for targeted assistance, \$44,529,300 would be allocated by formula to States for qualified counties based on the initial placements of refugees, Amerasians, entrants (including Havana parolees), and Kurdish asylees in these counties during the five-year period from FY 1997 through FY 2001 (October 1, 1996–September 30, 2001). This is data that is available in the ORR refugee data system.

For fiscal years 1999 through 2001, Havana parolees were derived from actual data. For fiscal years 1997–1998, INS provided the number of actual Havana parolees. The State of Florida supplied ORR with the actual number of these parolees which arrived in Florida. The remaining parolees were not identified with any other State of arrival. To account for these arrivals, ORR prorated the non-Florida parolee numbers to qualifying counties in other States based on the counties' proportion of the five-year entrant population in the U.S.

If a county does not agree with ORR's population estimate for refugees and

<sup>2</sup> Each time the term "refugee/entrant" is used, we refer to arrival data for refugees and Cuban and Haitian entrants that is available in the ORR refugee data system.

entrants and believes that its five-year population for FY 1997–FY 2001 was undercounted, the county must provide the following evidence in order for ORR to reconsider its population estimate: the county must submit to ORR a letter from each local voluntary agency that resettled refugees in the county that attests to the fact that the refugees/entrants listed in an attachment to the letter were resettled as initial placements during the five-year period from FY 1997–FY 2001 in the county making the claim.

Documentation must include the name, alien number, date of birth and date of arrival in the U.S. for each refugee/entrant claimed. Listings of refugees who are not identified by their alien numbers will not be considered. Counties should submit such evidence separately from comments on the proposed formula no later than 30 days from the date of publication of this notice by e-mail as an attachment in Excel or other compatible format to: *lbussert@acf.dhhs.gov* or via overnight mail to: Loren Bussert, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, 370 L’Enfant Promenade, SW., Sixth Floor East,

Washington, DC 20447, telephone: (202) 401–4732. Failure to submit the required documentation within the required time period will result in forfeiture of consideration.

Counties that have served asylees during the past year also may submit the following information in order to have their population estimate adjusted to include those asylees whose asylum was granted within the 60 month period ending September 30, 2001: (1) Name, (2) alien number, (3) date of birth, (4) the date asylum was granted, and (5) country of origin.

**(Please note:** The file should include the date that asylum was *granted*, not the date of entry into the U.S. or the date that the asylee was provided social services. Only persons granted asylum between October 1, 1996 and September 30, 2001 may be included in the file.)

Counties which have served victims of a severe form of trafficking during the past year may submit the following information in order to have their population estimate adjusted to include these trafficking victims: (1) Name, (2) alien number if available, (3) date of birth, (4) certification letter number, and, (5) date on certification letter.

Please submit the above data on asylees and victims of a severe form of trafficking served on separate Excel spreadsheets as an email attachment within 30 days of the publication date of this announcement to:

*lbussert@acf.dhhs.gov* or via overnight mail to: Loren Bussert, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, 370 L’Enfant Promenade, SW., Sixth Floor East, Washington, DC 20447, telephone: (202) 401–4732.

**VII. Allocations**

Table 3 lists the proposed qualifying counties, the number of refugee and entrant arrivals in those counties during the five-year period from October 1, 1997–September 30, 2001, the number of Havana parolee arrivals in those counties for this five-year period, the sum of the third, fourth, and fifth columns, and the proposed amount of each county’s allocation based on its five-year arrival population.

Table 4 provides State totals for proposed targeted assistance allocations. Table 5 indicates the areas that each proposed qualifying county represents. Tables 1 through 5 follow.

TABLE 1.—TOP 53 PROPOSED ELIGIBLE COUNTIES

County	State	Year arrival total	Concentration percent	Sum of ranks
<b>44 Targeted Assistance Counties Eligible for Continuation</b>				
Dade County .....	FL	60,757	2.6963	4
City of St. Louis .....	MO	9,784	2.8100	23
DeKalb County .....	GA	8,887	1.3347	34
Sacramento County .....	CA	10,647	0.8702	35
Multnomah .....	OR	12,048	0.6733	39
Oneida County .....	NY	4,743	2.0143	42
Jefferson County .....	KY	6,108	0.8806	45
King/Snohomish .....	WA	12,561	0.4877	50
Hennepin/Ramsey .....	MN	10,331	0.6355	51
New York .....	NY	26,779	0.3344	62
Polk County .....	IA	3,769	1.0061	66
DuVal County .....	FL	4,989	0.6405	66
Maricopa County .....	AZ	11,174	0.3637	69
Kent County .....	MI	3,893	0.6778	76
Suffolk County .....	MA	4,011	0.5815	77
Fulton County .....	GA	4,332	0.5309	77
Ingham County .....	MI	3,253	1.1646	79
Davis/Salt Lake .....	UT	5,704	0.3788	83
Dallas/Tarrant .....	TX	10,580	0.2887	87
Cook/Kane .....	IL	14,102	0.2439	92
City of Richmond .....	VA	2,520	1.2741	95
Spokane County .....	WA	3,165	0.7573	97
Santa Clara County .....	CA	5,431	0.3228	98
Harris County .....	TX	9,041	0.2659	100
Fairfax County .....	VA	4,305	0.3263	105
Davidson County .....	TN	3,222	0.5654	106
Monroe County .....	NY	3,351	0.4557	107
Cass County .....	ND	2,113	1.7160	111
Lancaster County .....	NE	2,314	0.9245	112
Hillsborough County .....	FL	3,434	0.3438	118
Guilford County .....	NC	2,419	0.5745	122
Denver County .....	CO	2,673	0.4819	124
Los Angeles County .....	CA	14,035	0.1474	125

TABLE 1.—TOP 53 PROPOSED ELIGIBLE COUNTIES—Continued

County	State	Year arrival total	Concentration percent	Sum of ranks
Philadelphia County .....	PA	3,966	0.2613	126
Erie County .....	PA	2,087	0.7431	132
Hampden County .....	MA	2,326	0.5098	132
San Diego County .....	CA	5,461	0.1941	134
Minnehaha County .....	SD	1,740	1.1734	140
District of Columbia .....	DC	2,349	0.4106	141
San Francisco .....	CA	3,866	0.2233	143
Clark County .....	NV	3,473	0.2524	143
Broward County .....	FL	3,465	0.2135	155
Cuyahoga County .....	OH	3,048	0.2187	169
Orange County .....	CA	3,763	0.1322	184

## 9 New Counties That Qualify

Onondaga County .....	NY	3,027	0.6604	106
Ada County .....	ID	2,292	0.7617	120
Warren County .....	KY	1,867	2.0179	123
Blackhawk County .....	IA	1,794	1.4014	129
Erie County .....	NY	3,176	0.3342	131
Palm Beach County .....	FL	3,303	0.2920	134
Pinellas County .....	FL	2,914	0.3162	146
Wayne County .....	MI	3,997	0.1939	149
Kansas City .....	MO	2,582	0.3177	149

TABLE 2.—COUNTIES THAT NO LONGER QUALIFY

County	State	Year arrival total	Concentration percent	Sum of ranks
Yolo County .....	CA	1,249	0.7444	179
Pierce County .....	WA	2,006	0.2862	184
Bernalillo County .....	NM	1,593	0.2862	207
Hudson County .....	NJ	1,335	0.2192	240
Fresno County .....	CA	654	0.0818	379

TABLE 3.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 2002

County	State	Refugees <sup>1</sup>	Entrants	Havana Parolees <sup>2</sup>	Total arrivals FY97–FY01	\$44,529,300 Total FY 2002 final allocation
Maricopa County .....	Arizona .....	10,211	617	346	11,174	\$1,434,040
Los Angeles County .....	California .....	13,811	44	180	14,035	\$1,801,213
Orange County .....	California .....	3,737	9	17	3,763	\$482,932
Sacramento County .....	California .....	10,643	0	4	10,647	\$1,366,406
San Diego County .....	California .....	5,441	3	17	5,461	\$700,849
San Francisco .....	California .....	3,852	3	11	3,866	\$496,151
Santa Clara County .....	California .....	5,418	5	8	5,431	\$697,000
Denver County .....	Colorado .....	2,670	0	3	2,673	\$343,045
District of Columbia .....	District of Columbia .....	2,335	4	10	2,349	\$301,464
Broward County .....	Florida .....	585	1,529	1,351	3,465	\$444,689
Dade County .....	Florida .....	6,486	13,635	40,636	60,757	\$7,797,386
Duval County .....	Florida .....	4,889	25	75	4,989	\$640,274
Hillsborough County .....	Florida .....	1,678	335	1,421	3,434	\$440,710
Palm Beach County .....	Florida .....	493	1,541	1,269	3,303	\$423,898
Pinellas County .....	Florida .....	2,804	20	90	2,914	\$373,975
DeKalb County .....	Georgia .....	8,871	6	10	8,887	\$1,140,533
Fulton County .....	Georgia .....	4,281	14	37	4,332	\$555,957
Ada County <sup>3</sup> .....	Idaho .....	2,292	0	0	2,292	\$294,149
Cook/Kane .....	Illinois .....	13,990	15	97	14,102	\$1,809,812
Polk County .....	Iowa .....	3,767	0	2	3,769	\$483,703
Blackhawk .....	Iowa .....	1,794	0	0	1,794	\$230,237
Jefferson County <sup>3</sup> .....	Kentucky .....	3,618	1,594	896	6,108	\$783,884
Warren County <sup>3</sup> .....	Kentucky .....	1,867	0	0	1,867	\$239,606
Hampden County .....	Massachusetts .....	2,326	0	0	2,326	\$298,512
Suffolk County .....	Massachusetts .....	3,880	77	54	4,011	\$514,761
Ingham County .....	Michigan .....	2,080	752	421	3,253	\$417,481

TABLE 3.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 2002—Continued

County	State	Refugees <sup>1</sup>	Entrants	Havana Parolees <sup>2</sup>	Total arrivals FY97–FY01	\$44,529,300 Total FY 2002 final allocation
Kent County .....	Michigan .....	3,422	293	178	3,893	\$499,617
Wayne County .....	Michigan .....	3,994	0	3	3,997	\$512,964
Hennepin/Ramsey .....	Minnesota .....	10,318	5	8	10,331	\$1,325,852
City of St. Louis .....	Missouri .....	9,784	0	0	9,784	\$1,255,652
Kansas City .....	Missouri .....	2,544	9	29	2,582	\$331,367
Lancaster County .....	Nebraska .....	2,306	5	3	2,314	\$296,972
Clark County <sup>3</sup> .....	Nevada .....	1,916	966	591	3,473	\$445,715
Erie County .....	New York .....	3,062	73	41	3,176	\$407,599
Monroe County .....	New York .....	2,456	570	325	3,351	\$430,058
New York .....	New York .....	26,233	256	290	26,779	\$3,436,743
Oneida County .....	New York .....	4,743	0	0	4,743	\$608,704
Onodaga County .....	New York .....	2,170	548	309	3,027	\$388,477
Guilford County .....	North Carolina .....	2,403	2	14	2,419	\$310,448
Cass County <sup>3</sup> .....	North Dakota .....	2,113	0	0	2,113	\$271,177
Cuyahoga County .....	Ohio .....	3,042	1	5	3,048	\$391,172
Multnomah .....	Oregon .....	11,135	584	329	12,048	\$1,546,207
Erie County .....	Pennsylvania .....	2,087	0	0	2,087	\$267,840
Philadelphia County .....	Pennsylvania .....	3,932	14	20	3,996	\$508,985
Minnehaha County <sup>3</sup> .....	South Dakota .....	1,740	0	0	1,740	\$233,307
Davidson County .....	Tennessee .....	3,202	2	18	3,222	\$413,503
Dallas/Tarrant .....	Texas .....	10,254	171	155	10,580	\$1,357,808
Harris County .....	Texas .....	8,080	600	361	9,041	\$1,160,297
Davis/Salt Lake .....	Utah .....	5,699	2	3	5,704	\$732,036
Fairfax County .....	Virginia .....	4,290	1	14	4,305	\$552,492
City of Richmond .....	Virginia .....	2,492	16	12	2,520	\$323,410
King/Snohomish .....	Washington .....	12,547	4	10	12,561	\$1,612,044
Spokane County .....	Washington .....	3,164	0	1	3,165	\$406,187
<b>Total .....</b>	<b>.....</b>	<b>272,947</b>	<b>24,350</b>	<b>49,674</b>	<b>346,971</b>	<b>44,529,300</b>

<sup>1</sup> Refugees includes refugees, Kurdish aslees, and Amerasian immigrants from Vietnam.

<sup>2</sup> For FY 1999–FY 2001, Havana parolees from actual data. For FY 1997–FY 1998, actual data for Florida counties; for all other counties, parolees estimated from entrant arrivals.

<sup>3</sup> Allocation to be awarded to a Wilson/Fish grantee, if approved by the Director.

TABLE 4.—TARGETED ASSISTANCE PROPOSED ALLOCATIONS BY STATE

State	\$44,529,300 Total FY 2002 allocation
Arizona .....	\$1,434,040
California .....	5,544,551
Colorado .....	343,045
District of Columbia .....	301,464
Florida .....	10,120,932
Georgia .....	1,696,490
Idaho .....	294,149
Illinois .....	1,809,812
Iowa .....	713,940
Kentucky .....	1,023,490
Massachusetts .....	813,273
Michigan .....	1,430,062
Minnesota .....	1,325,852
Missouri .....	1,587,019
Nebraska .....	296,972
Nevada .....	445,715
New York .....	5,271,581
North Carolina .....	310,448
North Dakota .....	271,177
Ohio .....	391,172
Oregon .....	1,546,207
Pennsylvania .....	776,825
South Dakota .....	223,307
Tennessee .....	413,503
Texas .....	2,518,105
Utah .....	732,036
Virginia .....	875,902
Washington .....	2,018,231

TABLE 4.—TARGETED ASSISTANCE PROPOSED ALLOCATIONS BY STATE—Continued

State	\$44,529,300 Total FY 2002 allocation
Total .....	44,529,300

TABLE 5.—TARGETED ASSISTANCE AREAS

State	Targeted assistance area	Definition
Arizona .....	Maricopa County.	Marin, San Francisco, and San Mateo Counties.
California .....	Los Angeles County. Orange County. Sacramento County. San Diego. San Francisco .....	
Colorado .....	San Clara County.	
District of Columbia.	Denver.	
Florida .....	Broward County Dade County. Duval County. Hillsborough County. Palm Beach County. Pinellas County.	
Georgia .....	DeKalb County Fulton County.	
Idaho .....	Ada County.	
Illinois .....	Cook and Kane Counties.	
Iowa .....	Polk County Blackhawk County.	
Kentucky .....	Jefferson County Warren County.	
Massachusetts .....	Hampden County Suffolk County.	Jackson County, Missouri, and Wyandotte County, Kansas.
Michigan .....	Ingham County Kent County Wayne County.	
Minnesota .....	Hennepin/Ramsey.	
Missouri .....	City of St. Louis Kansas City .....	
Nebraska .....	Lancaster County.	
Nevada .....	Clark County.	
New York .....	Erie County Monroe County New York .....	
North Carolina .....	Oneida County Onondaga County Guilford County.	
North Dakota .....	Cass County.	
Ohio .....	Cuyahoga County.	
Oregon .....	Multoman .....	Clackamas, Multnomah, and Washington Counties, Oregon, and Clark County, Washington.
Pennsylvania .....	Erie Philadelphia.	
South Dakota .....	Minnehaha County.	
Tennessee .....	Davidson County.	
Texas .....	Dallas/Tarrant Harris County.	
Utah .....	Davis/Salt Lake .....	
Virginia .....	Fairfax .....	
Washington .....	City of Richmond. King/Snohomish Spokane County.	

### VIII. Application and Implementation Process

Under the FY 2002 targeted assistance program, States/Wilson-Fish agencies may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State/Wilson-Fish agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Pursuant to 45 CFR 400.210(b), FY 2002 targeted assistance funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than 90 days after the end of the two-year expenditure period. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of the State's last filed report.

The requirements regarding the discretionary portion of the targeted assistance program will be addressed under separate continuation grant awards. Continuation applications for these funds, therefore, are not subject to provisions contained in this notice but to other requirements which will be published separately.

### IX. Application Requirements

In applying for targeted assistance funds in response to the Final Targeted Assistance Notice, a State agency will be required to provide the following:

A. Assurance that targeted assistance funds will be used in accordance with the requirements in 45 CFR part 400.

B. Assurance that targeted assistance funds will be used primarily for the provision of services which are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. States must indicate what percentage of FY 2002 targeted assistance formula allocation funds that are used for services will be allocated for employment services.

C. Assurance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs, *e.g.* social services, cash and medical assistance, etc.

D. If administered locally, the name of the local agency administering the

funds, and the name and telephone number of the responsible person.

E. The amount of funds to be awarded to the targeted county or counties. In instances where a State receives targeted assistance funding for impacted counties contained in a standard metropolitan statistical area (SMSA) which includes a county or counties located in a neighboring State, the State receiving those funds must provide a description of coordination and planning activities undertaken with the State Refugee Coordinator of the neighboring State in which the impacted county or counties are located. These planning and coordination activities should result in a proposed allocation plan for the equitable distribution of targeted assistance funds by county based on the distribution of the eligible population by county within the SMSA. The proposed allocation plan must be included in the State's application to ORR.

F. Assurance that county targeted assistance plans will include:

1. A description of the local planning process for determining targeted assistance priorities and services, taking into consideration all other ORR-funded services available to the refugee population, including formula social services.

2. Identification of refugee/entrant populations to be served by targeted assistance projects, including approximate numbers of clients to be served, and a description of characteristics and needs of targeted populations. (As per 45 CFR 400.314)

3. Description of specific strategies and services to meet the needs of targeted populations.

4. The relationship of targeted assistance services to other services available to refugees/entrants in the county including formula allocated ORR social services to States/Wilson-Fish agencies.

5. Analysis of available employment opportunities in the local community. Examples of acceptable analyses of employment opportunities might include surveys of employers or potential employers of refugee clients, surveys of presently effective employment service providers, and review of studies on employment opportunities/forecasts which would be appropriate to the refugee populations.

6. Description of the monitoring and oversight responsibilities to be carried out by the county or qualifying local jurisdiction.

G. Assurance that the local administrative budget will not exceed 15% of the local allocation. Targeted assistance grants are cost-based awards.

Neither a State nor a county is entitled to a certain amount for administrative costs. Rather, administrative cost requests should be based on projections of actual needs. All TAP counties will be allowed to spend up to 15% of their allocation on TAP administrative costs, as need requires. However, States and counties are strongly encouraged to limit administrative costs to the extent possible to maximize available funding for services to refugees.

H. For any State that administers the program directly or otherwise provides direct service to the refugee/entrant population in a qualified county (with the concurrence of the county), the State must have the same information contained in a county plan prior to issuing a Request for Proposals (RFP) for services.

I. A description of the State's plan for conducting fiscal and programmatic monitoring and evaluations of the targeted assistance program, including frequency of on-site monitoring.

J. Assurance that the State will make available to the county or designated local entity not less than 95% of the amount of its formula allocation for purposes of implementing the activities proposed in its plan, except in the case of a State that administers the program locally as described in item H above. Allocable costs for State contracting and monitoring for targeted assistance, if charged, must be charged to the targeted assistance grant and not to general State administration.

### X. Results or Benefits Expected

All applicants will be required to establish proposed targeted assistance performance goals for each of the six ORR performance outcome measures for each impacted county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The six ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR-6, the "Quarterly Performance Report."

States which are currently grantees for targeted assistance funds should base projected annual outcome goals on past performance. Current grantees should have adequate baseline data for all of the six ORR performance outcome

measures based on a history of targeted assistance program experience.

States identified as new eligible targeted assistance grantees are also required to set proposed outcome goals for each of the six ORR performance outcome measures. New grantees may use baseline data, as available, and current data as reported on the ORR-6 for social services program activity to assist them in the goal-setting process.

New qualifying counties within States that are current grantees are also required to set proposed outcome goals for each of the six ORR performance outcome measures. New counties may use baseline data, as available, and current data as reported on the ORR-6 for social services program activity to assist them in the goal-setting process.

Proposed targeted assistance outcome goals should reflect improvement over past performance and strive for continuous improvement during the project period from one year to another.

Final targeted assistance outcome goals are due November 15, 2002, in conjunction with the ORR Government Performance and Results Act (GPRA) cycle.

#### **XI. Budget and Budget Justification**

In response to the Final Targeted Assistance, applicants will be required to provide line item detail and detailed calculations for each budget object class identified on the Budget Information form—Standard Form (SF) (424A). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424. Forms may be obtained from the ORR Web site at: [www.hhs.gov/programs/orr](http://www.hhs.gov/programs/orr).

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. The Office of Refugee Resettlement is particularly interested in the following:

A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project. States that administer the program locally in lieu of the county, through a mutual agreement with the qualifying county, may request administrative costs that add up to, but may not exceed, 10% of the county's TAP allocation to the State's administrative budget.

#### **XII. Reporting Requirements**

States are required to submit quarterly reports on the outcomes of the targeted assistance program, using Schedule A and Schedule C of the ORR-6 Quarterly Performance Report (0970-0036).

#### **XIII. The Paperwork Reduction Act of 1995 (Pub. L. 104-13)**

All information collections within this program notice are approved under the following valid OMB control numbers: SF 424 (0348-0043); SF 424A (0348-0044); SF 424B (0348-0040); Disclosure of Lobbying Activities (0348-0046); Uniform Project Description (0970-0139), Expiration date 12/31/2003; Financial Status Report (SF-269) (0348-0039); and ORR Quarterly Performance Report (0970-0036).

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.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

Dated: May 15, 2002.

**Nguyen Van Hanh,**

*Director, Office of Refugee Resettlement.*

[FR Doc. 02-13088 Filed 5-24-02; 8:45 am]

**BILLING CODE 4184-01-P**

### **DEPARTMENT OF THE INTERIOR**

#### **Fish and Wildlife Service**

#### **Notice of Receipt of Applications**

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

**ACTION:** Notice of receipt.

**SUMMARY:** We announce our receipt of applications to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

**DATES:** Written comments on these requests for permits must be received June 27, 2002.

**ADDRESSES:** Written data or comments should be submitted to the Assistant Regional Director—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486; telephone 303-236-7400, facsimile 303-236-0027.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with these applications are available for review, subject to the

requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303-236-7400.

**SUPPLEMENTARY INFORMATION:** The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

*Applicants:* ZooMontana, Inc., Billings, Montana, TE-051845; San Diego Wild Animal Park, San Diego, California, TE-051835; Texas Zoo, Victoria, Texas, TE-051840; Bramble Park Zoo, Watertown, South Dakota, TE-051814.

The above applicants request permits to possess black-footed ferrets (*Mustela nigripes*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

*Applicant:* Detroit Zoological Institute, Detroit, Michigan, TE-056003.

The applicant requests a permit to possess Wyoming toads (*Bufo hemiophrys baxteri*) for public display and propagation in conjunction with recovery activities for the purpose of enhancing their survival and recovery.

*Applicant:* Craig Milewski, East Dakota Water Development District, Brookings, South Dakota, TE-056001.

The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* John A. Hawkins, Colorado State University, Fort Collins, Colorado, TE-056079.

The applicant requests a permit to take Colorado pikeminnow *Ptychocheilus lucius* in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Dated: May 8, 2002.

**David E. Heffernan,**

*Acting Regional Director, Denver, Colorado.*

[FR Doc. 02-13200 Filed 5-24-02; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Draft Recovery Plan for the Alaska-Breeding Population of the Steller's Eider (*Polysticta stelleri*)**

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

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft recovery plan for the threatened Alaska-breeding population of the Steller's eider (*Polysticta stelleri*). The draft recovery plan presents the tasks necessary to recover Alaska-breeding Steller's eiders and explains the process used to implement these actions. The Service solicits review and comment from the public on this draft plan.

**DATES:** The comment period for this draft recovery plan closes on July 29, 2002. Comments on the draft recovery plan must be received by the closing date.

**ADDRESSES:** Persons wishing to review the draft recovery plan can obtain a copy by contacting Northern Alaska Ecological Services, U.S. Fish and Wildlife Service, 101 12th Ave., Rm 110, Fairbanks, AK 99701 (telephone 907/456-0203; facsimile 907/456-0208) or by accessing the website: <http://alaska.fws.gov/>. Written comments and materials regarding the plan should be addressed to Ted Swem at the above address. Comments and materials received will be available, by appointment, for public inspection during normal business hours, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ted Swem, 907/456-0203.

**SUPPLEMENTARY INFORMATION:****Background**

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of

recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing recovery plans.

Three breeding populations of Steller's eiders are recognized: two in Arctic Russia and one in Alaska. Neither Russian population is listed as threatened or endangered. The Alaska-breeding population is the only population listed as threatened or endangered, and this recovery plan pertains exclusively to the conservation of this population.

The Alaska-breeding population was listed as threatened under the Act on June 11, 1997 (62 FR 31748). The decision to list the Alaska-breeding population of Steller's eiders as threatened was based on a substantial decrease in the species' nesting range in Alaska and the resulting increased vulnerability of the remaining breeding population to extirpation. When the Alaska-breeding population of the Steller's eider was listed as threatened, the factor or factors causing the decline were unknown. Factors identified as potential causes of decline included predation, hunting, ingestion of spent lead shot in wetlands, and changes in the marine environment that could affect Steller's eider food or other resources. Since listing, other potential threats, such as exposure to oil or other contaminants near fish processing facilities in southwest Alaska, have been identified, but the causes of decline and obstacles to recovery remain poorly understood. Accordingly, a significant number of early recovery tasks will involve research to identify threats and evaluate their impacts.

The draft recovery plan presents the tasks necessary to recover Alaska-breeding Steller's eiders and explains the process used to implement these actions. The draft recovery plan (1) provides background on the species and its natural history; (2) presents and explains the criteria used in measuring recovery; (3) lists recovery tasks that the Fish and Wildlife Service (Service) and Steller's Eider Recovery Team have identified as necessary for recovery of the species; (4) explains how the Service intends to implement and update this plan; and (5) includes appendices that

augment information provided in the first 4 sections.

The draft recovery plan is being submitted for technical and agency review. After consideration of comments received during the review period, the recovery plan will be submitted for final approval.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the recovery plan.

**Authority:** The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 7, 2002.

**Rosa Meehan,**

*Acting Regional Director.*

[FR Doc. 02-13231 Filed 5-24-02; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Submission of Information Collection to the Office of Management and Budget for Review Under the Paper Work Reduction Act**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of renewal of a currently approved information collection.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs has submitted to the Office of Management and Budget a request for approval and renewal of information collections, OMB Control No. 1076-0017, Financial Assistance and Social Service Program application form.

**DATES:** Written comments must be submitted on or before June 27, 2002.

**ADDRESSES:** Written comments should be sent directly to the Office of Management and Budget, Office of Regulatory Affairs, Docket Library Attention: Desk Officer Room 10102, 725 17th Street NW., Washington, DC 20503.

Send a copy of your comments to Larry Blair, Office of Tribal Services, Bureau of Indian Affairs, Department of Interior, 1849 C Street, NW., MS-4660-MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Interested persons can obtain additional information regarding collection requests with no additional charge by contacting Larry Blair, 202-208-2479. Facsimile number (202) 208-2648.



**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The information collected is necessary to be in compliance with 25 CFR part 20. Funding is authorized by 25 U.S.C. 13. The information is used to make determinations of eligibility for the BIA's social service (financial assistance) programs: General Assistance, Child Welfare Assistance, Miscellaneous Assistance, and services only (no cash assistance).

A 60-day notice for public comments was published in the **Federal Register** on February 15, 2002 (67 FR 7190). The only comment received was that the form should be lengthened. The justification was not adequate to revise the form nor was this consistent with the BIA policy to reduce paperwork where possible.

**II. Request for Comments**

The Department of the Interior invites comments being sent to OMB on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(b) The accuracy of the BIA's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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. Burden means the total time, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collection, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources to complete and review the collection of information; and to transmit or otherwise disclose the information.

**III. Data**

*Title of the collection of information:* Department of the Interior, Bureau of Indian Affairs, Financial Assistance and Social Service Programs.

*OMB Number:* 1076-0017.

*Expiration Date:* June 30, 2002.

*Type of Review:* Extension of a currently approved collection. The information is submitted to obtain or retain benefits and for case management/case planning purposes.

*Affected Entities:* Individual members of Indian tribes who are living on a reservation or within a tribal service area.

*Frequency of responses:* One application per year.

*Estimated Number of Annual Responses:* 200,000.

*Estimated Total Annual Burden Hours:* 200,000 × 15 min. = 50,000 hours.

Dated: May 13, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02-13274 Filed 5-24-02; 8:45 am]

**BILLING CODE 4310-4J-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated November 15, 2001, and published in the **Federal Register** on December 21, 2001, (66 FR 65992), American Radiolabeled Chemical, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Lysergic acid diethylamide (7315)	I
Dimethyltryptamine (7435) .....	I
Dihydromorphine (9145) .....	I
Phencyclidine (7471) .....	II
Cocaine (9041) .....	II
Codeine (9050) .....	II
Hydromorphone (9150) .....	II
Oxycodone (9143) .....	II
Thebaine (9333) .....	II
Benzoylcegonine (9180) .....	II
Meperidine (9230) .....	II
Metazocine (9240) .....	II
Morphine (9300) .....	II
Oxymorphone (9652) .....	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of American Radiolabeled Chemical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated American Radiolabeled Chemical, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 21, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02-13262 Filed 5-24-02; 8:45 am]

**BILLING CODE 4410-09-M**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration**

By Notice dated November 20, 2001, and published in the **Federal Register** on December 21, 2001, (66 FR 65993), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370) .....	I
Cocaine (9041) .....	II

The firm plans to import small quantities of the listed controlled substances for the National Institute of Drug Abuse and other clients.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the

registration of Research Triangle Institute is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Triangle Institute on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an import of the basic classes of controlled substances listed above.

Dated: May 21, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02-13263 Filed 5-24-02; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated August 27, 2001, and published in the **Federal Register** on September 7, 2001, (66 FR 46818), Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050) .....	II
Oxycodone (9143) .....	II
Thebaine (9333) .....	II

The firm plans to produce bulk product for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Rhodes Technologies to manufacture the listed controlled substances is consistent with the public interest at this time.

DEA has investigated Rhodes Technologies to ensure that the

company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 21, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02-13261 Filed 5-24-02; 8:45 am]

BILLING CODE 4410-09-M

**MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION**

**The United States Institute for Environmental Conflict Resolution; Agency Information Collection Activities; Extension of Currently Approved Information Collection; Comment Request; U.S. Institute for Environmental Conflict Resolution; Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals**

**AGENCY:** Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act and supporting regulations, this document announces that the U.S. Institute for Environmental Conflict Resolution (the Institute), part of the Morris K. Udall Foundation, is submitting to the Office of Management and Budget (OMB) a request for an extension for the currently approved information collection (ICR), OMB control Number 2010-0030: Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals ("National Roster of ECR Practitioners"), currently operating pursuant to Terms of Clearance issued July 29, 1999. The Institute published a **Federal Register** notice on March 20, 2002 (67 FR 13021-13024), to solicit

public comments for a 60-day period. The Institute received no comments. The purpose of this notice is to allow an additional 30 days for public comments regarding this information collection.

**DATES:** Comments must be submitted on or before June 27, 2002.

**ADDRESSES:** Direct comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) Attention: Amy Farrell, Room 10202 NEOB, 725 17th Street NW, Washington, DC 20503, Phone: 202-395-7318, Fax: 202-395-7285, Email: *Amy.L.Farrell@omb.eop.gov*. Please provide a copy to the U.S. Institute (contact information below.)

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the ICR, contact: Joan C. Calcagno, Roster Manager: U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701. Fax: 520-670-5530. Phone: 520-670-5299. E-mail: *roster@ecr.gov*.

**SUPPLEMENTARY INFORMATION:**

**A. Title for the Collection of Information**

Application for National Roster of Environmental Dispute Resolution and Consensus Building Professionals ("National Roster of ECR Practitioners").

**B. Potentially Affected Persons**

You are potentially affected by this action if you are a dispute resolution or consensus building professional in the environmental or natural resources field who wishes to be listed on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals.

**C. Questions To Consider in Making Comments**

The U.S. Institute for Environmental Conflict Resolution requests your comments to any of the following questions related to collecting information for the extension of the Application for the National Roster of ECR Practitioners:

(1) Is the continued use of the application ("collection of information") necessary for the proper performance of the functions of the agency, including whether the information has practical utility?

(2) Is the agency's estimate of the time spent completing the application ("burden of the proposed collection of information") accurate, including the validity of the methodology and assumptions used?

(3) Can you suggest ways to enhance the quality, utility, and clarity of the information collected?

(4) Can you suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology?

#### D. Abstract

The U.S. Institute for Environmental Conflict Resolution plans to continue collecting information from environmental dispute resolution and consensus building neutral professionals who desire to become members of the National Roster of ECR Practitioners, from which those involved in environmental, natural resource, or public lands disputes can locate, and may select, providers of neutral services. Responses to the collection of information (the application) are voluntary, but required to obtain a benefit (listing on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals.) 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.

*Background Information:* U.S. Institute for Environmental Conflict Resolution. The U.S. Institute for Environmental Conflict Resolution was created in 1998 by the Environmental Policy and Conflict Resolution Act (Public Law 105-156). The U.S. Institute is a federal program established by the U.S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent federal agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. The Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the Institute maintains the National Roster of ECR Practitioners, a roster of qualified facilitators and mediators with

substantial experience in environmental conflict resolution, and can help parties in selecting an appropriate neutral. The Institute accomplishes most of its work by partnering, contracting with, or referral to, experienced practitioners.

*The Need for and Use of the Information Collected in the Application for the Roster of ECR Practitioners:* Roster of ECR Practitioners Application: The application can be viewed on-line from the Institute's website: [www.ecr.gov](http://www.ecr.gov) (simply register in the system to access and review an application). A hardcopy application may also be obtained from the Institute for those without web access. (See contact information above.)

*Background Information:* The information collected in the application for the National Roster of ECR Practitioners is the basis for an on-line database, searchable by a combination of 10 criteria designed to locate appropriate practitioners by matching desired characteristics with the information in the application. The application was first available in September 1999 and remains available on a continuous basis. The Roster of ECR Practitioners first became operational in February 2000 with 60 members, and it currently includes over 200 members from 39 states, the District of Columbia, and two Canadian provinces. They represent a broad cross-section of 31 different professional backgrounds and a broad distribution of case experience across 39 types of case issues. Each member has documented experience which meets the roster entry criteria, and each has experience as a neutral in some or all of the following: mediation, facilitation, consensus building, process design, conflict assessment, system design, neutral evaluation/fact finding, superfund allocation, and/or regulatory negotiation.

The specific entry criteria and applicable definitions are available from the Institute's web site: [www.ecr.gov](http://www.ecr.gov). Generally stated, the entry criteria require that an applicant has:

(1) Served as the lead neutral in a collaborative process (e.g., mediation, consensus building, conflict assessment) for at least 200 case hours in two to ten environmental cases, and

(2) Accumulated a total of 60 points across three categories: additional case experience and complex case experience; experience as a trainer or trainee; and substantive work/volunteer/educational experience in fields related to Alternative Dispute Resolution/Environmental Conflict Resolution (ADR/ECR), such as law, science, public administration.

Use of the National Roster of ECR Practitioners: The roster search and referral service is accessible through the Institute. The Institute uses the roster (specifically the information collected in the application) as a resource when making referrals to those searching for neutral ECR professionals with specific experience, backgrounds, or expertise (external referrals). The Institute also uses the roster as a resource when locating appropriate ECR neutral professionals with whom to partner/sub-contract for projects in which the Institute is involved (internal referrals). The roster referral system is enhanced through cooperation with existing programs and networks of environmental dispute-resolution and consensus-building practitioners familiar with the issues in their respective states and regions. Twenty-one ADR Specialists with the U.S. Environmental Protection Agency (EPA) also have direct, electronic access to search the roster. Next, it is anticipated that other federal agencies will gain direct access over the next year. Eventually, the roster will be available to the public through the internet.

Federal agencies are not required to select from the roster. Professionals not on the roster remain fully eligible to serve as ECR practitioners in disputes involving federal agencies. Finally, being listed on the roster does not guarantee additional work for the practitioner.

Development and Need for the National Roster of ECR Practitioners: The roster was developed with the support of EPA. Based on a 1997 study concerning the potential of a national roster of qualified practitioners, EPA decided to support the development of such a roster through the Institute.

To develop the project, the EPA and the Institute brought together a work group consisting of EPA dispute resolution professionals and contracting officers, state dispute resolution officials, private dispute resolution practitioners and academics. Informed in part by ideas from this group, the EPA and the Institute proposed roster entry qualifications and draft application, which were published in the **Federal Register** in November 1998. Before the entry criteria and application were finalized, the comments received in response to the **Federal Register** notice were reviewed. Outreach continued through meetings and newsletter articles, as well as individual communications to professional associations, state and federal government agencies, dispute resolution firms, individual practitioners,

professional associations of attorneys, environmental and citizen groups.

The roster was created, and continues to be needed, for several reasons. The use of ADR in the environmental and public policy arena has grown markedly over the last two decades. In this context, ADR processes now include techniques ranging from conflict prevention, such as consensus building and facilitation of public policy dialogues, to specific dispute resolution through assisted negotiations and mediation. The number of ECR practitioners has grown as the field has gained prominence and professionals from a variety of disciplines have become attracted to its advantages and opportunities.

An essential step in any dispute resolution process occurs when parties select a practitioner. Parties making the selection rightfully expect that the practitioner will be qualified to provide the service sought and has experience and style matched well to the nature of the issues and to the parties. Thus, the Roster of ECR Practitioners is designed to advance the interests of the growing field of dispute resolution, reflect the evolving standards of best practice, and help direct the expenditure of public funds for quality services.

Over the last fifteen years of using ADR, EPA found that parties to a dispute or controversy will generate a list of desired characteristics, such as experience with specific types of issues, cases or disputes, location, and other factors, that will be used in an attempt to identify the right person to assist them. Locating practitioners meeting these criteria can be a "hit-or-miss" experience depending on the resources, available time, and experience of the parties with locating appropriate neutrals.

Although the EPA operates a national service contract that manages major cases through a list of experienced providers, it is limited in scope and membership, and as a consequence it can be burdensome to use for identifying neutrals for small or localized cases. Most other Federal agencies have no vehicle or information available to assist in this important first step to conducting a good dispute resolution process.

More specifically, the National Roster of ECR Practitioners is necessary for the proper performance of the Institute's goals: to resolve Federal environmental disputes in a timely and constructive manner; to increase the appropriate use of environmental conflict resolution; to improve the ability of Federal agencies and other interested parties to engage in ECR effectively; and to promote

collaborative problem-solving and consensus-building during the design and implementation of Federal environmental policies so as to prevent and reduce the incidence of future environmental disputes.

In addition, the U.S. Institute's enabling legislation directs the Institute to work with practitioners located near the conflict whenever practical. Consistent with this mandate, the Institute must be able to identify appropriate experienced dispute resolution and conciseness building professionals in an efficient manner.

Finally, the Administrative Dispute Resolution ("ADR") Act of 1996 (5 U.S.C. 571, et. seq.) authorizes the Federal government to contract with dispute resolution professionals (e.g., facilitators or mediators) to assist it and other parties to disputes or issues in controversy in reaching an agreement, settlement, or consensus. The ADR Act authorizes the government to take steps to make identifying and contracting with neutrals easier (cf. 5 U.S.C. 573(c)).

Thus, the goal of the National Roster of ECR Practitioners and the referral system is to improve access to qualified environmental dispute resolution and consensus building professionals for the Institute and others sponsoring or engaging in environmental conflict resolution processes. The roster expedites the identification of appropriate professionals, shortens the time needed to complete contracting documents, and helps refer parties to practitioners, particularly practitioners in the locale of the dispute.

More specifically, the roster and the referral system provide an efficient, credible and user-friendly source from which to systematically identify experienced environmental neutral professionals; increase the use of collaborative processes by providing a useful tool for locating appropriate practitioners; and provide users with a detailed Practitioner Profiles, reflecting information contained in the application, to be used as a helpful first step in the process of selecting an appropriate neutral.

#### **E. Burden Statement**

The application compiles data available from the resumes of dispute resolution and consensus building professionals into a format that is standardized for efficient and fair eligibility review, database searches, and retrievals. A professional needs to complete the form only one time. Once the application is approved, the roster member has continual access to his or her on-line account to update information, on a voluntary basis. The

burden includes time spent to review instructions, review resume information, and enter the information in the form.

*Likely Respondents:* Environmental dispute resolution and consensus building professionals (new respondents); existing roster members (for updating).

*Proposed Frequency of Response:* one, with voluntary updates approximately once per year.

*Estimated Number of New Respondents (first extension year):* 30.

*Estimated Number of Existing Respondents—for updating (first extension year):* 125.

*Estimated Number of New Respondents (per year for succeeding year):* 30.

*Estimated Number of Existing Respondents—for updating (per year for succeeding year):* 125.

*Respondent Time Burden Estimates: Estimate Time per New Response:* 150 minutes (2.5 hours).

*Estimated Number of Updates (per year):* 1, for 125 existing respondents.

*Estimated Time for Update:* 15 minutes.

*Estimated Total First Extension Year Burden:* 4500 minutes (75 hours) (30 new respondents), 1875 minutes (31.25 hours)(125 updates).

*Estimated Total Subsequent Year Annual Burden:* 4500 minutes (75 hours) (30 new respondents), 1875 minutes (31.25 hours)(125 updates).

*Respondent Cost Burden Estimates (at \$150. per hour\*):*

*Capital or start-up costs:* \$0.

*Estimated Cost per Respondent (first extension year):* \$375 (new respondents), 38 (update).

*Estimated Cost per Respondent (subsequent year):* \$375 (new respondents), 38 (update).

*Estimated Total First Extension Year Burden:* \$11,250 (new respondents), \$4,750 (updates).

*Estimated Total Subsequent Year annual Burden:* \$11,250 (new respondents), \$4,750 (updates).

\* The actual cost estimate for this information collection may be less because this hourly rate is what is paid for services as a neutral and necessarily is set by the neutral to factor in time spent in the administration of the neutral's business and overhead costs. Indeed, fully burdened labor rates for "professional specialty and technical" occupations from Bureau of Labor Statistics tables indicate that an hourly rate as low as \$36 may be appropriate.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information and transmitting information.

(Authority: 20 USC Sec. 5601–5609)

Dated the 21st day of May, 2002.

**Christopher L. Helms,**

*Executive Director, Morris K. Udall Foundation.*

[FR Doc. 02–13201 Filed 5–24–02; 8:45 am]

**BILLING CODE 6820–FN–P**

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## NATIONAL COUNCIL ON DISABILITY

### Advisory Committee Meetings/ Teleconferences

*Times and Dates:* 4:30 p.m. EDT, July 30, 2002 (meeting); 3 p.m. EDT, September 4, 2002 (teleconference).

*Place:* National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC.

**AGENCY:** National Council on Disability (NCD).

*Status:* All parts of these meetings will be open to the public. Those interested in participating in either of these meetings should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

*Matters to be Considered:* Roll call, announcements, reports, new business, adjournment.

**FOR FURTHER INFORMATION CONTACT:**

Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), ghawkins@ncd.gov (e-mail).

*Cultural Diversity Advisory*

*Committee Mission:* The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: May 6, 2002.

**Jeffrey T. Rosen,**

*General Counsel and Director of Policy.*

[FR Doc. 02–13128 Filed 5–24–02; 8:45 am]

**BILLING CODE 6820–MA–P**

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes Subcommittee: Meeting Notice

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Meeting.

**SUMMARY:** The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) Subcommittee on June 21, 2002. The meeting will take place at the address provided below. The topic of discussion will be ACMUI Subcommittee recommendations related to the training and experience of authorized users in the revised 10 CFR part 35, Medical Use of Byproduct Material, published on April 24, 2002 (67 FR 20250–20397).

**DATES:** ACMUI Subcommittee will hold a public meeting on Friday, June 21, 2002, from 8 a.m. to 12:00 p.m.

**ADDRESS FOR PUBLIC MEETING:** U.S. Nuclear Regulatory Commission, Two White Flint North Building, Conference Room T2B3, 11545 Rockville Pike, Rockville, MD 20852-2738.

**FOR FURTHER INFORMATION CONTACT:** Linda M. Psyk, telephone (301) 415–0215; e-mail [lm1@nrc.gov](mailto:lm1@nrc.gov) of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

### Conduct of the Meeting

Richard J. Vetter, Ph.D., will chair the meeting. Dr. Vetter will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Linda M. Psyk, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, MD 20852–2738. Submittals should be postmarked by June 14, 2002, and must pertain to the topic for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for

inspection on NRC's web site ([www.nrc.gov](http://www.nrc.gov)) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about July 8, 2002. Minutes of the meeting will be available on or about August 18, 2002.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *Code of Federal Regulations*, part 7.

Dated: May 21, 2002.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 02–13245 Filed 5–24–02; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

### Enhancing Public Participation in NRC Meetings; Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy Statement.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is revising its public meeting policy to enhance public participation in NRC meetings. This policy brings consistency to NRC public meetings planned by headquarters and regional staff by introducing a categorization system whereby the public can anticipate the level of participation that will be provided for during an upcoming meeting. The NRC has identified three categories of public meetings it convenes and has described information availability and follow-up effort associated with each meeting category. Information such as agendas, background documents, and meeting summaries will be available in ADAMS and at NRC's web site for certain categories of meetings. The policy also provides guidance on teleconferencing, security, and other administrative issues related to NRC staff-sponsored public meetings. This revision is in response to suggestions made by the public at a meeting held in April, 2001, and to fulfill the NRC's strategic goal of increasing public confidence.

**EFFECTIVE DATE:** May 28, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Mindy Landau or Ramin Assa, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–8703 or (301) 415–8709 respectively.

## Commission Policy Statement on Staff Meetings Open to the Public

### A. Purpose

The Nuclear Regulatory Commission has had a formal policy regarding open meetings since 1978 which has been revised periodically, and most recently on September 20, 2000. This paper presents a revised policy that the Nuclear Regulatory Commission (NRC) will follow in opening meetings between the agency staff and one or more outside persons to public observation and participation. The revised policy continues NRC's longstanding practice of providing the public with substantial information on its activities and of conducting business in an open manner, while balancing the need for the NRC staff to exercise its regulatory and safety responsibilities without undue administrative burden. The revised policy also sets forth a plan for categorizing meeting types that will provide a framework for enhancing public participation. The public will be notified of the category of the meeting, and thereby the level of participation to be anticipated, via the NRC's Public Meeting Notice System on its web site. Implementing guidance will be issued to the NRC staff. This meeting policy is a matter of NRC discretion and may be departed from as circumstances warrant.

### B. Definition

A public meeting is a planned, formal encounter open to public observation and participation between one or more NRC staff members and one or more external stakeholders, with the expressed intent of discussing substantive issues that are directly associated with the NRC's regulatory and safety responsibilities. An external stakeholder is any individual who is not:

1. An NRC employee;
2. Under contract to the NRC;
3. Acting as an official consultant to the NRC;
4. Acting as an official representative of an agency of the executive, legislative, or judicial branch of the U.S. Government (except on matters where the agency is subject to NRC regulatory oversight);
5. Acting as an official representative of a foreign government;
6. Acting as an official representative of a State or local government or Tribal official (except when specific NRC licensing or regulatory matters are discussed).

### C. Applicability and Exemptions

1. This policy applies solely to NRC staff-sponsored and conducted meetings

and not to meetings conducted by outside entities in which NRC staff members might attend and participate. It does not apply to Commission meetings or to meetings sponsored by offices that report directly to the Commission. Similarly, it does not apply to meetings between NRC staff and representatives of State government, including Agreement State representatives, relating to NRC Agreement State activities or to State regulatory actions or to other matters of general interest to the State or to the Commission; that is, matters other than specific NRC licensing or regulatory actions involving specific licensees. Also, the policy is not intended to apply to or supersede any existing law, rule or regulation that addresses public attendance at a specific type of meeting. For example, 10 CFR part 7 and 10 CFR part 9 will continue to be applicable to advisory committee meetings and Commission meetings, respectively.

2. This policy covers various types of public "meetings." It does not cover the "hearings" associated with adjudicatory proceedings under the Commission's Rules of Practice in 10 CFR part 2.

The term "public meeting" is traditionally associated with the Commission's efforts to provide information to the public and to seek public views on various generic and site-specific issues. These meetings are open to a wide variety of people with an interest in the subject matter and a willingness to follow the ground rules established for the conduct of the meeting.

The term "hearings," covered under 10 CFR part 2, relates primarily to Commission adjudicatory proceedings on various types of licenses and licensing actions (e.g., initial issuance of a license, amendment of an existing license, renewal of a license) or to enforcement actions involving the imposition of civil penalties or orders to modify, suspend or revoke a license or take other appropriate action. This policy also does not cover meetings concerning the settlement of issues pertaining to any proceeding or regarding enforcement matters. Specific requirements regarding participation in and the conduct of such hearings are provided in the Commission's Rules of Practice set out in 10 CFR part 2.

3. Meetings between the NRC staff and external stakeholders will be designated as public meetings unless the NRC staff determines that the subject matter or information to be discussed meets one or more of the following criteria:

- a. Is specifically authorized by an Executive Order to be withheld in the

interests of national defense or foreign policy (classified information) or specifically exempt from public disclosure by statute;

b. Contains safeguards or other protected information;

c. Contains trade secrets and commercial or financial information (proprietary information);

d. Is of a personal nature where such disclosure would constitute a clearly unwarranted invasion of personal privacy;

e. Is related to a planned, ongoing, or completed investigation and/or contains information compiled for law enforcement purposes;

f. Could result in the inappropriate disclosure and dissemination of preliminary, predecisional or unverified information;

g. Is a general information exchange having no direct, substantive connection to a specific NRC regulatory decision or action. However, should discussions in a closed meeting approach issues that might lead to a specific regulatory decision or action, the NRC staff may advise the meeting attendees that such matters cannot be discussed in a closed meeting and propose discussing the issues in a future open meeting.

h. Indicates that the administrative burden associated with public attendance at the meeting could interfere with the staff's execution of its safety and regulatory responsibilities, such as when the meeting is an integral part of the execution of the NRC inspection program.

It is important to note that whether or not a meeting should be open to the public is dependent primarily on the subject matter to be discussed, not who is participating (e.g., staff level versus senior management).

Also note that meetings between staff and licensees or trade groups to discuss technical issues or licensee performance would normally be open because they may lead to a specific regulatory decision or action.

### D. Public Participation in NRC Meetings

In order to fulfill the NRC's strategic goal of increasing public confidence, the agency has identified three categories of public meetings the agency convenes and has developed criteria for the level of public participation, information availability and follow-up effort associated with each meeting category. The extent of known public interest in the meeting or activity and the objective of the meeting insofar as public involvement is concerned, will be considered by the staff when assigning a meeting to an appropriate category. The description, purpose, and levels of

public participation for each category of meeting is described below.

#### Category 1

*Description*—Meetings in this category are typically held with one licensee, vendor, applicant or potential applicant rulemaking to discuss particular regulatory issues regarding their specific facility (or facilities), certificate of compliance, license or license application.

*Meeting Purpose*—The purpose of this type of meeting is to discuss one particular facility or site, or certified system or device, with an applicant or licensee regarding, for example, technical issues in an application, licensee actions, or inspection results. At this type of meeting, NRC anticipates that the public would obtain factual information to assist in their understanding of the applicable regulatory issues and NRC actions.

*Examples*—Examples of this type of meeting could include: Annual public meetings to discuss plant performance, regulatory conferences, predecisional enforcement conferences, meetings held prior to a facility restarting, as well as meetings held on licensing actions (or applications), renewals and amendments, new facilities, away-from-reactor storage sites, large or complex fuel cycle facilities, or waste disposal sites. Certain inspection exit meetings such as those for Incident Investigation Teams, Augmented Inspection Teams or others as appropriate, would also be included in this category.

*Level of Public Participation*—The public is invited to observe the meeting consistent with past practice, and the public will have the opportunity to communicate with the NRC after the business portion of the meeting, but before the meeting is adjourned. This does not preclude the licensee from responding to questions if they choose to do so.

For Category 1 meetings longer than two hours, one or more opportunities may be provided for the public to ask questions before the end of the meeting, if practicable. In advance of the meeting, members of the public may request, via e-mail or telephone, that the meeting coordinator consider changing the meeting to a Category 2 meeting (discussed below), depending on the level of public interest in the activity being discussed. Meetings that the staff believe will generate high public interest should also provide more than one opportunity for public comments and questions. The decision on whether to change the category of any particular meeting is a matter left to the discretion of the staff on a case-by-case basis.

*Types of Information Provided*—At a minimum, an agenda or a list of items to be discussed will be entered into the Agencywide Documents Access and Management System (ADAMS). The ADAMS document accession number would be provided in the meeting notice that is posted at our public Web site for access to any primary or background documents.

*Follow-up*—No formal follow-up will be provided beyond the normal period for questions. Informal follow-up (telephone or e-mail) may be appropriate for certain questions that cannot be answered at the meeting. Members of the public also have the option of writing or e-mailing the staff about particular concerns. These concerns will be considered by the staff as it deliberates on the issue. Feedback forms would also be provided at this type of meeting, so that comments can be reviewed and offices can track any planned improvements or resulting actions in their operating plans, as appropriate. Meeting summaries and participant lists will be publicly available in ADAMS.

#### Category 2

*Description*—Meetings in this category are typically held with a group of industry representatives, licensees, vendors or non-governmental organizations.

*Meeting Purpose*—The purpose of this type of meeting is for NRC to obtain feedback from the regulated community and other external stakeholders on issues that could potentially affect more than one licensee. At this type of meeting, NRC anticipates that the public would obtain factual information and provide the agency with feedback on the analysis of the issues, alternatives and/or decisions.

*Examples*—This type of meeting includes task force groups, industry groups (such as the Nuclear Energy Institute or owners groups), or public interest and citizen group discussions that focus on issues that could apply to several facilities, such as plant system aging, license renewal, decommissioning, or spent fuel storage.

*Level of Public Participation*—The public is invited to discuss regulatory issues with the agency at designated points identified on the agenda. Generally, there will be more opportunities provided for the public to ask questions and provide comments at a meeting of this type than at a Category 1 meeting.

*Types of Information*—An agenda, names of participants, and background documents will be entered into ADAMS, and the ADAMS package

accession number will be provided in the meeting notice. A Web page with links to other appropriate background information will be made available at NRC discretion. The ADAMS package accession number and any link to a Web page will be posted to the public Web site.

*Follow-up*—Staff will provide answers to questions as appropriate during the meeting. Questions that cannot be answered at the meeting will be assigned to a designated staff person as an action item. Meeting summaries or any transcripts and participant lists would be provided in ADAMS and on the Web, if a Web site is established. Feedback forms will be provided as they are in Category 1 meetings, so that comments can be reviewed and offices can track any planned improvements or resulting actions in their operating plans, as appropriate.

#### Category 3

*Description*—This type of meeting would be held with representatives of non-government organizations, private citizens or interested parties, or various businesses or industries (other than those covered under Category 2) to fully engage them in a discussion on regulatory issues.

*Meeting Purpose*—The purpose of this type of meeting is to maximize discussions with the public to ensure that their issues and concerns are presented, understood and considered by the NRC. The NRC anticipates that the public would work with the agency to facilitate the widest exchange of information, views, concerns and suggestions with regard to license-specific or generic regulatory issues.

*Examples*—Examples might include town hall or roundtable discussions, Environmental Impact Statement scoping meetings, workshops, the Regulatory Information Conference, the Nuclear Safety Research Conference, or proposed rulemaking meetings.

*Level of Public Participation*—Public participation is actively sought at this type of meeting, which has the widest participation opportunities and is specifically tailored for the public to comment and ask questions throughout the meeting.

*Types of Information*—An agenda, names of participants and background documents will be entered into ADAMS, and the accession number will be provided in the meeting notice. In addition, a Web page will be created where all relevant documents for the meeting will be posted. The ADAMS accession number and a link to the required Web page will be posted to the public Web site.

*Follow-up*—Staff follow-up is similar to Category 2, but meeting summaries or transcripts and participant lists will be provided in ADAMS and linked to the Web site. Feedback forms will also be provided at this level meeting.

#### E. Notice to the Public

Meeting announcement information is to be provided to the public as soon as the staff is reasonably confident that a meeting will be held and firm date, time and facility arrangements have been made, but generally no fewer than 10 calendar days before the meeting. Where a meeting must be scheduled but cannot be announced 10 calendar days in advance, the staff will provide as much advance notice as possible. Public notice of meetings will be made via the internet on the NRC Web site. Meeting changes or cancellations will also be announced promptly on the NRC Web site. Members of the public who cannot access the NRC Web site can contact the NRC Public Document Room staff via a toll-free number (1-800-397-4209) or by e-mail ([pdr@nrc.gov](mailto:pdr@nrc.gov)) for information on scheduled NRC meetings. Some meetings having very high public interest will also be noticed via a press release or paid advertisement in local newspapers, or both.

The assigned category level of the meeting, agenda, background documents, Commission papers, or other material that could be helpful to attendees at the meeting will be entered into ADAMS and made available through the public meeting notice system.

Teleconferencing may be requested by participants to the extent that travel to a meeting is considered difficult for interested citizens. Requests for teleconferencing should be made directly to the meeting contact listed on the public meeting Web site. Such requests may be granted to the extent budget resources are available and technical factors can be accommodated.

#### F. Visitors and Security

##### 1. Registration, Badging, and Sign-in Procedures

All visitors to the NRC's White Flint North (WFN) complex in Rockville, Maryland are screened through metal detectors and their packages are x-rayed. All visitors age 18 and older must present a picture identification.

During normal security access hours (6 a.m.—6 p.m. Monday through Friday), NRC employees must register their visitors (visitor's name, organization, time, place and purpose of visit, and whether the visit involves

classified information) with the guard force.

Visitors who have been registered in advance are issued a visitor badge by a guard and may move about freely without an escort in the public spaces. The public spaces in One White Flint North are the Public Document Room, the Commission Meeting Room (when open for a meeting), and the NUREG Café. In Two White Flint North, the public spaces are the Exhibit Area, Cafeteria, Snack 'n Go, and the Credit Union. Restrooms are also considered public spaces in both building complexes.

Visitors to the Public Document Room, the Commission Meeting Room or Credit Union are not normally registered in advance and their access to the public spaces is restricted.

##### 2. Parking Procedures

Visitors to the NRC are encouraged to use Metro because parking availability is limited. Vehicles driven by visitors are subject to inspection (undercarriage, trunk, hood, and inside), before being allowed to enter the complex. Visitors must have prior approval (arranged by an NRC employee) to park inside the garage or in the outside visitor parking area behind the buildings. Visitors who want to park in the garage must have an NRC escort before driving into the garage. The NRC escort must accompany the visitor from the garage to a receptionist area on the lobby level for screening, registration, and badging. Visitors pre-approved to park in the outside visitor parking area are directed by a guard to park their vehicles in the visitor parking area and proceed to the lobby of either building to meet their escorts and go through screening, registration, and badging.

##### 3. Recording Devices and Cameras

Portable electronic devices including cellular telephones, pagers, palm-size computing devices, two-way radios, and portable computers are allowed into NRC buildings and public meetings. However, devices that could interrupt or distract from public meetings (cellular phones, pagers and two-way radios) are not to be used during public meetings.

In addition, visitors may use recording devices in public meetings held in NRC headquarters spaces on the lobby levels designated as a "public access area." Cameras and video recording devices (e.g. camcorders) are permitted in public meetings on a case-by-case basis, with the approval of the Director, Office of Public Affairs or the Director, Division of Facilities and Security.

Any article that could cause property damage or personal injury is prohibited in NRC buildings. Prohibited articles include firearms, explosives, and incendiary devices. Members of the public going to NRC "controlled spaces" inside the buildings above the lobby levels are allowed access with recording devices with the approval of the sponsoring office and under the escort of an NRC employee.

##### 4. Restrictions on Signs and Banners

Signs, banners, posters, and displays not larger than 18"x18" are permitted at NRC public meetings, but cannot be waved, held over one's head, or generally moved about in the meeting room because they are distracting to the participants and audience. Signs, banners, posters, and displays affixed to sticks, poles, etc., are not permitted in the meeting rooms.

##### 5. Escort Requirements

All visitors going to locations above the first floor lobby level must display an NRC visitor badge and must be escorted by an NRC employee—one employee may escort up to five visitors.

##### 6. Use of NRC Copiers, Telephones, and Fax Machines

Visitors may not use NRC copiers and fax machines without the approval and supervision of an NRC employee. Visitors may use building lobby level telephones to make brief in-house and local calls. Those visiting the PDR or attending public meetings are also prohibited from bringing copying or imaging devices, including scanners, CD-ROM writers, photocopy machines, or other devices which permit the duplication of NRC documents because of the devices' intrusive and disruptive nature.

##### 7. Other Locations or Regions

Visitor controls and related security procedures are established for public meetings held in NRC regional offices or other remote locations based on an overall assessment by the Physical Security Branch relative to potential security concerns. Security requirements nationwide may differ based on various factors and therefore meetings are evaluated on a case-by-case basis.

#### G. Contact

The primary point of contact in the agency for general issues related to this policy will be the Assistant for Communications, Deputy Executive Director for Management Services, Office of the Executive Director for Operations. The Office of Public Affairs



is also available to receive questions and suggestions. There are also opportunities for comment on our public participation policies, or on any of our programs, at the link on the public involvement page of our Web site.

Dated at Rockville, Maryland, this 21st day of May, 2002.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 02-13244 Filed 5-24-02; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**DATES:** Weeks of May 27, June 3, 10, 17, 24, July 1, 2002.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### MATTERS TO BE CONSIDERED:

#### Week of May 27, 2002

*Tuesday, May 28, 2002*

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1)

3:00 p.m.—Discussion of Security Issues (Closed—Ex. 1)

*Wednesday, May 29, 2002*

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on the Status of New Reactor Licensing Activities (Public Meeting) (Contact: Joseph Williams, 301-415-1470)

This meeting will be webcast live at the Web address—[www.nrc.gov](http://www.nrc.gov)

#### Week of June 3, 2002—Tentative

*Tuesday, June 4, 2002*

1:15 p.m.—Discussion of Intergovernmental Issues (Closed—Ex. 1)

*Friday, June 7, 2002*

9:00 a.m.—Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

#### Week of June 10, 2002—Tentative

There are no meetings scheduled for the Week of June 10, 2002.

#### Week of June 17, 2002—Tentative

There are no meetings scheduled for the Week of June 17, 2002.

#### Week of June 24, 2002—Tentative

*Tuesday, June 25, 2002*

2:00 p.m.—Discussion of Intragovernmental Issues (Closed—Ex. 1)

*Wednesday, June 26, 2002*

10:30 a.m.—All Employees Meeting (Public Meeting)

1:30 p.m.—All Employees Meeting (Public Meeting)

#### Week of July 1, 2002—Tentative

*Monday, July 1, 2002*

2:00 p.m.—Discussion of International Safeguards Issues (Closed—Ex. 9)

\* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: David Louis Gamberoni (301) 415-1651.

#### Additional Information

By a vote of 5-0 on May 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held on May 28, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: [www.nrc.gov/what-we-do/policy-making/schedule.html](http://www.nrc.gov/what-we-do/policy-making/schedule.html).

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: May 23, 2002.

**David Louis Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 02-13328 Filed 5-23-02; 11:25 am]

BILLING CODE 7590-01-M

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses; Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice.

Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 3, 2002 through May 16, 2002. The last biweekly notice was published on May 14, 2002 (67 FR 34481).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before

action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 27, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and

how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 304-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

*AmerGen Energy Company, LLC, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of amendment request:* April 26, 2002.

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TSs), Section 2.3, "Limiting Safety System Settings," Section 3.1, "Protective Instrumentation," and Section 3.10, "Core Limits," to reflect a methodology to assure coupled neutronic/thermal-hydraulic instabilities are adequately detected and suppressed. This methodology is identified as Option II by the Boiling Water Reactor (BWR) Owners Group. The proposed amendment includes technical (*i.e.*, limiting safety system settings) and editorial changes, and is associated with the average power range monitoring (APRM) system.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*No.* The APRM neutron monitoring system is not an initiator of, or a precursor to, a previously evaluated accident. The APRM system monitors the power level of the reactor core and provides automatic core protection signals in the event of a power transient. The revised requirements will result in a reactor scram, should one be needed, sooner than under the current requirements. These revised requirements do not lead to, and are not results of, physical design modifications. The APRM and other systems associated with the proposed TS requirements will thus continue to perform their functions as originally designed. Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*No.* The proposed amendment does not affect accident initiators or precursors because it does not alter any design feature, reactor fuel safety limit, equipment configuration, or manner in which the unit is operated. Further, it

does not alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Accordingly, the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

*No.* The proposed amendment does not change any design feature, analysis methodology, safety limits or acceptance criteria. The APRM system under the revised requirements will continue to perform its design functions. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Attorney for licensee:* Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036-5869.

*NRC Section Chief:* Richard J. Laufer.

*AmerGen Energy Company, LLC, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Exelon Energy Company, LLC, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of amendment request:* April 10, 2002.

*Description of amendment request:* The proposed changes to the Technical Specifications (TSs) will relocate the emergency diesel generator (EDG) 24-month maintenance inspection requirements to licensee-controlled documents, *i.e.*, either the Updated Final Safety Analysis Report (UFSAR) or the Technical Requirements Manual as appropriate, either of which would be controlled in accordance with the requirements of 10 CFR 50.59.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1.] The proposed amendments do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative changes to relocate the current EDG maintenance inspection requirements.

The EDGs are designed to provide a reliable alternative source of AC [alternating current] electrical power in the event of an accident coincident with the loss of offsite power. The failure of an EDG itself is not considered as an accident evaluated in the UFSAR. The proposed administrative changes to relocate the maintenance inspection requirements do not affect the current accident initiators or precursors that could lead to a previously evaluated accident.

The failure of a single EDG to respond when required to mitigate the consequences of an accident has already been considered as a subsequent single failure in the current plant safety analyses. The proposed administrative changes to relocate the maintenance inspection requirements do not alter the EDG design features, operation, or accident analysis assumptions which could affect the ability of the EDGs to mitigate the consequences of a previously evaluated accident. Current TS testing requirements for the EDGs, *e.g.*, starting, timing, loading, and sequencing will continue to ensure reliable EDG operation and are not being changed in this request.

Since only the relocation of EDG maintenance inspection requirements is involved, the proposed changes will not increase the likelihood of the malfunction of another system, structure or component which has been assumed as an accident initiator or credited in the mitigation of an accident.

Based on the above discussion, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2.] The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The EDGs are designed to provide a reliable alternative source of AC electrical power in the event of an accident coincident with the loss of offsite power. The proposed TS changes are administrative changes to relocate the EDG maintenance inspection requirements.

No change in the ability to perform the design function of the EDGs is involved. No change in the operation of the EDGs is required. Instrumentation setpoints, starting, sequencing, and loading functions associated with the EDGs are not affected by the proposed changes. No modifications to the EDGs are required to implement the proposed TS changes. Therefore, no new failure mechanism, malfunction, or accident initiator is considered credible.

Additionally, the proposed TS changes do not affect other plant design, hardware, system operation, or procedures. Therefore, based on the above discussion, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3.] The proposed amendments do not involve a significant reduction in a margin of safety.

The proposed TS changes are administrative changes to relocate the current EDG maintenance requirements.

The consideration of safety margins for this amendment included a review of the acceptance criteria for emergency core cooling systems for light water nuclear power reactors in 10 CFR 50.46, and ECCS [emergency core cooling system] evaluation models in Appendix K to 10 CFR [Part] 50. The proposed amendments do not involve a relaxation of the criteria used to establish the safety limits, a relaxation of the bases for the limiting safety system setting, nor a relaxation of the bases for the limiting conditions for operation.

Controlling values for the EDGs are included in current TS testing requirements, e.g., EDG starting, timing, loading, and sequencing. The proposed amendment will not modify these requirements or the accident analysis assumptions regarding the performance of the EDGs which could potentially challenge safety margins established to ensure fuel cladding integrity, as well as reactor coolant and containment system integrity.

The safety analyses of the EDGs' ability to mitigate accidents do not require revision in order to implement the proposed amendment[s]. Modification of the existing margins is not required.

Based on the above discussion, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

*NRC Section Chief:* Richard J. Laufer.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* January 31, 2002.

*Description of amendments request:* The proposed amendments would correct several administrative errors to Technical Specifications Sections 5.6.5.b and Appendix B. The changes would correct the title of a topical report, the date of issuance of a report, and the name of the state agency that issues pollution discharge elimination system permits.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Technical Specification 5.6.5.b, Item 16 is being corrected to change the title of the publication for CENPD-382-P-A from "C-E Methodology for Core Designs Containing Erbuim Burnable Absorbers" to "Methodology for Core Designs Containing Erbuim Burnable Absorbers." Correction of an administrative error does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 5.6.5.b, Item 19 is being corrected to change the date of publication for CEN-161-(B)-P, Supplement 1-P, "Improvements to Fuel Evaluation Model" from April 1989 to April 1986. Correction of an administrative error does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification Appendix B, Page 2-1 (both units) last paragraph is being corrected to change the State of Maryland Department of Health and Mental Hygiene to the Maryland Department of the Environment. The revision of a state organizational title to accurately reflect administrative changes made to that organization, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would Not Create the Possibility of a New or Different [Kind] of Accident From Any Accident Previously Evaluated

Technical Specification 5.6.5.b, Item 16 is being corrected to change the title of publication for CENPD-382-P-A from "C-E Methodology for Core Designs Containing Erbuim Burnable Absorbers" to "Methodology for Core Designs Containing Erbuim Burnable Absorbers." Correction of an administrative error will not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

Technical Specification 5.6.5.b, Item 19 is being corrected to change the date of publication for CEN-161-(B)-P, Supplement 1-P, "Improvements to Fuel Evaluation Model" from April 1989 to April 1986. Correction of an administrative error will not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

Technical Specification Appendix B, Page 2-1 (both units) last paragraph is being corrected to change the State of Maryland Department of Health and Mental Hygiene to the Maryland Department of the Environment. The revision of a state organizational title to accurately reflect administrative changes made to that organization will not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Would Not Involve a Significant Reduction in [a] Margin of Safety

Technical Specification 5.6.5.b, Item 16 is being corrected to change the title of publication for CENPD-382-P-A from "C-E Methodology for Core Designs Containing Erbuim Burnable Absorbers" to "Methodology for Core Designs Containing Erbuim Burnable Absorbers." Correction of an administrative error will not involve a significant reduction in [a] margin of safety.

Technical Specification 5.6.5.b, Item 19 is being corrected to change the date of publication for CEN-161-(B)-P, Supplement 1-P, "Improvements to Fuel Evaluation Model" from April 1989 to April 1986. Correction of an administrative error will not involve a significant reduction in [a] margin of safety.

Technical Specification Appendix B, Page 2-1, (both units) last paragraph is being corrected to change the State of Maryland Department of Health and Mental Hygiene to the Maryland Department of the Environment. The revision of a state organizational title to accurately reflect administrative changes made to that organization will not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Richard J. Laufer.

*Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina*

*Date of amendments request:* March 25, 2002.

*Description of amendments request:* The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of " \* \* \* up to 24 hours or up to the limit of the specified Frequency, whichever is less" to " \* \* \* up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400),

on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated March 25, 2002.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

**Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

**Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated**

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of

accident from any accident previously evaluated.

**Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety**

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Thomas Koshy, Acting.

*Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant (HBRSEP), Unit No. 2, Darlington County, South Carolina*

*Date of amendment request:* March 26, 2002.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 5.5.16, "Containment Leakage Rate Testing Program," to require the performance of a Type A test within 15 years from the last Type A test, which was performed on April 9, 1992. The proposed change is supported by a plant-specific risk assessment.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

**1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**

The proposed change to TS 5.5.16 provides a one-time extension to the testing interval for Type A (containment integrated leak rate) testing. The existing 10-year test interval is based on past test performance. The proposed TS change provides a one-time extension of the Type A test interval to 15 years for HBRSEP, Unit No. 2. The proposed TS change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment vessel is designed to provide a leak tight barrier against the uncontrolled release of radioactivity to the environment in the unlikely event of postulated accidents. As such, the containment vessel is not considered as the initiator of an accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only a one-time change to the interval between Type A containment leakage tests. Type B and C leakage testing will continue to be performed at the interval specified in 10 CFR Part 50, Appendix J, Option A, as currently required by the HBRSEP, Unit No. 2, TS. As documented in NUREG-1493, "Performance-Based Containment Leakage-Test Program," industry experience has shown that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. In fact, an analysis of 144 integrated leak rate tests results, including 23 failures, found that none of the failures involved containment liner breach. NUREG-1493 also concluded, in part, that reducing the frequency of Type A containment leakage rate testing to once per 20 years was found to lead to an imperceptible increase in risk. The HBRSEP, Unit No. 2, test history and risk-based evaluation of the proposed extension to the Type A test interval supports this conclusion. The design and construction requirements of the containment vessel, combined with the containment inspections performed in accordance with the American Society of Mechanical Engineers (ASME) Code, Section XI, and the Maintenance Rule (i.e., 10 CFR 50.65) provide a high degree of assurance that the containment vessel will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed Technical Specification change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or

consequences of an accident previously evaluated

**2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated**

The proposed change to TS 5.5.16 provides a one-time extension to the testing interval for Type A (containment integrated leak rate) testing. The existing 10-year test interval is based on past test performance. The proposed TS change will provide a one-time extension of the Type A test interval to 15 years for HBRSEP, Unit No. 2. The proposed change to the Type A test interval does not result in any physical changes to HBRSEP, Unit No. 2. In addition, the proposed test interval extension does not change the operation of HBRSEP, Unit No. 2, such that a failure mode involving the possibility of a new or different kind of accident from any accident previously evaluated is created.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

**3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety**

The proposed change to TS 5.5.16 provides a one-time extension to the testing interval for Type A (containment integrated leak rate) testing. The existing 10-year test interval is based on past test performance. The proposed TS change will provide a one-time extension of the Type A test interval to 15 years for HBRSEP, Unit No. 2. The NUREG-1493 generic study of the effects of extending containment leakage testing found that a 20 year extension for Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG-1493 found that, generically, the design containment leakage rate contributes a very small amount to the individual risk, and that the decrease in Type A testing frequency would have a minimal affect on this risk, because most potential leakage paths are detected by Type B and C testing.

The proposed change involves only a one-time extension of the interval for Type A containment leakage testing; the overall containment leakage rate specified by the HBRSEP, Unit No. 2, Technical Specifications is being maintained. Type B and C containment leakage testing will continue to be performed at the frequency required by the HBRSEP, Unit No. 2, Technical Specifications. The regular containment inspections being performed in accordance with ASME, Section XI, and the Maintenance Rule (i.e., 10 CFR 50.65) provide a high degree of assurance that the containment will not degrade in a manner that is only detectable by Type A testing. In addition, a plant-specific risk evaluation has demonstrated that the one-time extension of the Type A leakage test interval from 10 years to 15 years results in only a very small increase in risk for those accident sequences influenced by Type A testing.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Thomas Koshy, Acting.

*Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan*

*Date of amendment request:* August 24, 2001.

*Description of amendment request:* The proposed amendment would change Technical Specification (TS) Limiting Condition for Operation (LCO) 3.7.3, "Control Room Emergency Filtration (CREF) System," to address a degraded CREF pressure boundary. Specifically, the amendment would (1) add a note to the LCO that would allow the CREF pressure boundary to be opened under administrative control; (2) add a new Condition (B) for two CREF subsystems inoperable due to an inoperable control room pressure boundary—the associated Required Action would be to restore the control room pressure boundary to operable status and the Completion Time would be 24 hours; (3) add the phrase, "for reasons other than Condition (B)," to the Condition requiring entry into LCO 3.0.3 for two CREF subsystems or a nonredundant component or portion of the CREF system inoperable in Mode 1, 2, or 3; and (4) renumber the remaining existing Conditions and Required Actions of LCO 3.7.3, as required.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

**1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**

No. The Control Room Emergency Filtration (CREF) System is not assumed to be an initiator of any analyzed accident. Therefore, the proposed change does not affect the probability of any accident previously evaluated. The proposed change to the CREF Technical Specifications would permit the control room pressure boundary to be opened intermittently under administrative control. Based on the proposed compensatory measures in the form of a dedicated individual who is in communication with the control room, and his ability to rapidly restore the pressure

boundary, the capability to mitigate a design basis accident will be maintained. In addition, the proposed change adds a new Condition that would allow up to 24 hours to restore an inoperable control room pressure boundary to operable status and would modify existing Conditions to accommodate the new Condition (so as to maintain the requirements of the existing Conditions). The proposed change does not involve a significant increase in the consequences of an accident previously evaluated based on the availability of self-contained breathing apparatus equipment to minimize radiological dose due to iodine, and the ability to operate at least one CREF subsystem to maintain positive pressure or to at least minimize any inflow of air from outside of the control room.

**2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated**

No. The proposed change would permit the control room pressure boundary to be opened intermittently under administrative control. In addition, the proposed change would add a new Condition that would permit a 24-hour period to take action to restore an inoperable control room pressure boundary to operable status. The proposed change does not alter the operation of the plant or any of its equipment, introduce any new equipment, or result in any new failure mechanisms or single failures. Therefore, this change does not create the possibility of a new accident, and does not change the way that an analyzed accident will progress.

**3. The Change Does Not Involve a Significant Reduction in the Margin of Safety**

No. The proposed change would permit the control room pressure boundary to be opened intermittently under administrative control. In addition, the proposed change would add a new Condition that would permit a 24-hour period to take action to restore an inoperable control room pressure boundary to operable status. The proposed change does not adversely affect the ability of the fission product barriers to perform their functions. The only safety-related equipment affected by the proposed change is the CREF system. Adequate compensatory measures are available to mitigate a breach in the CREF control room pressure boundary. The probability of a design basis accident that would place demands on the CREF System occurring during a period that the control room pressure boundary would be allowed to be inoperable have been shown to be negligible for this limited period of time. In addition, the proposed change would avoid the potential for placing the unit in TS Limiting Condition for Operation (LCO) 3.0.3, due solely to a breach in the control room pressure boundary. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

*Attorney for licensee:* Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226-1279.  
*NRC Section Chief:* L. Raghavan.

*Dominion Nuclear Connecticut Inc., et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of amendment request:* February 5, 2002, as supplemented on March 6, 2002.

*Description of amendment request:* This request changes the term in the Technical Specifications "once each REFUELING INTERVAL" to "once per 24 months" in several surveillance requirements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change is to revise the term "once each REFUELING INTERVAL" to "once per 24 months" in several technical specification surveillance requirements. These surveillances were previously approved for once per 24 months when the term REFUELING INTERVAL was defined as once per 24 months. The proposed change does not revise any surveillance requirements. The change does not alter any regulatory requirement or any acceptance criteria for any design-basis accidents described in the Millstone Unit No. 3 Final Safety Analysis Report (FSAR). The proposed change does not alter the method by which the surveillances are conducted, does not involve any physical changes to the plant, and does not modify the manner in which the plant is operated. Since the change does not change the frequency of surveillance, it cannot affect the likelihood or consequences of accidents. Therefore, the change will not increase the probability or consequences of an accident previously evaluated.

2. Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant or change the plant configuration (no new or different type of equipment will be installed). The proposed change does not require any new or unusual operator actions. The change does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated. The change does not introduce any new failure modes and does not change the surveillance frequency. Therefore, the proposed change

will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a Significant Reduction in a Margin of Safety

The proposed change does not change any analyses for the current design-basis accidents described in the Millstone Unit No. 3 FSAR. Therefore, the proposed change will not result in a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141-5127.

*NRC Section Chief:* James W. Clifford.

*Exelon Generation Company, LLC, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of amendment request:* April 15, 2002.

*Description of amendment request:*

The proposed amendments would modify the allowable value and surveillance requirements for reactor protection system instrumentation for the reactor vessel steam dome pressure—high function.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed TS Changes Do Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed Technical Specifications (TS) changes support a design change that upgrades the existing reactor vessel steam dome pressure—high instrumentation from pressure switches to analog trip units. Analog trip units use a proven technology that is more reliable than the existing equipment. The proposed design is consistent with a generic design that has been previously reviewed and approved by the NRC. Analog trip units are currently used in various applications at Dresden Nuclear Power Station (DNPS), including the reactor protection system (RPS) low water level scram function.

The proposed TS changes add new channel check and trip unit calibration surveillance requirements (SRs), and modify other SRs in keeping with the use of pressure transmitters for the reactor vessel steam dome pressure—high function. The new SRs are not applicable to the existing instrumentation because the current pressure switches are non-indicating and do not employ trip units.

TS requirements that govern operability or routine testing of plant instruments are not

assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these changes will not involve an increase in the probability of an accident previously evaluated. Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed change does not adversely impact structures, systems, or components. The planned instrument upgrade is a more reliable design than existing equipment. The proposed change establishes requirements that ensure components are operable when necessary for the prevention or mitigation of accidents or transients. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed TS Changes Do Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed changes support a planned instrumentation upgrade by incorporating SRs required to ensure operability. The change does not adversely impact the manner in which the instrument will operate under normal and abnormal operating conditions. Therefore, these changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes in allowable values and surveillance requirements do not affect the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed TS Changes Do Not Involve a Significant Reduction in a Margin of Safety

The proposed TS changes support a planned instrumentation upgrade. The proposed changes do not affect the probability of failure or availability of the affected instrumentation. The revised allowable values, addition of a channel check and trip unit calibration, and revision of other SRs do not affect the analytical limit assumed in the safety analyses for the actuation of the instrumentation. Therefore, the proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

*NRC Section Chief:* Anthony J. Mendiola.

*Exelon Generation Company, LLC, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois*

*Date of amendment request:* May 1, 2002.

*Description of amendment request:* The proposed amendments revise the required emergency diesel generator start time limit specified in Technical Specification (TS) Section 3.8.1, "AC Sources—Operating," Surveillance Requirements from " $\leq 10$  seconds" to " $\leq 13$  seconds."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR) involving emergency diesel generator (EDGs) are failure of one EDG to start during a loss-of-offsite power (LOOP), with or without, simultaneous occurrence of the design basis loss-of-coolant accident (LOCA). New evaluations were necessary for the General Electric GE-14 (GE-14) fuel to be used at Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2. The proposed change increases the time limit allowed for an EDG to start by 3 seconds. However, the increased EDG start time span allowance is still within the time delay assumed in these newly evaluated accidents. Thus, the probability for a successful EDG start is unchanged by this proposed change. A change in the start time of an EDG, but still within the bounds of the time delay assumed in analyzed accidents, does not affect previously evaluated accidents.

In either accident specified above (i.e., failure of one EDG with either a LOOP or a LOOP plus LOCA), the UFSAR accident analysis assumes the limiting single failure, as required by 10 CFR 50 Appendix K, "ECCS Evaluation Models," which is the complete failure of the unit EDG to start. The limiting single failure is unchanged by the 3-second increase in EDG start time. For this limiting single failure, the redundant "swing" EDG starts within 13 seconds and powers the essential loads delivering Emergency Core Cooling System (ECCS) flow to the core within the GE-14 LOCA analysis assumptions. This GE-14 analysis meets all of the same 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," requirements as the previously evaluated LOCA analysis assuming a 10-second EDG start time. Therefore, the consequences of an EDG start failure are not impacted by the proposed increase in the allowed EDG start time limit. Based on the above, the proposed TS change does not involve a significant increase in the consequences of an accident previously evaluated.

In summary, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the required EDG start time limit utilized by the six Surveillance Requirements (SRs) that verify EDG start capability. No other changes in requirements are being proposed. The revised EDG start time limit is consistent with the EDG and ECCS start time delay assumed in the design basis accident analysis. Therefore, the proposed EDG start time utilized by the six SRs is still bounded by analyzed evaluations of a LOOP or a LOOP in conjunction with a LOCA. No new failure modes are introduced by this proposed change. In addition, the proposed change does not physically alter the plant and will not alter the operation of the structures, systems, or components of QCNPS. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated will not be created.

The proposed TS change does not involve a significant reduction in a margin of safety.

The consequences of a LOOP or a LOOP in conjunction with a LOCA have been previously evaluated. New evaluations were performed for the GE-14 fuel to be used at QCNPS. These new evaluations assume a bounding and longer EDG start time delay, following detection of the LOOP condition, prior to powering permanent loads fed off its associated emergency bus. Since the longer EDG start time delay was assumed in these new evaluations, any EDG start within the longer start time is bounded. The currently specified TS EDG start time limit is based on the existing analyses for the fuel utilized by QCNPS. New analysis for GE-14 fuel has assumed more conservative and bounding time delays for the integrated ECCS delivery timing sequence. All of the acceptance criterion of 10 CFR 50.46 continue to be met with the new GE-14 conservative EDG and ECCS sequences analyzed. The proposed change does not alter the basis upon which the start time limit specified in the TS is derived. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

*NRC Section Chief:* Anthony J. Mendiola.

*North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* April 15, 2002.

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TSs) to relocate boron concentration limits contained in certain TSs to the Core Operating Limits Report (COLR). The proposed amendment would change TS 2.1, "Safety Limits," to relocate Figure 2.1-1, "Reactor Core Safety Limits-Four Loops in Operation," to the COLR; and would revise TSs 2.1.1 and 2.1.2 limiting conditions and actions to be consistent with the improved Standard Technical Specifications (ITS). The proposed amendment also would relocate the Departure from Nucleate Boiling (DNB)-related parameters, specified in TS 3/4.2.5, to the COLR. TS 6.8.1.6, "Core Operating Limits Report," and the associated TS Bases, would be revised to reflect the above changes. Editorial and administrative changes, consistent with the ITS, would also be made to TS 6.8.1.6.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The Proposed Changes Do Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed changes to relocate cycle-specific parameters from the TSs to the COLR are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which it is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Changes Do Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes do not alter the design assumptions, conditions, or configuration of the facility or the manner in which it is operated. The proposed changes have no adverse impact on component or



system interactions. Since there are no changes to the design assumptions, parameters, conditions and configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different accident from any previously analyzed.

### 3. The Proposed Changes Do Not Involve a Significant Reduction in the Margin of Safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the TSs themselves that would adversely affect any current margin of safety. The proposed changes are administrative in nature and impose alternative procedural and programmatic controls on these parameter limits.

Therefore, relocation of the subject cycle-specific parameter limits and other proposed editorial changes, to be reflective of the relocated parameters, do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* William J. Quinlan, Esq., Assistant General Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

*NRC Section Chief:* James W. Clifford.

*Nuclear Management Company, LLC, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of amendment request:* April 17, 2002.

*Description of amendment request:* The proposed amendment would revise the Kewaunee Nuclear Power Plant Technical Specification (TS) Section 6.3, "Plant Staff Qualifications," to reflect the title change from Superintendent Plant Radiation Protection to Radiation Protection Manager. In addition, the licensee informed the United States Nuclear Regulatory Commission of its intention to reformat TS Section 6.3 to Microsoft WORD format.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

#### 1. Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed changes will not alter the intent of the TS. Reformating TS Section 6.3 is administrative. Changing the title from Superintendent Radiation Protection to

Radiation Protection Manager is also administrative in nature. There is no impact on accident initiators or plant equipment, and thus does not affect the probability or consequences of an accident.

#### 2. Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated.

The proposed changes do not involve a change to the physical plant or operations. Since these are administrative changes they do not contribute to accident initiation. Therefore, they do not produce a new accident scenario or produce a new type of equipment malfunction.

#### 3. Involve a Significant Reduction in the Margin of Safety

Since these are administrative changes, they do not involve a significant reduction in the margin of safety. The proposed changes do not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497.

*NRC Section Chief:* L. Raghavan, Section Chief

*PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* April 2, 2002.

*Description of amendment request:* The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of " \* \* \* up to 24 hours or up to the limit of the specified Frequency, whichever is less" to " \* \* \* up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the

consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 2, 2002.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

#### Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

#### Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's incorporation of the above analysis by reference and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101-1179.

*NRC Section Chief:* Richard J. Laufer.

*Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of amendment request:* April 9, 2002.

*Description of amendment request:* The proposed amendment would revise the Ginna Station Improved Technical Specification (ITS) associated with Safety Limits, Instrumentation Setpoints, and the Core Operating Limits Report. The purpose of this license amendment is to provide a clear and consistent identification of instrumentation setpoints and their operability basis.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of Ginna Station in accordance with the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The Reactor Trip System (RTS) Instrumentation, Engineered Safety Feature Actuation System (ESFAS), Loss of Power (LOP) Diesel Generator (DG) Start Instrumentation, and Containment Ventilation Isolation trip functions are part of the accident mitigation response and are not themselves an initiator for any transient. Therefore, the probability of an accident previously evaluated is not significantly affected, including the probability of a spurious actuation. This proposed amendment includes changes to Allowable Values that have been determined with the use of an accepted methodology. The new values ensure that all automatic protective actions will be initiated at or before the condition assumed in the safety analysis. This change will allow the nominal trip setpoints to be adjusted within the calibration tolerance band allowed by the setpoint methodology. Plant operation with these revised values will not cause any design or analysis acceptance criteria to be exceeded. The structural and functional integrity of plant systems is unaffected. There will be no adverse effect on the ability of the channels to perform their safety functions as assumed in the safety analyses. Since there will be no adverse effect on the trip setpoints or the instrumentation associated with the trip setpoints, there will be no significant increase in the consequences of any accident previously evaluated.

Other changes in trip system function, content and format are proposed based on the current configuration of the trip system hardware. Similarly, since the ability of the instrumentation to perform its safety function is not adversely affected, there will be no significant increase in the consequences of any accident previously evaluated. The proposed editorial, administrative and format changes do not affect plant safety and are in accordance with NUREG-1431.

The proposed change to relocate core safety limits and trip setpoint parameter values to the Core Operating Limits Report (COLR) is a programmatic and administrative change that does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. The cycle-specific values relocated into the COLR will continue to be controlled by the Ginna Station programs and procedures. Accident analyses addressed in the UFSAR [Updated Final Safety Analysis Report] will be examined

with respect to changes in the cycle-dependent parameters, which are obtained from the use of Nuclear Regulatory Commission (NRC) approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be conducted per the requirements of 10 CFR 50.59, will ensure that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Operation of Ginna Station in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment includes changes to the format and magnitudes of nominal trip setpoints and allowable values that preserve all safety analysis assumptions related to accident mitigation. The protection system will continue to initiate the protective actions as assumed in the safety analysis.

The proposed change will continue to ensure that the trip setpoints are maintained consistent with the setpoint methodology and the plant safety analysis. Plant operation will not be changed.

Other proposed changes are made so that the technical specifications more accurately reflect the installed plant specific trip system hardware. Furthermore, the proposed changes do not alter the functioning of the protection systems. No new mode of failure has been created and no new equipment performance requirements are imposed. The proposed amendment has no effect on any previously evaluated accident.

The proposed change to relocate core safety limits and trip setpoint parameter values to the COLR is a programmatic and administrative change and does not result in any change in the manner in which the plant is operated or the way in which the Reactor Trip System provides plant protection. All of the accident transients analyzed in the UFSAR will continue to be protected by the same trip functions with the required trip setpoints. Removal of the cycle specific variables has no influence or impact on, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC approved methods, and submitted to the NRC to allow the staff to continue to review the values of these limits. The technical specifications will continue to require operation within the core operating limits, and appropriate actions will be required if these limits are exceeded. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

The proposed change does not involve a significant reduction in [a] margin of safety.

Operation of Ginna Station in accordance with the proposed changes does not involve

a significant reduction in a margin of safety. The proposed trip setpoint Allowable Values are calculated with an accepted methodology. The proposed changes will continue to ensure that the trip setpoints are maintained consistent with the setpoint methodology and the plant safety analysis. The response of the protection system to accident transients reported in the Updated Final Safety Analysis Report (UFSAR) is unaffected by this change. Therefore, accident analysis acceptance criteria are not affected.

Other proposed changes are made so that the protection system technical specifications more accurately reflect the plant-specific trip system hardware. The proposed change does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed change does not alter the functional capabilities assumed in a safety analysis for any system, structure, or component important to the mitigation and control of design bases accident conditions within the facility. Nor does this change revise any parameters or operating restrictions that are assumptions of a design basis accident. In addition, the proposed change does not affect the ability of safety systems to ensure that the facility can be placed and maintained in a shutdown condition for extended periods of time.

The proposed change to relocate core safety limits and trip setpoint parameter values to the COLR represents an administrative change and no hardware changes are involved; therefore, no accident analysis acceptance criteria are affected. The margin of safety is not affected by the removal of cycle specific core operating limits from the technical specifications. The margin of safety presently provided by current technical specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from NRC approved methodologies, and the actions to be taken if a limit is exceeded. The development of the limits for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 review. The proposed amendment is a programmatic and administrative change that provides assurance that plant operations continue to be conducted in a safe manner. The proposed amendment does not result in any change in the manner in which the plant is operated or the way in which the Reactor Trip System (RTS) provides plant protection. The proposed relocation does not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. Therefore, the response of the RTS to accident transients described in the UFSAR is unaffected by this change. As stated previously, this portion of the proposed amendment does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. The accident transients are unaffected and the safety analysis acceptance limits are unaffected. The design of the facility and system

operating parameters are not being changed. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

*NRC Section Chief:* Richard J. Laufer.

#### *Notice of Issuance of Amendments to Facility Operating Licenses*

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

**Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the *Federal Register* as indicated.**

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the

Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

*Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendments:* March 1, 2002.

*Brief description of amendments:* The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a limiting condition for operation following a missed SR from the current limit of "\* \* \* up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "\* \* \* up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

*Date of issuance:* May 7, 2002.

*Effective date:* May 7, 2002, and shall be implemented within 60 days of the date of issuance.

*Amendment Nos.:* Unit 1—141, Unit 2—141, Unit 3—141.

*Facility Operating License Nos. NPF-41, NPF-51, and NPF-74:* The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* April 2, 2002 (67 FR 15621). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 2002.

*No significant hazards consideration comments received:* No.

*Dominion Nuclear Connecticut, Inc., Docket Nos. 50-336 and 50-423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut*

*Date of application for amendment:* June 4, 2001.

*Brief description of amendment:* These amendments modify the Millstone Nuclear Power Station, Unit No. 2 (MP2) and Unit No. 3 (MP3) Technical Specifications (TSs) to relocate selected MP2 and MP3 technical specifications related to the reactor coolant system to the respective Technical Requirements Manual (TRM),

with the exception of MP3 Technical Specification Section 4.4.10, which will be relocated to Section 6 of MP3's TS. The Bases of the affected TSs will be modified to address the proposed changes.

*Date of issuance:* May 8, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 266, 204.

*Facility Operating License Nos. DPR-65 and NPF-49:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal*

**Register:** October 31, 2001 (66 FR 55011). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 2002.

*No significant hazards consideration comments received:* No.

*Dominion Nuclear Connecticut, Inc., et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut Date of application for amendment: August 27, 2001.*

*Brief description of amendment:* The amendment changes the Millstone Nuclear Power Station, Unit No. 3 Technical Specifications (TSs) action and surveillance requirements associated with the containment airlock. The Bases of the affected TSs will be modified to address the proposed changes.

*Date of issuance:* May 15, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment No.:* 205.

*Facility Operating License No. NPF-49:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal*

**Register:** November 14, 2001 (66 FR 57119). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2002.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Generation Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of application for amendment:* August 24, 2001, as supplemented December 20, 2001, and February 15, 2002.

*Brief description of amendment:* The amendment makes changes to the license and technical specifications to reflect the transfer of operating authority to Entergy Nuclear Operations, Inc.

*Date of issuance:* May 5, 2002.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment No.:* 193.

*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications and License.

*Date of initial notice in Federal*

**Register:** October 4, 2001 (66 FR 50694). The supplemental information received after the initial notice did not expand the application beyond the scope of the notice or affect the applicability of the Commission's generic no significant hazards consideration determination pursuant to 10 CFR 2.1315. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 2002.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Operations, Inc., Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of application for amendment:* September 28, 2001.

*Brief description of amendment:* The amendment revises the Anticipated Transient Without Scram Recirculation Pump Trip Reactor Pressure High setpoint by replacing the current conditional setpoints, which are based upon the number of Safety Relief Valves out of service, with a single setpoint.

*Date of issuance:* May 8, 2002.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 273.

*Facility Operating License No. DPR-59:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal*

**Register:** December 12, 2001 (66 FR 64294). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 2002.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas*

*Date of amendment request:* January 31, 2002.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 5.6.5, "Core Operating Limits Report (COLR)," to include an additional reference to Entergy Operations, Inc. (Entergy) Topical Report ENEAD-01-P, "Qualification of Reactor Physics Methods for Pressurized Water Reactors in the Entergy System."

*Date of issuance:* May 15, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of implementation of Amendment No. 215.

*Amendment No.:* 216.

*Renewed Facility Operating License No. DPR-51:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal*

**Register:** February 19, 2002 (67 FR 7416). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2002.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi*

*Date of application for amendment:* January 25, 2001, as supplemented by letter dated February 20, 2002.

*Brief description of amendment:* This amendment revises Technical Specification 3.1.4, Control Rod Scram Times, to increase the control rod scram time testing interval from 120 days to 200 days of full power operation.

*Date of issuance:* May 14, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment No.:* 150.

*Facility Operating License No. NPF-29:* The amendment revises the Technical Specifications.

*Date of initial notice in Federal*

**Register:** March 21, 2001 (66 FR 15923). The supplemental letter provided clarifying information that did not change the original application nor expand the scope of the **Federal Register** notice as published. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 14, 2002.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois*

*Date of application for amendments:* November 30, 2001.

*Brief description of amendments:* The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is

extended from the current limit of “\* \* \* up to 24 hours or up to the limit of the specified Frequency, whichever is less” to “\* \* \* up to 24 hours or up to the limit of the specified Frequency, whichever is greater.” In addition, the following requirement is added to SR 3.0.3: “A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.”

*Date of issuance:* April 30, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* 128 and 123.

*Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* February 19, 2002 (67 FR 7417). The Commission’s related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 2002.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of application for amendments:* June 1, 2001, as supplemented on February 8, 2002.

*Brief description of amendments:* These amendments revise Limiting Condition for Operation 3.6.1.7 concerning drywell average air temperature.

*Date of issuance:* May 9, 2002.

*Effective date:* As of date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 159, 121.

*Facility Operating License Nos. NPF-39 and NPF-85:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 8, 2001 (66 FR 41619). The Commission’s related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 2002.

*No significant hazards consideration comments received:* No.

*Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska*

*Date of amendment request:* May 9, 2001, as supplemented by electronic mail dated February 28, 2002.

*Brief description of amendment:* The amendment consists of changes to the Technical Specifications (TSs) Table 3.3.1.1-1, Function 2.b due to an error in Amendment 184. The supplementary

information in the electronic mail dated February 28, 2002, provided clarifications, and did not alter the Commission’s conclusions regarding significant hazards consideration.

*Date of issuance:* May 9, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment No.:* 191.

*Facility Operating License No. DPR-46:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* November 28, 2001 (66 FR 59509). The Commission’s related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2002.

*No significant hazards consideration comments received:* No.

*North Atlantic Energy Service Corporation, et al., Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* February 21, 2002.

*Description of amendment request:* The amendment relocates specific pressure, differential pressure, and flow values, as well as specific test methods, associated with certain Engineered Safeguards Features (ESF) pumps from the Technical Specifications to the Seabrook Station Technical Requirements Manual.

*Date of issuance:* May 2, 2002.

*Effective date:* As of its date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 83.

*Facility Operating License No. NPF-86:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* March 19, 2002 (67 FR 12604). The Commission’s related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 2002.

*No significant hazards consideration comments received:* No.

*North Atlantic Energy Service Corporation, et al., Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* December 21, 2001, as supplemented March 25 and April 8, 2002.

*Description of amendment request:* The amendment revises Technical Specification Surveillance Requirements 4.3.1.2 and 4.3.2.2 to allow verification in place of demonstration of response time associated with certain pressure sensors,

differential pressure sensors, process protection racks, nuclear instrumentation, and logic systems.

*Date of issuance:* May 2, 2002.

*Effective date:* As of its date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 84.

*Facility Operating License No. NPF-86:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 22, 2002 (67 FR 2925). The supplements dated March 25 and April 8, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally published, and did not change the staff’s original proposed no significant hazards consideration determination as published in the **Federal Register** on January 22, 2002, (67 FR 2925). The Commission’s related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 2002.

*No significant hazards consideration comments received:* No.

*Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California*

*Date of application for amendments:* November 13, 2001, as supplemented by letters dated February 26, 2002, March 11, 2002, and April 18, 2002.

*Brief description of amendments:* The amendments revise the technical specifications to incorporate a new alternate repair criteria (ARC) for steam generator (SG) tubes with axial primary water stress corrosion cracking (PWSCC) at dented tube support plate (TSP) intersections. These amendments will apply to future operating cycles of Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2.

*Date of issuance:* May 1, 2002.

*Effective date:* May 1, 2002, to be implemented within 30 days from the date of issuance.

*Amendment Nos.:* Unit 1—152; Unit 2—152.

*Facility Operating License Nos. DPR-80 and DPR-82:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 8, 2002 (67 FR 929). The February 26, 2002, March 11, 2002, and April 18, 2002, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the original proposed no significant hazards consideration determination. The Commission’s related evaluation of the

amendments is contained in a Safety Evaluation dated May 1, 2002.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee*

*Date of application for amendment:* October 9, 2001, as supplemented March 13 and April 11, 2002.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 6.8.4.h, to extend the requirement to perform a containment integrated leak test from once every 10 years to 11.5 years for the current interval only.

*Date of issuance:* May 7, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 45 days of issuance.

*Amendment No.:* 265.

*Facility Operating License No. DPR-79:* Amendment revises the technical specifications.

*Date of initial notice in Federal Register:* November 14, 2001 (66 FR 57127). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 2002.

*No significant hazards consideration comments received:* No.

*Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* December 6, 2001.

*Brief description of amendment:* The amendment revises several of the Required Actions in the Callaway Plant Technical Specifications (TSs) that require suspension of operations involving positive reactivity additions or suspension of operations involving reactor coolant system (RCS) boron concentration reductions. In addition, the proposed amendment revises several Limiting Condition for Operation (LCO) Notes that preclude reductions in RCS boron concentration. This amendment revises these Required Actions and LCO Notes to allow small, controlled, safe insertions of positive reactivity, but limits the introduction of positive reactivity such that compliance with the required shutdown margin or refueling boron concentration limits will still be satisfied. This amendment is based on an NRC-approved traveler, Technical Specification Task Force (TSTF)-286, Revision 2.

*Date of issuance:* May 1, 2002.

*Effective date:* May 1, 2002, and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 149.

*Facility Operating License No. NPF-30:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* February 5, 2002 (67 FR 5340).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 2002.

*No significant hazards consideration comments received:* No.

*Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* December 13, 2001, as supplemented by letter dated April 8, 2002.

*Brief description of amendment:* The amendment revises the Limiting Condition for Operation (LCO) 3.5.5, Required Action A.1 for the LCO, and Surveillance Requirement 3.5.5.1 in Technical Specification (TS) 3.5.5, "Seal Injection Flow." The revision replaces the flow and differential pressure limits that were stated for the reactor coolant pump seal injection flow by limits provided in Figure 3.5.5-1, which has been added to the TSs.

*Date of issuance:* May 2, 2002.

*Effective date:* May 2, 2002, and shall be implemented prior to entering Mode 3 ascending during the restart from Refueling Outage 12, which is scheduled for the Fall of 2002, subject to the note above Surveillance Requirement 3.5.5.1.

*Amendment No.:* 150.

*Facility Operating License No. NPF-30:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* February 5, 2002 (67 FR 5341).

The supplemental letter of April 8, 2002, does not expand the scope of the application as noticed, clarifies the proposed changes given in the application, and does not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 2002.

*No significant hazards consideration comments received:* No.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vermont*

*Date of application for amendment:* November 20, 2001.

*Brief description of amendment:* The amendment changes Technical

Specifications Table 3.2.6 by revising the Allowed Outage Times (AOTs) and associated action requirements for certain post-accident monitoring instrumentation.

*Date of Issuance:* May 10, 2002.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 207.

*Facility Operating License No. DPR-28:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 8, 2002 (67 FR 934).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 10, 2002.

*No significant hazards consideration comments received:* No.

#### **Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of

telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor),

Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1-800-397-4209, 304-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 27, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should

also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's

Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

*Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee*

*Date of amendment request:* May 6, 2002, as supplemented on May 8, 2002 (TSC 02-05).

*Description of amendment request:* The amendment changed the Technical Specifications (TSs) for Sequoyah Nuclear Plant, Unit 2. The proposed change would modify TS Surveillance Requirement 4.4.5.4.a.8 to clarify the scope of the steam generator (SG) tube inspections required in the SG tubesheet region.

*Date of issuance:* May 10, 2002.

*Effective date:* May 10, 2002.

*Amendment No.:* 266.

*Facility Operating License No. DPR-79:* The amendment revises the TSs.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated May 10, 2002.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief:* Thomas Koshy, Acting.

Dated at Rockville, Maryland, this 20th day of May, 2002.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02-13082 Filed 5-24-02; 8:45 am]

**BILLING CODE 7590-01-P**

## COMMISSION ON OCEAN POLICY

### Public Meeting

**AGENCY:** U.S. Commission on Ocean Policy.

**ACTION:** Notice.

**SUMMARY:** The U.S. Commission on Ocean Policy will hold its sixth regional meeting, the Commission's eighth public meeting, to hear and discuss coastal and ocean issues of concern to the Northwest region of the United States.

**DATES:** Public meetings will be held Thursday, June 13, 2002 from 12:30 p.m. to 6 p.m. and Friday, May 14, 2002 from 8:30 a.m. to 6 p.m.

**ADDRESSES:** The meeting location is the Commission Chambers, Port of Seattle, Pier 69, 2711 Alaskan Way, Seattle, WA 98121.

#### FOR FURTHER INFORMATION CONTACT:

Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC, 20036, 202-418-3442, [schaff@oceancommission.gov](mailto:schaff@oceancommission.gov).

**SUPPLEMENTARY INFORMATION:** This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106-256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by June 5, 2002 to the meeting Point of Contact. A public comment period is scheduled for Friday, June 14. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's website at <http://www.oceancommission.gov> prior to the meeting.

Dated: May 20, 2002.

**James D. Watkins,**

*Chairman, U.S. Commission on Ocean Policy.*

[FR Doc. 02-13199 Filed 5-24-02; 8:45 am]

**BILLING CODE 6820-WM-P**

## UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

### Sunshine Act Meeting

**TIMES AND DATES:** 1 p.m., Monday, June 3, 2002; 8:30 a.m., Tuesday, June 4, 2002.

**PLACE:** Washington, DC at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

**STATUS:** June 3—1 p.m. (Closed); June 4—8:30 a.m. (Open)

#### MATTERS TO BE CONSIDERED:

Monday, June 3—1 p.m. (Closed)

1. Financial Performance.
2. Strategic Planning.
3. Personnel Matters and Compensation Issues.

Tuesday, June 4—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 6-7, 2002.
2. Remarks of the Postmaster General and CEO.
3. Implementation of June 30 Price Changes.
4. Automated Flat Sorting Machine 100 Achievements.

Tuesday, June 4—8:30 a.m. (Open)

[continued]

5. Making Information Technology Accessible for Persons with Disabilities.
6. Capital Investment.
  - a. Northern New Jersey, Teterboro, Processing and Distribution Center.
7. Tentative Agenda for the July 1-2, 2002, meeting in Anchorage, Alaska.

#### FOR FURTHER INFORMATION CONTACT:

William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

**William T. Johnstone,**

*Secretary.*

[FR Doc. 02-13367 Filed 5-23-02; 2:21 pm]

**BILLING CODE 7710-12-M**

## PRESIDIO TRUST

### Notice of Public Meeting

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. § 460bb note, Title I of Pub. L. 104-333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held from 6 p.m. to 8:30 p.m. on Thursday, June 13, 2002, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.



The purpose of this meeting is to provide an opportunity for the public to ask questions regarding the Presidio Trust Management Plan, Land Use Policies for Area B of The Presidio of San Francisco (PTMP) and associated Final Environmental Impact Statement (Final EIS).

*Time:* The meeting will be held from 6 p.m. to 8:30 p.m. on Thursday, June 13, 2002.

**ADDRESSES:** The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

*Agenda:* The agenda of the meeting is (1) a presentation of PTMP highlights; and (2) a Public Comment Period: Question and Answer Session regarding PTMP and associated Final EIS.

**FOR FURTHER INFORMATION CONTACT:** Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129-0052, Telephone: (415) 561-5300.

Dated: May 22, 2002.

**Karen A. Cook,**  
General Counsel.

[FR Doc. 02-13310 Filed 5-24-02; 8:45 am]

**BILLING CODE 4310-4R-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

#### Extension:

Rule 7d-2; SEC File No. 270-464; OMB Control No. 3235-0527  
Rule 237; SEC File No. 270-465; OMB Control No. 3235-0528

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collections of information discussed below.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts ("Canadian retirement accounts"). In cases where these individuals move to the United States, these participants ("Canadian/U.S. Participants" or "participants") may not be able to manage their Canadian retirement account investments. Most securities and most investment

companies ("funds") that are "qualified investments" for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirements of the Securities Act of 1933 ("Securities Act")<sup>1</sup> and, in the case of securities of an unregistered fund, the Investment Company Act of 1940 ("Investment Company Act").<sup>2</sup> As a result of these registration requirements of the U.S. securities laws, Canadian/U.S. Participants, in the past, had not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

In 2000, the Commission issued two rules that enabled Canadian/U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian/U.S. Participants and sales to their accounts.<sup>3</sup> Rule 237 under the Securities Act permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act. Rule 7d-2 under the Investment Company Act permits foreign funds to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act.

The provisions of rules 237 and 7d-2 are substantially identical. Rule 237 requires written offering materials for securities that are offered and sold in reliance on the rule to disclose prominently that those securities are not registered with the Commission and may not be offered or sold in the United States unless they are registered or exempt from registration under the U.S. securities laws. Rule 7d-2 requires written offering materials for securities offered or sold in reliance on that rule to make the same disclosure concerning those securities, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. Neither rule 237 nor rule 7d-2 requires any documents to be filed with the Commission. The burden under either rule associated with adding

this disclosure to written 2 offering documents is minimal and is non-recurring. The foreign issuer, underwriter or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement. The staff estimates the annual burden as a result of the disclosure requirements of rules 7d-2 and 237 as follows.

#### a. Rule 7d-2

At the time rule 7d-2 was adopted,<sup>4</sup> the staff estimated that there were approximately 1,300 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act. During the first year rule 7d-2 was in effect, the staff estimates that approximately 910 (70 percent) of these Canadian funds relied on the rule. The staff further estimates that each of those 910 Canadian funds, on average, distributed 3 different written offering documents concerning those securities, for a total of 2,730 offering documents.<sup>5</sup>

The staff therefore estimates that during the first year that rule 7d-2 was in effect, approximately 910 respondents made 2,730 responses by adding the new disclosure statements to approximately 2,730 written offering documents. Thus, the staff estimates that the total annual burden associated with this disclosure requirement in the first year after rule 7d-2 became effective was approximately 455 hours (2,730 offering documents × 10 minutes per document). In each year following the first year that rule 7d-2 became effective, the staff estimates that approximately 65 (5 percent) additional Canadian funds may rely on the rule to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts, and that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 195 offering documents. The staff therefore estimates that in each

<sup>4</sup> See *supra* note 3.

<sup>5</sup> Because Canadian tax law effectively precludes non-Canadian funds from being held in a Canadian retirement account, the Commission believes that no funds from countries other than Canada rely on rule 7d-2 to sell their shares to the Canadian retirement accounts of Canadian/U.S. Participants.

<sup>1</sup> 15 U.S.C. 77.

<sup>2</sup> 15 U.S.C. 80a.

<sup>3</sup> See Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33-7860, 34-42905, IC-24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)].

year after the first year that rule 7d-2 became effective, approximately 65 respondents would make 195 responses by adding the new disclosure statement to approximately 195 written offering documents. The staff therefore estimates that after the first year, the annual burden associated with the rule 7d-2 disclosure requirement would be approximately 32.5 hours (195 offering documents  $\times$  10 minutes per document).

#### b. Rule 237

*Canadian issuers other than funds.* The Commission understands that there are approximately 3,500 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian/U.S. Participants.<sup>6</sup> The staff estimates that in any given year approximately 35 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 35 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 105 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 35 respondents would be required to make 105 responses by adding the new disclosure statements to approximately 105 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 17.5 hours (105 offering documents  $\times$  10 minutes per document).

*Other foreign issuers other than funds.* In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian/U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. Because Canadian law strictly limits the amount of foreign investments that may be held in a Canadian retirement account, however, the staff believes that the number of issuers from other countries that relies on rule 237, and that therefore is required to comply with

<sup>6</sup> Canadian funds can rely on both rule 7d-2 and rule 237 to offer securities to participants and sell securities to their Canadian retirement accounts without violating the registration requirements of the Investment Company Act or the Securities Act. Rule 237, however, does not require any disclosure in addition to that required by rule 7d-2. Thus, the disclosure requirements of rule 237 do not impose any burden on Canadian funds in addition to the burden imposed by the disclosure requirements of rule 7d-2. To avoid double-counting this burden, the staff has excluded Canadian funds from the estimate of the hourly burden associated with rule 237.

the offering document disclosure requirements, is negligible.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 20, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-13232 Filed 5-24-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 27, 2002:

An open meeting will be held on Wednesday, May 29, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room, and a closed meeting will be held on Thursday, May 30, 2002, at 10 a.m.

Commissioners, Counsel to the Commission, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5

U.S.C. 552b(c)(3), (5), (6), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the open meeting scheduled for Wednesday, May 29, 2002, will be:

1. The Commission will consider whether to issue an order approving the application by Xcel Energy Inc. ("Xcel Energy"), a registered holding company under the Public Utility Holding Company Act of 1935, as amended, and its wholly owned subsidiary, NRG Acquisition Company, LLC, to acquire the outstanding publicly held stock of Xcel Energy's majority owned subsidiary, NRG Energy, Inc., by means of a tender or exchange offer and to engage in related transactions. The Commission will also consider whether to grant a hearing requested by an individual shareholder of Xcel Energy.

2. The Commission will consider whether to issue notices of two applications from Barclays Global Fund Advisors (Barclays) seeking certain exemptions from the Investment Company Act of 1940. One application seeks an order to permit Barclays to introduce exchange-traded funds based on fixed income securities indices. The other application seeks an order to allow the shares of the proposed exchange-traded funds, as well as the shares of exchange-traded funds advised by Barclays and based on equity securities indices, to be sold in the secondary market without prospectus delivery when not required by the Securities Act of 1933.

3. The Commission will consider a proposal by the options exchanges to amend the Options Intermarket Linkage Plan. The Commission also will consider proposing a repeal of Rule 11Ac1-7 under the Securities Exchange Act of 1934 and extending a temporary exemption for broker-dealers from the requirements of the rule. Rule 11Ac1-7 requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, and to disclose the better published quote available at that time, unless the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan.

4. The Commission will consider whether to issue a release proposing for comment an amendment to paragraph (b)(3) of Rule 15c3-3. The provisions in this paragraph apply when broker-dealers borrow fully paid and excess margin securities from customers. The conditions for such borrowings include the requirement that broker-dealers

provide customers with full collateral consisting of certain specified financial instruments or cash. The amendment would allow broker-dealers to pledge such other collateral as the Commission designates as permissible by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness.

5. The Commission will consider whether to issue, jointly with the Commodity Futures Trading Commission, an order to permit certain foreign security index futures to continue to be treated as broad-based index futures.

6. The Commission will consider a release proposing amendments to Rule 10b-10 under the Securities Exchange Act of 1934 ("Exchange Act") and new Exchange Act Rule 11d2-1, which are designed to clarify the disclosures broker-dealers effecting transactions in security futures products in customers' futures accounts must make in the confirmations sent to customers regarding those transactions.

The Commission will also consider issuing an exemptive order providing that broker-dealers effecting transactions in security futures products in customers' futures accounts are exempted from the requirements of Exchange Act Rule 10b-10 and Exchange Act Section 11(d)(2) until the amendments to Exchange Act Rule 10b-10 and new Rule 11d2-1 become effective.

The subject matter of the closed meeting scheduled for Thursday, May 30, 2002, will be:

Formal order of investigation;  
Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: May 22, 2002.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-13299 Filed 5-22-02; 4:13 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45966; File No. SR-Amex-2002-24]

### Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Securities Linked to the Nasdaq-100 Index

May 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under Section 107A of the Amex Company Guide ("Company Guide"), index linked debt securities whose value will be linked in part to changes in the value of the Nasdaq-100 Index ("Nasdaq-100") pursuant to the methodology set forth below.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>3</sup> The Amex proposes to list for trading under Section 107A of the Company Guide, index linked debt securities ("Securities") whose value in whole, or in part, will be based on the Nasdaq-100. Holders of the Securities will receive at maturity a payment linked to the closing level of the Nasdaq-100 based on the following formula: (1) If the Final Index Level of the Nasdaq-100 is at or above the Initial Index Level, the holder will receive a payment of \$1,000 per Security; or (2) if the Final Index Level of the Nasdaq-100 is below the Initial Index Level, the holder will receive an amount in cash equal to \$1,000 per Security multiplied by the Index Settlement Level. The Index Settlement Level is defined as the Final Index Level of the Nasdaq-100 divided by the Initial Index Level, expressed as a percentage. The Nasdaq-100 is determined, calculated and maintained solely by the Nasdaq.<sup>4</sup>

The Initial Index Level, which will be announced at the time of the offering, is the closing level of the Nasdaq-100 on the pricing date. The Final Index Level will equal the closing level of the Nasdaq-100 or any successor index at the regular official weekday close of the principal trading session of The Nasdaq Stock Market, Inc. ("Nasdaq") National Market on the final index determination date.<sup>5</sup>

##### Securities Description

The Securities will be non-convertible, unsecured and unsubordinated obligations of J.P. Morgan Chase & Co. ("JP Morgan"). The Securities will conform to the initial

<sup>3</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>4</sup> J.P. Morgan Chase & Co. and The Nasdaq Stock Market, Inc. have entered into a non-exclusive licensing agreement providing for the use of the Nasdaq-100 by J.P. Morgan Chase & Co. and certain affiliates and subsidiaries in connection with certain securities including these Notes. Nasdaq is not responsible and will not participate in the issuance and creation of the Securities.

<sup>5</sup> The final index determination date is five (5) trading days prior to maturity, subject to extension in the case of a market disruption event.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

listing guidelines under Section 107A<sup>6</sup> and continued listing guidelines under Sections 1001–1003<sup>7</sup> of the Company Guide. Although a specific maturity date will not be established until the time of the offering, the Securities will provide for a maturity of not less than one (1) year nor more than ten (10) years from the date of issue. The Securities are expected to issue at a discount from the face or denomination amount. At maturity, holders of the Securities may receive less than 100% of the initial issue price.

Nasdaq-100 levels for the purpose of determining the payment to holders at maturity will be determined by reference to prices for the Index on a business date shortly prior to maturity. The payment at maturity of the Securities will be based on the Final Index Level. At maturity, holders will receive an amount in cash that is greater than the issue price of the Securities if the Final Index Level of the Nasdaq-100 is greater than the Initial Index Level. However, in no event will a holder of the Securities receive more than \$1,000 per Security (or the face amount of such security) at maturity. A holder at maturity will receive less than \$1,000 in an amount based on the Index Settlement Level if the Final Index Level is less than the Initial Index Level. Holders of the Securities will receive a cash payment at maturity as long as the Nasdaq-100 does not lose 100% of its value.<sup>8</sup>

<sup>6</sup> The initial listing standards for the Securities require: (1) A market value of at least \$4 million, and (2) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

<sup>7</sup> The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Securities, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list a security if the aggregate market value or principal amount of bonds publicly held is less than \$400,000.

<sup>8</sup> Thus, the Securities are not principal protected. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on May 20, 2002.

The Securities are expected to be listed in \$1,000 denominations with the Exchange's equity margin rules applying to trading. The Securities will be cash-settled in U.S. dollars. Holders of the Securities will have no claim or right to the underlying securities of the Nasdaq-100 or the Nasdaq-100 itself. The Securities are designed for investors who want to participate or gain exposure to the Nasdaq-100 while limiting downside risk and, who are willing to forgo market interest payments during the term.<sup>9</sup> The Securities will not have a minimum principal amount that will be repaid and, accordingly, payments at maturity may be less than the original issue price of the Securities.

### Index Description

The Nasdaq-100 is a modified capitalization-weighted index of 100 of the largest and most active non-financial domestic and international issues listed on Nasdaq. The Index is determined, comprised and calculated by Nasdaq without regard to the Securities. The Index is calculated and disseminated every fifteen seconds to market information vendors. The Nasdaq-100 reflects the largest growth companies across major industry groups with all index components of domestic issuers having a market capitalization of at least \$500 million and an average daily trading volume of at least 100,000 shares. For foreign issuers, the worldwide market capitalization must be at least \$10 billion with a U.S. market capitalization of at least \$4 billion and an average daily trading volume of at least 200,000 shares. In addition, no single security comprising the Nasdaq-100 is permitted to have more than a 24% weighting. The Nasdaq-100 was originally developed with a base value of 125 on February 1, 1985. Originally a capitalization-weighted index, on December 21, 1998, the Nasdaq-100 changed to a modified capitalization-weighted index.

A modified capitalization-weighted index is a hybrid between equal weighting and capitalization-weighting. This type of methodology is expected to: (1) Retain the economic attributes of capitalization weighting; (2) promote portfolio weight diversification; (3) reduce Nasdaq-100 performance distortion by preserving the capitalization ranking of companies; and (4) reduce market impact on the smallest Nasdaq-100 securities from

<sup>9</sup> For example, a 20% loss in the Nasdaq-100 will provide a 0% return on the Securities, assuming that the expected issue price for a Security is \$800 per \$1,000 face value.

necessary weight rebalancings. A quarterly examination of the Nasdaq-100 is performed to gauge whether a rebalancing of the Index is necessary. If one of the following weight distribution requirements is not met, the Index is rebalanced. These requirements are as follows: (1) The current weight of the single largest market capitalization index security must be less than or equal to 24%; and (2) the collective weight of those index securities whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%.

As of March 19, 2002, the market capitalization of the securities included in the Nasdaq-100 ranged from a high of \$334.98 billion to a low of \$1.42 billion. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 76.86 million shares to a low of 0.54 million shares. The Commission has previously granted approval to the Amex to list and trade the Nasdaq-100 Tracking Stock ("QQQ") and options on the QQQ.<sup>10</sup> In addition, the Exchange also lists and trades options on the Nasdaq-100 (NDX) and the Mini Nasdaq-100 (MNX).<sup>11</sup>

Because the Securities are issued in \$1,000 denominations, the Amex's existing floor trading rules will apply to the listing of the Securities. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Securities.<sup>12</sup> Second, even though the Exchange's debt trading rules apply, the Securities will be subject to the equity margin rules of the Exchange.<sup>13</sup> Third, in conjunction with the Amex's Hybrid Approval Order, the Exchange will, prior to trading the Securities, distribute a circular to the membership providing guidance with regard to member firm

<sup>10</sup> See Securities Exchange Act Nos. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (approval to list and trade Nasdaq-100 Shares) and 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (approval to list and trade options on Exchange-Traded Funds).

<sup>11</sup> Approval of the Nasdaq-100 for underlying an option contract was originally granted to the Chicago Board Options Exchange, Inc. in 1994. See Securities Exchange Act Release Nos. 33428 (January 4, 1994), 59 FR 1576 (January 11, 1994) (approval to list and trade options on the Nasdaq-100); 34052 (May 12, 1994), 59 FR 25972 (May 18, 1994) (approval to list and trade Flex Options on the Nasdaq-100) and 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (approval of a Reduced Value Nasdaq-100).

<sup>12</sup> Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

<sup>13</sup> See Amex Rule 462.

compliance responsibilities (including suitability recommendations) when handling transactions in the Securities and highlighting the special risks and characteristics of the Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Securities: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Securities. Specifically, the Amex will rely on its existing surveillance procedures governing debt, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act<sup>14</sup> in general and furthers the objectives of Section 6(b)(5)<sup>15</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *A. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange did not receive any written comments on the proposed rule change.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-24 and should be submitted by June 18, 2002.

## V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.<sup>16</sup> The Commission believes that the availability of the Securities will provide an instrument for investors to achieve desired investment objectives through the purchase of an exchange-traded debt product linked to the Nasdaq. These objectives include participating in or gaining exposure to the Nasdaq while limiting somewhat downside risk. However, the Commission notes that the Securities are index-linked debt securities whose value in whole or in part will be based upon the Nasdaq-100. In addition, the Securities are non-principal protected: they do not have a minimum principal amount that will be repaid, and payments on the Securities at maturity may be less than their original issue price. For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to the Securities are consistent with the Act.

The Securities are non-convertible and will conform to the Amex listing guidelines under Section 107A of the Company Guide. The specific maturity date will not be established until the time of the offering, but will not be less than one year from the date of issue. The securities will have a face value of \$1,000 per security and will be sold at a discount. Holders of the Securities

will receive a cash payment based on the following formula: If the Final Index Value is greater than or equal to the Initial Index Value, then a holder receives \$1,000 per Security; If the Final Index Value is less than the Initial Index Value, then the holder receives, per security, \$1,000 multiplied by the result of dividing the Final Index Value by the Initial Index Value.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Securities. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Securities to: (1) Determine that such transaction is suitable for the customer, and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction.

In addition, the Amex equity margin rules and debt trading rules will apply to the Securities. The Commission believes that the application of these rules should strengthen the integrity of the Securities. The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Securities, the Commission believes that the potential for manipulation of the Securities is minimal, thereby protecting investors and the public interest. The Commission further notes that the underlying Index is managed by the Nasdaq, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation. In addition, the Nasdaq-100 is calculated and disseminated every 15 seconds to market information vendors.

The Commission also notes that the Amex will issue a circular on the Securities. The circular should include, among other things, a discussion of the risks that may be associated with the Securities in addition to details on the composition of the Index and how the rates of return will be computed. Further, pursuant to Exchange Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> *Id.*

to every customer prior to trading the Securities.

The Commission notes that the securities are dependent upon the individual credit of the issuer, J.P. Morgan. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Securities. In addition, the Exchange's hybrid listing standards further require that the securities have at least \$4 million in market value.<sup>17</sup> In any event, financial information regarding J.P. Morgan, in addition to the information on the issuers of the underlying securities comprising the Nasdaq-100, will be publicly available.<sup>18</sup> Based on these factors, the Commission finds that the proposal to trade the Securities is consistent with section 6(b)(5) of the Act.<sup>19</sup>

Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the Nasdaq-100 is a portfolio of highly capitalized and actively traded securities similar to component securities in hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, the Securities will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-Amex-2002-24), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-13193 Filed 5-24-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45969; File No. SR-DTC-2002-04]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Application of a Receiver-Authorized Delivery-Like Function to Maturity Presentments for Money Market Instruments in Times of Unusual Market Stress

May 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 25, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend DTC's procedures to allow the application of a Receiver-Authorized Delivery ("RAD")-like function in times of unusual market stress to maturity presentments ("MPs") of money market instruments ("MMIs") that are in DTC's custody.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### (i) Current Maturity Presentments

Under DTC's current procedures for the processing of MPs, early on the maturity date (generally around 2:00 a.m.), DTC initiates deliveries of the maturing paper from the accounts of participants having position in the maturing paper to the MMI participant account of the issuing/paying agent ("IPA"). These MPs are processed as the equivalent of book-entry deliveries versus payment. As such, MPs may "recycle" just as any delivery would if the net debit cap or collateralization controls applicable to the IPA's account prevents the delivery from being completed. If recycled, the MP delivery would be completed once additional funds such as settlement obligation prepayments or new issuances are credited to the IPA's account. Attempts to complete deliveries of recycling MPs occur randomly without regard to the identity of the offsetting prepayment/issuance transactions. For example, an issuance for commercial paper ("CP") Issuer A might establish collateral in the IPAs account that could be used to support the processing of a maturity of CP Issuer B's paper. This arrangement has operated successfully since MMIs first became DTC-eligible in 1990.

DTC's MMI procedures provide that the IPA can "refuse to pay" for maturing paper of a particular issuer by communicating that intention to DTC before 3:00 p.m. (ET) on the maturity date. This intention will be communicated to all participants by DTC. DTC will then reverse any completed MPs by recrediting them to presenting participants' accounts, which offsets the associated settlement credits in those accounts. DTC will also unwind the following transactions it may have processed earlier that day in the same and other MMIs of that "defaulting issuer": uncompleted maturity presentments; any valued issuances; any periodic income (interest or dividend) and principal presentments; and any reorganization presentments. In addition, DTC will mark down the collateral value of all of the defaulting issuer's MMIs in the system to zero and will block further issuances of that issuer's paper through DTC.

##### (ii) Application of Receiver-Authorized Delivery-Like Function

The Receiver-Authorized Delivery (RAD) function enables each participant to limit and consider certain securities

<sup>17</sup> See Section 107A of the Company Guide.

<sup>18</sup> The companies that comprise the Nasdaq-100 are reporting companies under the Act.

<sup>19</sup> 15 U.S.C. 78(f)(b)(5).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified parts of these statements.

deliveries (those obligating the participant to pay \$15 million or more) and certain payment orders (those obligating the participant to pay \$1 million or more) which are directed to its account by any other participant before its account is updated. Certain other transactions, including substantially overvalued deliveries and deliveries initiated just prior to cutoff, are automatically subject to the RAD function.

Under DTC's current procedures, RAD is not available for MPs initiated by DTC on behalf of presenting participants because MPs are known in advance and can generally be presumed to be valid obligations due and payable. Moreover, the processing of MPs occurs early in the processing day in the expectation that the associated money credits posted to the accounts of presenting participants will be available to support the efficient subsequent processing of new MMI issuances. Finally, subjecting all MMI maturities to RAD would impose an operational burden on IPAs, who would be required to authorize each MP in order for the transaction to be completed.

Since the events of September 11, IPAs have raised a concern that in such emergency situations the random nature of DTC's process for updating recycling MPs prevents the IPAs from aligning the funding of maturities with offsetting issuances of the same issue or with decisions to activate back-up lines of credit in order to fund a particular issuer's maturing obligations.

The purpose of the proposed rule change is to provide to IPAs in the event of a systemic, operational, or other crisis that could result in MMI maturities not being funded in the normal course a mechanism for dealing with the nonpayment of maturities that does not have the consequences of a "refusal to pay." Under the proposed rule change, in extraordinary circumstances<sup>3</sup> and only after consultation with its regulators, DTC at its option could direct MPs for MMIs maturing on the days following the crisis to a new contingency RAD-like feature. This would afford the IPA an opportunity to review and approve MPs prior to having them processed into its account and would provide the IPA additional measures of control over its financial obligations to particular MMI issuers in times of unusual market stress. DTC would continue this procedure at its

option until processing conditions returned to a more normal state.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it will promote the prompt and accurate settlement of securities transactions and will be implemented in a manner that is consistent with DTC's risk management controls.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The proposed rule change was reviewed with members of The Bond Market Association's Money Market Operations Committee in December 2001 and the Commercial Paper Issuers Working Group in January 2002. They agreed that using the proposed RAD-like feature offers many advantages in that it is a process that can be rapidly deployed by DTC on the days following a disaster and that allows IPAs to control the presentation of maturing paper into their accounts and thereby better manage their exposures in times of unusual market stress.

Some members of these industry groups expressed concern that subjecting MPs to RAD-like controls might impose a difficult operational burden on IPAs if they would be required to authorize each MP individually. In this connection, a custodian bank pointed out that a significant delay in the availability of credits from successfully processed MPs (which but for the need for RAD approvals would have been processed in the early morning hours) could leave custodians with higher than usual debits and therefore could potentially cause the recycling of other delivery versus payment transactions. To address these concerns, the RAD-like controls developed by DTC will provide the IPA with several options to facilitate its processing, including the ability to approve all MPs as a group.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**VI. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR-DTC-2002-04 and should be submitted by June 18, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45968; File No. SR-NASD-2002-42]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 thereto by the National Association of Securities Dealers, Inc. Relating to the Integrated Processing of Odd-Lot Share Amounts in Nasdaq's SuperMontage System**

May 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>3</sup> Such circumstances would be evidenced by the closing of one or more national securities exchanges (e.g., the New York Stock Exchange or Nasdaq).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on April 23, 2002.<sup>3</sup> Nasdaq filed Amendment No. 2 to the proposed rule change on May 17, 2002.<sup>4</sup> Nasdaq filed Amendment No. 3 to the proposed rule change on May 17, 2002.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes changes to several NASD Rules governing the operation of Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage") to allow the system to accept, integrate, process, and otherwise facilitate the interaction of orders of less than one round-lot (100 shares) with all other SuperMontage quotes and orders.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.<sup>6</sup>

#### 4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (cc) No Change.

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a

proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is [executed] *reduced by executions to less than a normal unit of trading.*

(ee) through (ff) No Change.

(gg) *The term "Legacy Quote" shall mean the quotation mechanism that existed in Nasdaq on or before July 1, 2002, and that does not permit the entry of Quotes/Orders at multiple price levels in the NNMS.*

\* \* \* \* \*

#### 4706. Order Entry Parameters

(a) Non-Directed Orders —

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) No Change.

(B) A Non-Directed Order must be a market or marketable limit order, [must be a round-lot or a mixed-lot,] must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant may be designated as Immediate or Cancel.

(C) through (E) No Change.

(2) No Change.

(b) Directed Orders A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) through (3) No Change.

(c) No Change.

(d) Order Size—Any [round or mixed-lot] order *in whole shares* up to 999,999 shares may be entered into the NNMS for normal execution processing. [Odd-lot orders, and the odd-lot portion of a mixed-lot, are subject to a separate execution process, as described in Rule 4710(e).]

(e) No Change.

[(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed-lot order, shall be processed as described in Rule 4710(e).]

\* \* \* \* \*

#### 4707. Entry and Display of Quotes/Orders

(a) No Change.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quoting Market Participant's Quotes/Orders as follows:

(1) No Change.

(2) No Change.

(3) *Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:*

(A) Odd-lots, Mixed-lots, and Rounding—The Nasdaq system (and all accompanying data feeds) shall be capable of displaying trading interest in round-lot amounts. For quote display purposes, Nasdaq will aggregate all shares, including odd-lot share amounts, entered by a Quoting Market Participant at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination consistent with subparagraphs (b)(1) and (b)(2) of this rule. Though rounded, any odd-lot portion of a Quoting Market Participant's trading interest that is not displayed as a result of this rounding process will remain in the system, with the time-priority of their original entry, and be continuously available for execution. Round-lots that are subsequently reduced by executions to a mixed-lot amount will likewise be rounded for display purposes by the system to the nearest round-lot amount at that same price level. Any odd-lot number of shares that do not get displayed as a result of this rounding will remain in the system with the time-priority of their original entry and thus be continuously available for execution. If executions against an Attributable Quote/Order result in there being an insufficient (odd-lot) amount of shares at a price level to display an Attributable Quote/Order for one round-lot, the system will display the Quoting Market Participant's next best priced Attributable Quote/Order consistent with Rule 4710(b)(2). If all Attributable Quotes/Orders on the bid and/or offer side of the market are exhausted so that there are no longer any Attributable Quotes/Orders, the system will refresh a market maker's exhausted bid or offer quote using the process set forth in Rule 4710(b)(5). With the exception of Legacy Quotes, odd-lot remainders that are not displayed will remain in the system at their original price levels and continue to be available for execution.

(c) through (e) No Change.

\* \* \* \* \*

#### 4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(i) No Change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On April 23, 2002, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> On May 17, 2002, the Exchange filed a form 19b-4, which replaced the original filing in its entirety ("Amendment No. 2").

<sup>5</sup> See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 17, 2002 ("Amendment No. 3"). In Amendment No. 3, Nasdaq replaced the text of NASD Rule 4707 in its entirety.

<sup>6</sup> The Commission notes that it has made technical, non-substantive change to the proposed rule text. Nasdaq has committed to submit an amendment conforming to these changes. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Kelly Riley, Senior Special Counsel, Division, Commission, on May 17, 2002.



(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute *the full size of such order (even if the delivered order is a mixed-lot or odd-lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN* [such order in a manner consistent with the Firm Quote Rule].

(iii) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)—(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' Displayed Quotes/Orders and Reserve Size, including Agency Quotes (if applicable), in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. *For purposes of the execution algorithms described in paragraphs (i), (ii) and (iii) below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage,*

*remain in system and available for execution.*

(i) through (iv) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferred Order in an amount equal to the system-delivered order or execution. [; provided, however, that if an NNMS order that is a mixed-lot, the system will only deliver a Liability Order or an execution for the number of round-lots contained in the mixed-lot order, and will only decrement the size of a Displayed Quote/Order by the number of shares represented by the number of round-lots contained in the mixed-lot order. The odd-lot portion of the mixed-lot will be executed at the same price against the NNMS Market Maker next in the odd-lot rotation, as described in subparagraph (e) of this rule.]

(i) through (iv) No Change.

(D) through (E) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to [zero] *an amount less than one normal unit of trading* due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant, or in the absence of such size-level designation, to the automatic refresh size. *The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order.* To utilize the Reserve Size functionality, a minimum of a normal unit of trading must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least a normal unit of trading. This functionality will not be available for use by UTP Exchanges.

(B) Auto Quote Refresh ("AQR")—Once an NNMS Market Maker's Displayed Quote/Order size and Reserve Size on either side of the market in the security has been decremented to [zero] *an amount less than one normal unit of trading* due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to [zero] *an amount less than a normal unit of trading*, by a price

interval designated by the NNMS Market Maker; and

(ii) No Change.

(iii) This functionality shall produce an Attributable Quote/Order. [In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Attributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.]

(iv) *The AQR functionality described in this subparagraph shall only be available for use in connection with a NNMS Market Maker's "Legacy Quote."* [An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.]

(3) through (8) No Change.

(c) No Change.

(d) No Change.

[(e) Odd-Lot Processing

(1) Participation in Odd-Lot Process—All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market maker is registered.

(2) Execution Process

(A) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd-lot exposure limit from 0 to 999,999 shares.

(B) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.

(C) For odd-lots that are part of a mixed-lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.

(D) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.

(E) After the NNMS system has executed an odd-lot against an NNMS

Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.]

[(f)] (e) UTP Exchanges

(1) through (6) No Change.

\* \* \* \* \*

#### 4715. Adjustment of Open Quotes and/or Orders

NNMS will automatically adjust the price and/or size of open quotes and/or orders resident in the system in response to issuer corporate actions related to a dividend, payment or distribution, on the ex-date of such actions, except where a cash dividend or distribution is less than one cent (\$0.01), as follows:

(a) No Change.

(b) No Change.

(c) Buy Orders—Buy side orders shall be adjusted by the system based on the particular corporate action impacting the security (i.e. Cash dividend, stock dividend, both, stock split, reverse split) as set forth below:

(1) No Change.

(2) Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. Unless marked "Do Not Increase", the size of the order shall be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest [round-lot] share.

(3) No Change.

(4) No Change.

(5) No Change.

(d) No Change.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### (1) Purpose

Currently, the rules of SuperMontage provide for the voluntary participation of market makers in the execution of odd-lot orders. Only those market makers that voluntarily set individual odd-lot exposure limits on specific securities would have odd-lot orders sent to them on a rotating basis for execution. Resulting executions would reduce the market maker's odd-lot exposure limit, but not its displayed quote, and the system would not deliver an additional execution against the same odd-lot market maker until at least 5 seconds have elapsed since the market maker's last previous odd-lot execution in the security. For mixed-lot orders, SuperMontage would execute the round-lot portion(s) of such orders through the main non-directed order process and thereafter execute any odd-lot remainder against the next market maker in rotation with an odd-lot exposure amount sufficient to fully execute the odd-lot. The resulting odd-lot execution would be done at the same price as the round-lot portion(s) of the mixed-lot order.

Upon further review, Nasdaq has determined to alter this approach to the processing of odd-lots and mixed-lot orders in SuperMontage. Instead, Nasdaq proposes to implement in SuperMontage a fully integrated process to execute and process orders in share amounts of less than one round-lot (100 shares). As such, Nasdaq will not provide a separate process for odd-lot orders and instead allow the entry of orders in any whole share amount from 1 to 999,999 shares. The outline of this "actual shares" approach follows.

#### I. Display of Quotations and Dissemination of Transaction Reports

Nasdaq will continue to display and disseminate quote and trade information solely in round-lot amounts. The Nasdaq inside market will consist of the best-priced bid display quote and the best-priced offer display quote that are at least one round-lot (100 shares) in size. Nasdaq will continue to disseminate transactions to the public tape, whether it is a round or mixed-lot

execution, in round-lot increments.<sup>7</sup> For quote display purposes, Nasdaq will aggregate all shares (orders and quotes) entered by a market participant, including UTP Exchanges, at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination. For example, a quoting market participant with three separate orders to buy of 50 shares, 225 shares and 590 shares at the same price level would have displayed next to its market identifier on the bid side of the market an aggregate quote size of 800 shares (50 + 225 + 590 = 865 which is then rounded down to 800 shares for display purposes). Likewise, a party entering a mixed-lot quote/order will have that mixed-lot amount automatically rounded down to nearest round-lot amount for display. Though rounded, any odd-lot portion that is not displayed as a result of this rounding process (in the previous example, 65 shares) will remain in the system, with the time-priority of their original entry. SuperMontage's aggregated share price information features will disseminate price and size information based solely on aggregated round-lot share amounts (including aggregated mixed-lots rounded down to round-lots) and will not include any price level where there is less than a round-lot share amount of trading interest.

#### A. Display of Mixed-Lot and Odd-Lot Remainers

SuperMontage will not display odd-lots.<sup>8</sup> Aggregated or initial round-lot amounts that are subsequently reduced by executions to a mixed-lot amount will be rounded down for display purposes to the nearest round-lot amount at that same price level. If executions result in there being an insufficient (odd-lot remainder) amount of shares at a price level to display a round-lot share amount for a market participant using SuperMontage's new quote/order interface ("Quote/Order"), the system will instead display that market participant's next best priced round-lot share amount on that same

<sup>7</sup> For the purpose of publicly reporting transactions to the tape, Nasdaq would round a mixed-lot execution down, and report it as the next lowest round-lot increment. Telephone conversation between Thomas P. Moran, Associate Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on May 17, 2002.

<sup>8</sup> Under the proposal, the maximum number of shares of an individual order, or an aggregated total of multiple orders, that potentially may not be displayed is 99 shares. Nasdaq believes that this approach is consistent with the Commission's Limit Order Display Rule that exempts customer limit orders of odd-lot size from the display requirement. See Exchange Act Rule 11Ac1-4(c)(3); 17 CFR 240.11Ac-4(c)(3).

side of the market where the market participant using quotes/orders has displayable trading interest of at least a single round-lot share amount. If there is no remaining displayable trading interest on a particular side of the market a new quote/order will be generated using the "penalty process," as set forth in Section I.B. below.

If a market participant in SuperMontage continues to use current quote technology—"Legacy Quote"—instead of SuperMontage's new quote and order entry messages and features,<sup>9</sup> the system will likewise not display any odd-lot remainder of the Legacy Quote and will instead either: (1) refresh the Legacy Quote using the Auto Quote Refresh ("AQR") function to a price and size selected by the entering party, or (2) generate a entirely new Legacy Quote using the penalty process, as set forth below.

#### B. Penalty Quote Refresh

If a market maker is using either a Quote/Order, or a Legacy Quote without AQR functionality, and has no attributable round-lot share amounts on a particular bid or ask side of a market to round to, SuperMontage will automatically generate, consistent with NASD Rule 4710(b)(5), a quote of a normal size unit of trading (*i.e.*, a round-lot).<sup>10</sup> When a market participant's

<sup>9</sup> An integral part of Nasdaq's implementation strategy for SuperMontage is to provide users with the ability to initially select their level of interaction with the system and the timing of internal firm programming changes necessary to take advantage of some or all of SuperMontage's new features and functionality. Through a programming approach known as "backward compatibility," SuperMontage will allow firms to continue to use the quote and order templates they use today in the SuperSoes environment to format messages to interact with the SuperMontage (*i.e.*, Legacy Quote). Likewise, firms that continue to use current SelectNet formats, will be able to use SuperMontage's Directed Order Process to communicate with other market participants.

Firms would need to make at least some programming changes to participate in the new SuperMontage environment using existing SuperSOES formats, interfaces and functions. However, backward compatibility allows a firm to internally prioritize which SuperMontage features and functions it would like to take advantage of, and program for those changes first. In one limited circumstance, however, the decision to program to use a SuperMontage feature providing greater flexibility than that available in today's environment, can result in losing a complimentary capability. This occurs when a firm programs to use SuperMontage's new Quote/Order interface and thus is able to place multiple quotes at multiple price levels in the system. When this occurs, the firm may no longer use Nasdaq's AQR feature which is associated exclusively with Legacy Quotes. See Section I.C. of this filing.

<sup>10</sup> The currently approved SuperMontage rule provides that if a market maker's quote or order is decremented to zero and the market maker does not update its principal quote via AQR, transmit a revised attributable quote/order to Nasdaq, or have

Legacy Quote is refreshed using the penalty process, any odd-lot remainder of the market participant's present in the system will be purged and will not be retained for potential execution.<sup>11</sup> However, the odd-lot remainder of a market maker using a Quote/Order will remain in the system, will not be purged, and will be retained for potential execution.

#### C. Automatic Quote Refresh

As stated previously, a market participant using a Legacy Quote, but not Quote/Order, may use Nasdaq's AQR functionality to have their displayed quote refreshed to a price and size (round-lot share amount) selected by the firm immediately after its displayed and reserve size at a price level is reduced to less than 100 shares. Any odd-lot share amount present at the

another attributable quote or order in the system, Nasdaq will place the market maker's quote (both sides) in a closed state for three minutes. At the end of that time, if the market maker did not voluntarily update or withdraw its quote from the market, Nasdaq will refresh the market maker's quote/order to its normal unit of trading at the lowest bid and highest offer currently being displayed in that security and reopen the market maker's quote.

Nasdaq recently filed with the Commission a proposed rule change to modify this process. Under the proposal, if all bids and/or offers are exhausted so that there are no longer any Quote/Orders displayed on the bid or offer side of the market, and the market maker does not update its principal quote via AQR, transmit a revised attributable quote/order to Nasdaq, or have another attributable quote or order in the system, the system, after 30 seconds, would refresh only the market maker's exhausted bid or offer quote to a normal unit of trading priced \$0.01 inferior to the lesser of either: a) the last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote would create a locked or crossed market, SuperMontage will instead re-open the exhausted market maker's bid/offer quote at a price \$0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this penalty quote refresh process would result in the creation of a bid/offer of less than \$0.01, the system will refresh that bid/offer to a price of \$0.01. See Securities Exchange Act Release No. 45671 (March 28, 2002), 67 FR 16784 (April 8, 2002) (Notice for File No. SR-NASD-2002-01).

Changes were made to this footnote pursuant to a telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on May 20, 2002.

<sup>11</sup> Note, however, between the time a market maker's Legacy Quote is decremented to less than a round-lot share amount and the time the market maker's Legacy Quote is refreshed pursuant to the penalty process or the transmission of a revised attributable quote prior to the system refreshing the quote via the penalty process, any odd-lot remainders will be retained by the system and shall be accessible for execution. In essence, odd-lot remainders of a Legacy Quote are purged from the system contemporaneous with the actually refreshing of a Legacy Quote. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on May 20, 2002.

time a Legacy Quote is refreshed by AQR shall *not* be retained in the SuperMontage system for execution and the system will only recognize and potentially process the round-lot refreshed amount.

AQR was introduced in a SOES environment (and carried over into SuperSOES), where market participants can only enter one price level, and can have their quotes decremented to zero due to automatic executions. In SOES and SuperSOES, if a firm does not refresh its quote after being decremented to zero, the firm is subject to a mandatory withdrawal from market making in the security at issue, as it has failed to maintain a two-sided market ("SOESed-out-of-the-Box"). Thus, the purpose of AQR is to allow market participants to meet their two-sided quote obligations in an environment where market participant are subject to automatic execution and withdrawal and have only one means of meeting with two-sided market requirement (*i.e.*, via a two-sided quote).

In this filing, Nasdaq proposes that SuperMontage will only allow AQR to function with Legacy Quotes.<sup>12</sup> AQR will not function with new SuperMontage Quotes/Orders as AQR was tied to an environment where an market participant can only enter a single quote to manage their position. In addition, Nasdaq believes that AQR is redundant if a firm is using multiple quote/orders to manage their positions—that is, if a firm is using multiple quotes or orders to manage their position and meet their two-sided market obligation, AQR is duplicative.

Lastly, Nasdaq believes it is important to note that the need for AQR in a SuperMontage environment is less, in part, because market makers can no longer be SOESed-out-of-the-Box pursuant to the penalty quote process (as described in Section B of this filing).

#### D. Retention of Odd-Lot Remainders for Potential Execution

SuperMontage will always retain for potential execution all odd-lot remainders of Quotes/Orders unless canceled by the entering party. For Legacy Quotes, odd-lot remainders will be retained by the system only to the extent that Legacy Quote has not been refreshed by either the AQR function or the penalty process. Legacy Quotes using Nasdaq's AQR functionality shall have their displayed quote refreshed to

<sup>12</sup> The SuperMontage, as originally approved, contemplated the use of the AQR function with a market participant's use of multiple attributable quotes. See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

the price and round-lot share amount selected by the firm immediately after its display and reserve at a price level is reduced to less than 100 shares. Any odd-lot share amount present at the time a Legacy Quote is refreshed using the AQR function shall *not* be retained in the SuperMontage system for execution. In addition, when a Legacy Quote without AQR functionality is refreshed using the penalty process, any odd-lot remainder shall not be retained by the system after the market maker has had its quote refreshed by the penalty process.<sup>13</sup> ECNs that have only odd-lot share amounts remaining at a price level will remain in the montage with no displayed quote on the side(s) of the market where they have the odd-lot amount. Though un-displayed, such odd-lots remainders will reside in the system, retain their price and time priority, and will be available for execution.

#### E. Reserve Refresh

SuperMontage also allows market participants to use reserve size and select a round-lot refresh amount that the market participant wishes its quote to be refreshed to once its displayed size is reduced to less than a round-lot. Thus, once a quote or an order is decremented to a size less than 100 shares, the system will refresh the quote from reserve size by an amount designated by the market participant. If there was an odd-lot amount available prior to the quote being refreshed, the odd-lot remainder of quotes and orders being refreshed from reserve would be retained by the system and combined with the refresh size. For example, a market maker ("MMA") is displaying a 1000 share bid quote. MMA has 5000 shares in reserve and a 500 share refresh size. SuperMontage executes 925 shares against MMA's. Upon execution, since MMA's displayable interest is less than 100 shares, the system will refresh MMA's quote by the refresh amount—500 shares, but will also retain the 75 share odd-lot remainder in the system. The resulting 575 share total will remain in the system and available for execution but will be rounded down to 500 shares for display purposes.

#### II. Entry of Orders

Under the new approach to odd-lot orders, market participants will be able to enter orders into SuperMontage in any whole-share amount from 1 to 999,999 shares. Though eligible for entry and execution along with all other quotes and orders, orders originally entered in odd-lot amounts may not use

SuperMontage's Reserve Size feature.<sup>14</sup> Like round-lot orders, odd-lot and mixed-lot orders will be allowed to be entered as "market" orders or priced "limit" orders, and may have a designated time-in force of "Day," "Immediate or Cancel," or "Good-till-cancelled."<sup>15</sup> They can also be replaced, increased or decreased under the same terms and conditions as round-lot orders. Odd-lot orders may also be preferenced (via the Non-Directed Order Process set forth in NASD Rule 4710(b)(1)(B)(iv)) to other market participants in the same manner as round and mixed-lots.

Finally, to the extent that any order residing in SuperMontage becomes subject to an issuer corporate action related to a stock split or dividend that would require adjustment of the size of that order, Nasdaq will adjust the order's size to an appropriate individual share amount.<sup>16</sup> Currently, the rules governing these adjustments call for, in certain cases, the rounding of share amounts to the nearest round-lot. If this proposal is approved, such rounding, when required, will be done to the single share. Nasdaq believes that this will result in more accurate representation of buying and selling interest.

#### III. Execution Process

Odd-lots and mixed-lots shall be processed through SuperMontage's Non-Directed Order process. All market and marketable limit orders for odd-lots and mixed-lots will execute against trading interest on the other side of the market (against which it is marketable) on a share-by-share basis (in actual share amounts). Odd-lots and mixed-lots will receive a time stamp upon entry into SuperMontage, which they will retain while in the system. Odd-lots and mixed-lots will be executed pursuant to the execution algorithm selected (price/time (default), price/time with fee consideration, and price/size/time) by

<sup>14</sup> Quotes and orders originally entered into the system as mixed-lots may use the SuperMontage reserve size feature. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on May 17, 2002.

<sup>15</sup> Nasdaq has filed a rule proposed rule change with the Commission to allow orders in SuperMontage to be designated as "Day." The Commission expects that Nasdaq will amend the proposed rule change shortly to include the "Good-till-cancelled" designation. See File No. SR-NASD-2001-98.

<sup>16</sup> Nasdaq filed a proposed rule change with the Commission that became effective pursuant to section 19(b)(3)(A) of the Act, which sets forth this adjustment process that currently contains rule language rounding share amounts to round-lots. See Securities Exchange Act Release No. 4577 (April 18, 2002), 67 FR 20566 (April 25, 2002).

the entering market participant. Priced mixed-lot orders (limit orders) that are entered by a quoting market participant and that are or become non-marketable, will be displayed in SuperMontage on a rounded basis. That is, the system will round down the size of mixed-lot to the nearest round-lot amount.<sup>17</sup> An odd-lot, mixed-lot, or round-lot that subsequently is reduced to an odd-lot or mixed-lot size will retain the time-stamp of original entry for purposes of determining priority in the Non-Directed Order processing queue.

As described above, odd-lots will be retained by the system, but will not be displayed. Odd-lots and mixed-lots will interact with other quotes and orders against which they are marketable in the same manner as round-lots. As also described above, SuperMontage will *not* execute at an inferior price level until all better-priced share amounts that are in the system, both round-lots and undisplayed odd-lots, are executed.

Nasdaq believes that the full integration of odd-lot share amounts into SuperMontage is a great step forward in ensuring that the small orders of public customers are treated fairly, consistently, and on the same terms as the larger orders of professional market participants. In addition, by placing such orders on an equal execution footing with round-lot trading interest, Nasdaq believes that odd-lot share amounts can be a significant source of liquidity in the Nasdaq market.

#### (2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>18</sup> in general and with section 15A(b)(6) of the Act,<sup>19</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions and securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

<sup>17</sup> "Immediate or Cancel" ("IOC") Orders are not eligible for display in SuperMontage. Orders entered by order-entry firms are designated as IOC. Quoting market participants (*i.e.*, market makers, ECNs, and UTP Exchanges) may designate orders as IOC.

<sup>18</sup> 15 U.S.C. 78o-3.

<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> See *supra* note 11.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Nasdaq neither solicited nor received written comments.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.<sup>20</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-42 and should be submitted by June 18, 2002.

<sup>20</sup> Nasdaq has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after its publication in the **Federal Register**. See Amendment No. 2, *supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-13191 Filed 5-24-02; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-45970; File No. SR-NYSE-2001-33]**

### **Self-Regulatory Organizations; The New York Stock Exchange; Notice of Filing of Proposed Rule Change To Amend the Certification Requirements of the Listed Company Manual**

May 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 24, 2001, the New York Stock Exchange ("NYSE") filed with the Securities and Exchange Commission ("Commission") and on April 16, 2002, and May 7, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the proposed rule change is to amend Section 501 of the NYSE's Listed Company Manual ("Manual") to specify that a stock may be listed on the NYSE notwithstanding that is dematerialized or in book-entry-only form if the stock is included in the Direct Registration System ("DRS").

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by the NYSE.

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Section 5 of the NYSE's Manual deals with stock certificates requirements including when certificates must be distributed and what form stock certificates must take. Section 501.01 of the Manual currently requires a listed company to send stock certificates to record holders unless the stock distribution relates to a stock dividend reinvestment plan, stock dividend reinvestment purchase plan or a similar stock purchase plan, or the company's stock is included in DRS.

Over the years the NYSE has recognized changes in custom as the use of certificates has become less common with respect to certain securities such as corporate bonds and structured products (e.g., equity-linked notes). In the 1980s for example, the NYSE amended Section 501.02 to specify that bonds may be listed on a book-entry basis using a global certificate held by a depository.<sup>3</sup>

Even with respect to common stocks, the trend has been to emphasize immobilization of certificates and book-entry delivery and settlement of trades whenever possible. In 1993, uniform rules were adopted among the U.S. securities markets to specify that exchange members must settle all trades in "depository-eligible securities" on a book-entry basis (that is, without having to physically deliver certificates).<sup>4</sup> In 1995, the NYSE adopted a rule specifying that a security must be "depository eligible" prior to listing it on the exchange.<sup>5</sup> Depository eligibility does not preclude certification of a security but it does not require a certificate either. Accordingly, securities may be completely dematerialized, represented by a single global certificate held at the depository, or represented by traditional stock certificates. In each case, the important characteristic is that the securities involved can be held in or on behalf of a depository so that trades

<sup>3</sup> Securities Exchange Act Release No. 25872 (June 30, 1988), 53 FR 25,560 [File No. SR-NYSE-88-07] (order approving rule permitting the use of a single global certificate for bonds).

<sup>4</sup> NYSE Rule 226. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 [File Nos. SR-AMEX-93-07; SR-BSE-93-08; SR-MSE-93-03; SR-NASD-93-11; SR-NYSE-93-13; SR-PSE-93-04; and SR-PHLX-93-09] (order approving SRO rules requiring book-entry settlement of securities transactions).

<sup>5</sup> NYSE Rule 227. Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 [File No. SR-NYSE-95-19] (order approving adoption of Rule 227 requiring issuers' shares to be depository eligible).

may be settled by book-entry without physical delivery.

In 1996, the NYSE amended Section 501.01 of the Manual to rescind its policy requiring listed companies to provide certificates to record holders for all distributions and instead allow issuers to offer a choice of receiving certificates or holding their position in DRS.<sup>6</sup> Using DRS an investor is able to hold a book-entry position on the books of the issuer, to update stock ownership information directly with an issuer's transfer agent, and to electronically move his or her interest between the books of the issuer and his or her broker. While participation in DRS is optional for an issuer, the NYSE has to date taken the position that an investor must be able to obtain a traditional stock certificate upon request. As so construed, DRS did not afford the issuer the ability to completely dematerialize or utilize a global certificate with book-entry-only movement of securities positions.

In recent months, the NYSE has been approached by non-U.S. issuers that would like to list their ordinary shares on the NYSE but would prefer to use a book-entry-only format (*i.e.*, where shareholders would not have the option of obtaining certificates). In addition, under the laws of certain countries, corporate securities are required to be dematerialized. Traditionally non-U.S. companies have been able to dematerialize their ordinary shares outside the U.S. while utilizing American Depositary Receipt ("ADR") programs, which provide for the issuance of ADR certificates, in the U.S. For non-U.S. companies that desire to list ordinary shares in the U.S. as opposed to listing ADRs, it has become necessary to accommodate those non-U.S. companies' need or preference to dematerialize their shares or utilize a book-entry-only format.

Coincidentally, as the U.S. securities industry begins to prepare to change to a T+1 settlement cycle, there is a renewed focus on eliminating certificates from securities processing altogether, including a discussion within the industry of whether dematerialization should be mandated as it has been in certain other countries. Dematerialization has also assumed an increased urgency in the context of contingency planning following the September 11th tragedy.

The rule change proposes amend Section 501.01 to allow a listed

company to not send stock certificates to a record holder as long as the company's stock is included in DRS or is issued pursuant to a dividend reinvestment program, stock purchase plan, or similar plan. Non-equity securities that have traditionally been issued in book-entry-only form, such as bonds and derivatives, will continue to be covered by the specific rules applicable to them and will not be required to be in DRS in order to issue in book-entry only or in a dematerialized form.<sup>7</sup> The proposed rule change does not mandate book-entry-only or dematerialization. Rather, the NYSE believes the rule change will eliminate the need to issue the traditional stock certificate and will allow non-certificated equities to be listed on the NYSE, subject to the requirement of Rule 227 that the issue be "depository eligible."

The NYSE believes the proposed rule change recognizes the desirability of providing shareholders with the flexibility offered by DRS, which provides an alternative to the traditional choices of receiving a stock certificate or holding stock in "street name" through a broker-dealer. Under DRS the shareholder can be directly registered with the company but be spared the burden and expense of safeguarding a certificate. The NYSE also notes that the successful expansion of the DRS since its first implementation in the mid-1990s should readily accommodate non-U.S. companies trading ordinary shares in this country.

The NYSE believes that in accommodating book-entry-only or complete dematerialization of common stock it is aligning itself with the rules and policies of the other U.S. listing markets. The National Association of Securities Dealers Automated Quotations System ("NASDAQ") does not have rules requiring certification or dictating the format of issues that are certificated. The American Stock Exchange ("AMEX"), which had rules similar to the traditional NYSE rules, eliminated all those rules as part of a sweeping set of amendments intended to more closely align the AMEX and NASDAQ listing administration following the acquisition of the AMEX by the National Association of Securities Dealers in 1998. As a result, each of those markets is today fully able to accommodate a listing applicant that wishes to dematerialize or use a book-entry-only structure for its common stock.

The basis under the Act for this proposed rule change is the requirement

under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.<sup>8</sup>

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The NYSE has neither solicited nor received written comments on the proposed rule change. The NYSE will notify the Commission of any written comments received by the NYSE.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

<sup>6</sup> Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 [File No. SR-NYSE 96-29] (order approving rule change requiring participating in DRS for certain stock distributions).

<sup>7</sup> Sections 703.16 and 501.11 of the Manual.

<sup>8</sup> 15 U.S.C. 78q-1.

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2001-33 and should be submitted by June 18, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-13233 Filed 5-24-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. ("ZSCVII"), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to Worldwinner.com, Inc. ("Worldwinner"), 313 Washington Street, Suite 308, Newton, Massachusetts 02458. The financing is contemplated for marketing and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate ZSCVII, currently owns greater than 10 percent of Worldwinner, and therefore Worldwinner is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 20, 2002.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 02-13206 Filed 5-24-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. ("ZSCVII"), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to HydroCision, Inc. ("HydroCision"), 100 Burtt Road, Suite G01, Andover, Massachusetts 01810. The financing is contemplated for product production and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital V, L.P., an Associate ZSCVII, currently owns greater than 10 percent of HydroCision, and therefore HydroCision is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 20, 2002.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 02-13207 Filed 5-24-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. ("ZSCVII"), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business

Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to Spherics, Inc. ("Spherics"), 300 Metro Center Boulevard, Suite 150, Warwick, Rhode Island 02886. The financing is contemplated for market expansion and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate ZSCVII, currently owns greater than 10 percent of Spherics, and therefore Spherics is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 20, 2002.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 02-13208 Filed 5-24-02; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

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

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on February 6, 2001 [FR 66, page 9048]. No comments were received.

**DATES:** Comments must be submitted on or before June 27, 2002, to: Attention

<sup>9</sup> 17 CFR 200.30-3(a)(12).

DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

Linda Lasley, Attorney-Adviser Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0002, Telephone (202) 366-4723.

**SUPPLEMENTARY INFORMATION:**

**Office of the Secretary (OST)**

*Title:* Transportation For Individuals With Disabilities-Accessibility Of Over-The-Road-Buses (OTRBs).

*OMB Control Number:* 2100-0019.

*Affected Public:* Bus Companies and the disability community.

*Annual Estimated Burden:* 316,226.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 21, 2002.

**Michael Robinson,**

*Office of the Chief Information Office, United States Department of Transportation.*

[FR Doc. 02-13219 Filed 5-24-02; 8:45 am]

**BILLING CODE 4910-62-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

[Summary Notice No. PE-2002-38]

**Petitions for Exemption; Summary of Petitions Received**

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

**ACTION:** Republication of notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain 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. Because this summary was published containing errors on March 28, 2002, and the period for comments closed before the correction was printed, this summary of petition is being published again. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 17, 2002.

**ADDRESSES:** Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2002-11868 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1-800-647-5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Annette Kovite (425-227-1262), Transport Airplane Directorate (ANM-113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055-4056; or Vanessa Wilkins (202-267-8029), Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 21, 2002.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* FAA-2002-11868.

*Petitioner:* The Boeing Company.

*Section of 14 CFR Affected:* 14 CFR 25.365(e).

*Description of Relief Sought:*

To permit a time-limited exemption for a period of time not to exceed three years to allow continued delivery of

Model 767 airplanes, both in production and retrofit, which incorporate enhanced security flight deck doors meeting the requirements of 14 CFR 25.795(a)(1) and (2).

[FR Doc. 02-13218 Filed 5-24-02; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Notice of Intent To Rule on Application 02-08-C-00-CVG To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Covington, KY**

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before June 27, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following addresses: Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116-3841. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Holscher, Director of Aviation of the Kenton County Airport Board at the following address: P.O. Box 752000, Cincinnati, Ohio 45275-2000.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kenton County Airport Board under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry O. Bowers, Airports Program Manager, Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116-3841, (901) 544-3495, Extension 21. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under the provisions of the 49 U.S.C. 40117 and



part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 20, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Kenton County Airport Board was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 3, 2002.

The following is a brief overview of the application.

*Proposed charge effective date:* August 1, 2003.

*Proposed charge expiration date:* July 1, 2008.

*Level of the proposed PFC:* \$4.50.

*Total estimated PFC revenue:* \$261,649,000.

*Brief description of proposed project(s):* (1) Runway 17/35 (Future 18R/36L), a new north-south runway including a 1,00-foot extension to Runway 9/27; (2) Noise Compatibility Program (NCP) Measures—1999 Part 150 Study Update; (3) KR 212 Interchange Improvements—Design; (4) Deicing System Enhancements—Storm-Water Treatment System Gunpowder Creek; (5) Concourse C Improvements—Flight Information Display System Replacement; (6) Terminal Area Blast Analysis; (7) Airport Security Master Plan; (8) Extend Runway 9/27 an additional 1,000-foot for a total length of 12,000 feet.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: (1) FAR Part 121 supplemental operators which operate at the Airport without an operating agreement with the Board and enplane less than 1,500 passengers per year and (2) Part 135 on-demand air taxis, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 1701 Columbia Avenue, College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kenton County Airport Board.

Issued in Memphis, Tennessee, on May 20, 2002.

**LaVerne F. Reid,**

*Manager, Memphis Airports District Office, Southern Region.*

[FR Doc. 02-13217 Filed 5-24-02; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of Program Services and the Market Room within the Department of the Treasury are soliciting comments concerning recordkeeping requirements associated with Reporting of International Capital and Foreign Currency Transactions and Positions—31 CFR part 128.

**DATES:** Written comments should be received on or before July 29, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments on international capital transactions and positions to: Department of the Treasury, ATTN: Dwight Wolkow, IP Room 4410 NY, 1500 Pennsylvania Avenue NW., Washington DC 20220. In view of delays in mail delivery due to recent events, please also notify Mr. Wolkow by email ([dwight.wolkow@do.treas.gov](mailto:dwight.wolkow@do.treas.gov)), FAX (202-622-1207) or telephone (202-622-1276).

Direct all written comments on foreign currency transactions and positions to: Department of the Treasury, ATTN: Lois Quinn, Room 2405, 1500 Pennsylvania Avenue NW., Washington DC 20220. In view of delays in mail delivery due to recent events, please also notify Ms. Quinn by email ([lois.quinn@do.treas.gov](mailto:lois.quinn@do.treas.gov)), FAX (202-622-2021) or telephone (202-622-9122).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on international capital transactions and positions should be directed to Mr. Wolkow. Requests for additional information on foreign currency transactions and positions should be directed to Ms. Quinn.

**SUPPLEMENTARY INFORMATION:** *Title:* 31 CFR part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

*OMB Number:* 1505-0149.

*Abstract:* 31 CFR part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as

provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, 31 CFR part 128 establishes general guidelines for reporting on the nature and source of foreign currency transactions of large U.S. business enterprises and their foreign affiliates. This regulation includes a recordkeeping requirement, § 128.5, which is necessary to enable the Office of Program Services and the Office of Foreign Exchange Operations to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations.

*Current Actions:* No changes to recordkeeping requirements are proposed at this time.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,000.

*Estimated Average Time per Respondent:* 3 hours per respondent per filing.

*Estimated Total Annual Burden Hours:* 6,000 hours, based on one response per year.

### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether 31 CFR 128.5 is necessary for the proper performance of the functions of the Offices, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

**Timothy D. Dulaney,**

*Director, Market Room.*

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Systems.*

[FR Doc. 02-13205 Filed 5-24-02; 8:45 am]

**BILLING CODE 4810-25-P**

**DEPARTMENT OF THE TREASURY****Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service****AGENCY:** Departmental Offices, Treasury.**ACTION:** Notice of meeting.**SUMMARY:** This notice announces the date, time, and location for the quarterly meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC), and the provisional meeting agenda.**DATES:** The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, June 14, 2002, starting at 9 a.m., at the Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC. The meeting will be held in the Secretary's Conference Room, Rm. 3325, for approximately four hours.**FOR FURTHER INFORMATION, CONTACT:** Gordana S. Earp, Director, Tariff and Trade Affairs (Enforcement), Office of the Under Secretary (Enforcement), Telephone: (202) 622-0336.

At this meeting, the Advisory Committee is expected to pursue the following draft agenda. The agenda may be modified prior to the meeting.

**Agenda**

- I. Update on Supply Chain Security and Customs-Trade Partnership Against Terrorism ("C-TPAT");
- II. Other Issues:
  - A. ACE/ITDS Update;
  - B. Report of the Customs Office of Rulings and Regulations;
  - C. Update on Focused Assessment and Importer Self-Assessment Programs;
  - D. Treasury Data Study and G-7 Data Uniformity Initiative;
  - E. Customs Uniformity Initiative;
- III. Administrative Issues:
  - A. Status of 2001 COAC Annual Report to the Congress;
  - B. Next Meeting

**SUPPLEMENTARY INFORMATION:** The Advisory Committee on Commercial Operations of the United States Customs Service ("COAC") was created by Congress in Public Law 100-203, Title IX, Section 9503(c), December 22, 1987, 100 Stat. 1330-381 (19 U.S.C. 2071 note). The Committee advises the Secretary of the Treasury and reports to Congress any recommendations on matters involving the commercial operations of the United States Customs Service. By statute, the Secretary of the Treasury appoints the members of this Committee, and the Assistant Secretary of the Treasury for Enforcement presides over the meetings.

The June 14, 2002 meeting of the Committee is open to the public;

however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to address the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622-0220 or Helen Belt at (202) 622-0230.

Dated: May 21, 2002.

**Timothy E. Skud,***Deputy Assistant Secretary, Regulatory, Tariff, and Trade (Enforcement).*

[FR Doc. 02-13223 Filed 5-24-02; 8:45 am]

**BILLING CODE 4810-25-P****DEPARTMENT OF THE TREASURY****Bureau of Alcohol, Tobacco and Firearms****Proposed Collection; Comment Request****ACTION:** Notice and request for comments.**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report—Proprietor of Export Warehouse.**DATES:** Written comments should be received on or before July 29, 2002 to be assured of consideration.**ADDRESSES:** Direct all written comments to Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Robert P.

Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:***Title:* Report—Proprietor of Export Warehouse.*OMB Number:* 1512-0115.*Form Number:* ATF F 5220.4.*Abstract:* Proprietors account for taxable articles on this report. ATF uses

this information to ensure that Federal laws and regulations have been complied with and determined taxes have been paid.

*Current Actions:* ATF F 5220.4, Report—Proprietor of Export Warehouse has been revised. The title of the form has been changed from Monthly Report-Export Warehouse Proprietor to Report—Proprietor of Export Warehouse. The instructions have been revised and ATF believes that the additional instructions will help proprietors better understand the reporting requirements. The revision will also reduce follow-up contact between proprietors and ATF personnel and make reporting consistent between proprietors of export warehouses and proprietors of tobacco products or cigarette papers and tubes. There is a decrease in burden hours due to a decrease in the number of respondents who will complete the form.*Type of Review:* Revision.*Affected Public:* Business or other for-profit.*Estimated Number of Respondents:* 123.*Estimated Total Annual Burden Hours:* 1,181.**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 16, 2002.

**William T. Earle,***Assistant Director (Management) CFO.*

[FR Doc. 02-13211 Filed 5-24-02; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY****Bureau of Alcohol, Tobacco and Firearms****Proposed Collection; Comment Request**

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes.

**DATES:** Written comments should be received on or before July 29, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Robert P. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes.

*OMB Number:* 1512-0163.

*Form Number:* ATF F 5210.5.

*Abstract:* Manufacturers account for their taxable articles on ATF F 5210.5, Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes. ATF uses this information to ensure that taxes have been properly paid and that Federal laws and regulations are complied with.

*Current Actions:* ATF F 5210.5, Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes has been revised. The instructions have been changed and ATF believes that the additional instructions will help the manufacturers to understand the reporting requirements. A new requirement is an employer identification number that must be listed on the form. An employer identification number is required on the tax returns that are filed by

manufacturers and ATF will use these numbers to electronically match ATF F 5210.5 with the tax returns. There is an increase in burden hours due to an increase in the number of manufacturers.

*Type of Review:* Revision.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 150.

*Estimated Total Annual Burden Hours:* 1,800.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 16, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02-13212 Filed 5-24-02; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY****Bureau of Alcohol, Tobacco and Firearms****Proposed Collection; Comment Request**

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is

soliciting comments concerning the Application for a Permit As a Manufacturer of Tobacco Products or an Export Warehouse Proprietor, Application for an Amended Permit as a Manufacturer of Tobacco Products or an Export Warehouse Proprietor, Application for Permit Under 26 U.S.C. Chapter 52 Importer of Tobacco Products, and Application for an Amended Permit Under 26 U.S.C. Chapter 52, Importer of Tobacco Products.

**DATES:** Written comments should be received on or before July 29, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Robert P. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for a Permit as a Manufacturer of Tobacco Products or an Export Warehouse Proprietor, Application for an Amended Permit as a Manufacturer of Tobacco Products or an Export Warehouse Proprietor, Application for Permit Under 26 U.S.C. Chapter 52 Importer of Tobacco Products, and Application for an Amended Permit Under 26 U.S.C. Chapter 52, Importer of Tobacco Products.

*OMB Number:* 1512-0398.

*Form Number:* ATF F 2093 (5200.3), ATF F 2098 (5200.16), ATF F 5230.4, and ATF F 5230.5.

*Abstract:* The forms are used by the tobacco industry members to obtain and amend permits necessary to engage in business as a manufacturer of tobacco products, importer of tobacco products, or proprietor of a export warehouse.

*Current Actions:* ATF F 2093 (5200.3) and ATF F 2098 (5200.16) have been revised. ATF modified these application forms on which applicants apply for a new or amended permit to manufacture tobacco products or to operate an export warehouse. The new revisions inform the applicant as to what documentation must be sent for ATF to make a decision regarding the permit. The revised instructions will reduce follow-up contact between applicants and ATF personnel. ATF has also reduced the amount of information required by the forms while still maintaining standards on qualifying applicants.

*Type of Review:* Revision.

*Affected Public:* Business or other for-profit, State, Local or Tribal Government.

*Estimated Number of Respondents:* 630.

*Estimated Total Annual Burden Hours:* 1,130.

**Request for Comment**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 16, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02-13213 Filed 5-24-02; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**Retraction of Revocation Notice**

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** The following Customs broker license was erroneously included in a list of revoked Customs broker licenses.

Name	License	Port name
Jose A. Ramos .....	05284	Houston

Customs broker license No. 05284 remains valid.

Dated: May 15, 2002.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 02-13222 Filed 5-24-02; 8:45 am]

**BILLING CODE 4820-02-P**

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties**

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning April 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

**EFFECTIVE DATE:** April 1, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298-1200, extension 1349.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in

the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2002-13 (*see*, 2002-12 IRB \_\_, dated March 25, 2002), the IRS determined the rates of interest for the calendar quarter beginning April 1, 2002, and ending June 30, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning July 1, 2002, and ending September 30, 2002.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments * (percent)
Prior to:				
070174 .....	063075	6	6	.....
070175 .....	013176	9	9	.....
020176 .....	013178	7	7	.....
020178 .....	013180	6	6	.....
020180 .....	013182	12	12	.....
020382 .....	123182	20	20	.....
010183 .....	063083	16	16	.....
070183 .....	123184	11	11	.....
010185 .....	063085	13	13	.....
070185 .....	123185	11	11	.....
010186 .....	063086	10	10	.....

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments* (percent)
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	063002	6	6	5

\*Effective 1-1-99.

Dated: May 22, 2002.

**Robert C. Bonner,**

*Commissioner of Customs.*

[FR Doc. 02-13280 Filed 5-24-02; 8:45 am]

BILLING CODE 4820-02-P

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**Extension of Duty-Free Treatment for Certain Agricultural Products of Israel**

**AGENCY:** United States Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This document informs the public of the extension of duty-free treatment for certain agricultural products of Israel and advises the public of the procedures that are available to ensure that duty-free treatment will be accorded to eligible products that were entered, or withdrawn from warehouse for consumption, between January 1, 2002, and the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Connie Chancey, Quota Branch, Office of Field Operations (202-927-5850).

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the

United States of America and the Government of Israel ("the FTA Agreement") which was approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 ("the FTA Act," codified at 19 U.S.C. 2112 Note). Section 4(b) of the FTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA Agreement, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the FTA Agreement.

On November 4, 1996, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products, effective from December 4, 1996, through December 31, 2001 ("the 1996 Agreement"), in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade while acknowledging differing interpretations as to the meaning of certain rights and obligations in the FTA Agreement as to that trade. Accordingly, pursuant to section 4(b) of the FTA Act, President Clinton issued Proclamation 6962 of December 2, 1996, in order to provide to Israel, through the close of December

31, 2001, access into customs territory of the United States for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges, consistent with the 1996 Agreement. This Proclamation included appropriate tariff modifications, the terms of which are set forth in Subchapter VIII, Chapter 99, Harmonized Tariff Schedule of the United States (HTSUS).

On December 31, 2001, the United States entered into an agreement with Israel to extend the 1996 Agreement through December 31, 2002, in order to allow for additional time to negotiate a successor arrangement to the 1996 Agreement. Accordingly, pursuant to section 4(b) of the FTA Act, President Bush issued Proclamation 7554 of May 3, 2002, to extend, through the close of December 31, 2002, the U.S. commitments under the 1996 Agreement. The Annex to this Proclamation set forth appropriate modifications to the HTSUS which, under the terms of the Proclamation, are effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2002, including entries for which the liquidation of duties has not become final under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

**Entry Amendment Procedures**

In the case of products that are eligible for treatment under Subchapter VIII, Chapter 99, HTSUS, as modified by Proclamation 7554, but for which no claim for that treatment was made because the products were entered, or withdrawn from warehouse for consumption, on or after January 1, 2002, and before the publication of this notice, and provided that liquidation has not become final under 19 U.S.C. 1514 with respect to those products, importers may avail themselves of one of the following procedures in order to make a retroactive claim for that treatment:

1. The importer may amend the entry by filing a Supplementary Information Letter (SIL) with Customs. For the policy on SILs, ABI users should see Administrative Message 97-0727 dated August 3, 1997, and non-ABI filers should contact the local Customs port office;

2. The importer may make a Post Entry Amendment (PEA) in accordance with the requirements and procedures set forth in the notice published in the **Federal Register** (65 FR 70872) on November 28, 2000, regarding the PEA test program. The operation of the PEA test program was extended to December 31, 2002, by a notice published in the **Federal Register** (67 FR 768) on January 7, 2002; or

3. The importer may file a protest in accordance with 19 U.S.C. 1514 and 1515 and Part 174 of the Customs Regulations (19 CFR part 174).

Submission of a retroactive claim under one of the procedures mentioned above does not automatically guarantee the refund of duties deposited with Customs, and Customs notes in this regard that the applicable calendar year 2002 quota provided for under Subchapter VIII, Chapter 99, HTSUS, must be available when the retroactive claim is made. In addition, no refund will apply in the case of additional duties paid as safeguard measures under Chapter 99 of the HTSUS.

Dated: May 22, 2002.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 02-13224 Filed 5-24-02; 8:45 am]

**BILLING CODE 4820-02-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Form 8404**

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

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8404, Interest Charge on DISC-Related Deferred Tax Liability.

**DATES:** Written comments should be received on or before July 29, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Interest Charge on DISC-Related Deferred Tax Liability.

*OMB Number:* 1545-0939.

*Form Number:* 8404.

*Abstract:* Shareholders of Interest Charge Domestic International Sales Corporations (IC-DISCs) use Form 8404 to figure and report an interest charge on their DISC-related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations and individuals.

*Estimated Number of Responses:* 2,000.

*Estimated Time Per Response:* 8 hrs., 48 min.

*Estimated Total Annual Burden Hours:* 17,600.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 15, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02-13172 Filed 5-24-02; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Form W-4V**

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

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W-4V, Voluntary Withholding Request.

**DATES:** Written comments should be received on or before July 29, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Voluntary Withholding Request.

*OMB Number:* 1545-1501.

*Form Number:* W-4V.

*Abstract:* If an individual receives any of the following government payments, he/she may voluntarily complete Form W-4V to request that the payer withhold Federal income tax. Those payments are unemployment compensation, social security benefits, tier I railroad retirement benefits, Commodity Credit Corporation loans, or certain crop disaster payments under the Agricultural Act of 1949 or title II of the Disaster Assistance Act of 1988.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and farms.

*Estimated Number of Respondents:* 19,700,000.

*Estimated Time Per Respondent:* 29 min.

*Estimated Total Annual Burden Hours:* 9,653,000.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a

matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 16, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02-13173 Filed 5-24-02; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 8840**

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

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8840, Closer Connection Exception Statement for Aliens.

**DATES:** Written comments should be received on or before July 29, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Closer Connection Exception Statement for Aliens.

*OMB Number:* 1545-1410.

*Form Number:* 8840.

*Abstract:* Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is a nonresident of the United States by reason of the closer connection exception described in Reg. section 301.7701(b)-2.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 350,000.

*Estimated Time Per Respondent:* 2 hrs., 25 min.

*Estimated Total Annual Burden Hours:* 843,500.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 16, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02-13174 Filed 5-24-02; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Privacy Act of 1974; System of Records

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury (Department) gives notice of a newly proposed Internal Revenue Service (IRS) system of records, Employee Complaint and Allegation Referral Records-Treasury/IRS 00.007.

**DATES:** Comments must be received no later than June 27, 2002. The proposed system of records will be effective July 8, 2002 unless the IRS receives comments which would result in a contrary determination.

**ADDRESS:** Comments should be sent to the Director, Commissioner's Complaint Processing and Analysis Group, N:ADC:C, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspecting at the IRS Freedom of Information Reading Room also located at 1111 Constitution Avenue, NW. The telephone number for the Reading Room is (202) 622-5164.

**FOR FURTHER INFORMATION CONTACT:** Jim D'Elia, Commissioner's Complaint Processing and Analysis Group, N:ADC:C, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone number (202) 622-5212.

**SUPPLEMENTARY INFORMATION:** The IRS is establishing this system of records (1) to promote public confidence in the integrity of the IRS; (2) to identify and monitor complaints, allegations and other information received concerning current and former IRS employees and IRS contractors; (3) to ensure that the IRS provides a timely and appropriate response to those complaints, allegations and other information; (4) to advise complainants of the status and results of investigations or inquiries conducted as a result of the IRS's receipt of their complaints, and (5) to compile summary reports. The reports will provide non-identifying information about the type of complaints, allegations and resulting actions concerning current and former IRS employees and IRS

contractors and will be distributed to IRS and Department of the Treasury executives, managers and employees, the Congress and the public. Specifically, section 1211 of PL 104-168, Taxpayer Bill of Rights 2 (TBOR2), requires that the Secretary of the Treasury submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of instances involving the misconduct of employees of the IRS. Section 3701 of PL 105-206, the IRS Restructuring and Reform Act (RRA) of 1998, requires that the Secretary or the Secretary's delegate maintain records of taxpayer complaints of misconduct by IRS employees on an individual employee basis to prepare the report required by section 1211 of TBOR2. Since parts of this system are retrieved by individual identifier, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public.

Treasury/IRS 00.003-Customer Feedback System, last published on December 10, 2001, at 66 FR 63787, contains records of complaints, problems, compliments, and suggestions about IRS employees and IRS systems and processes that involve administration of the tax laws and procedures, received by the IRS from taxpayers or their representatives. These complaints and problems might, but do not necessarily have to, include allegations of conduct by IRS employees that could involve the mandatory discharge provisions of section 203 of the IRS RRA. IRS 00.003 contains disposition information on the matters that do not include section 1203 allegations. When complaints or problems lodged by taxpayers or their representatives include allegations of conduct by IRS employees that could involve the mandatory discharge provisions of section 1203, the matter is forwarded to the Treasury Inspector General for Tax Administration (TIGTA) for review. Upon the conclusion of that review (which may or may not involve an investigation), TIGTA returns the matter to IRS for appropriate action. Records of complaints, information from TIGTA Reports of Investigation (if any), and disposition information for these matters are stored in IRS 00.007.

Treasury/IRS 00.007 also contains records of allegations of administrative or criminal misconduct, other than those involving section 1203, from whatever source, which are referred back to the IRS from TIGTA without TIGTA investigation, or as part of TIGTA's investigation (e.g., complaints against any IRS executive or GS-15 manager; allegations of criminal

wrongdoing, or any allegation lodged directly with TIGTA). IRS 00.007 also contains disposition information on these matters.

Records relating to personnel actions taken against IRS employees as a result of allegations maintained in IRS 00.003, and/or 00.007 may be found in Treasury/IRS 36.001-Appeals, Grievances and Complaints Records, and Treasury/IRS 36.003-General Personnel and Payroll Records. IRS 36.001 and IRS 36.003 were published in the **Federal Register** on December 10, 2001, at 66 FR 63819 and 66 FR 63820 respectively.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

A proposed rule to exempt this system from certain provisions of the Privacy Act (5 U.S.C. 552a) will be published separately in the **Federal Register**. The proposed IRS system of records, Employee Complaint and Allegation Referral Records-Treasury/IRS 00.007, is published in its entirety below.

Dated: May 20, 2002.

**W. Earl Wright, Jr.,**

*Chief Management and Administrative Programs Officer.*

#### Treasury/IRS 00.007

##### SYSTEM NAME:

Employee Complaint and Allegation Referral Records.

##### SYSTEM LOCATION:

Commissioner's Complaint Processing and Analysis Group, Internal Revenue Service (IRS) National Office, 1111 Constitution Avenue, NW., Washington DC.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees of the IRS and IRS contractors who are the subjects of complaints directed to, or inquiries or investigations conducted by the IRS or the Treasury Inspector General for Tax Administration (TIGTA); (2) individuals (complainants) who submit these complaints.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Documents containing the complaint, allegation or other information regarding current and



former IRS employees and IRS contractors; (2) documents containing information about efforts to determine the relevant facts, and the applicable law, rule or regulation; and (3) documents containing information about actions taken in response to a complaint, allegation or other information regarding current and former IRS employees and IRS contractors.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; sec. 7803 of Pub. L. 105-206, the IRS Restructuring and Reform Act (RRA) of 1998; sec. 1211 of Pub. L. 104-168, Taxpayer Bill of Rights 2 (TBOR2); sec. 3701 of the RRA of 1998.

**PURPOSE(S):**

Records in this system are used (1) to promote public confidence in the integrity of the IRS; (2) to identify and monitor complaints, allegations and other information received concerning current and former IRS employees and IRS contractors; (3) to ensure that the IRS provides a timely and appropriate response to those complaints, allegations and other information; (4) to advise complainants of the status and results of investigations or inquiries conducted as a result of the IRS's receipt of their complaints, and (5) to compile summary reports. The reports will provide non-identifying information about the type of complaints, allegations and resulting actions concerning current and former IRS employees and IRS contractors and will be distributed to IRS and Department of the Treasury executives, managers and employees, the Congress and the public. Specifically, section 1211 of Pub. L. 104-168, TBOR2, requires that the Secretary of the Treasury submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of instances involving the misconduct of employees of the IRS. Section 3701 of Pub. L. 105-206, the IRS RRA of 1998, requires that the Secretary or the Secretary's delegate maintain records of taxpayer complaints of misconduct by IRS employees on an individual employee basis to prepare the report required by section 1211 of TBOR2.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or

foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations;

(2) Disclose information to a Federal, State or local agency relevant to or necessary to the agency's hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose relevant, non-privileged information to a Federal, State, local, or foreign court, magistrate, grand jury, or administrative tribunal in accordance with applicable constitutional, substantive, or procedural law or practice. This use includes disclosures to an opposing party or his/her attorney for the purpose of negotiation on such matters as settlement or plea bargaining. This use also includes disclosures to an opposing party or his/her attorney, or a witness, during the proceeding itself or in discovery.

(4) Provide information to third parties during the course of an investigation or inquiry to the extent necessary to obtain information pertinent to the investigation or inquiry;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Disclose information to a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or is seeking to become licensed;

(7) Disclose information to complainants or victims to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim. Information concerning the progress of the investigation or case is limited strictly to whether the investigation/case is opened or closed. Information about any disciplinary action is provided only after the subject of the action has exhausted all reasonable appeal rights;

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the information pertains;

(9) Disclose information to a government contractor to the extent the contractor needs this information to perform the contract.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic media.

**RETRIEVABILITY:**

By name of individual who submitted the complaint, allegation or other information, or by name of the individual that is the subject of the complaint, allegation or other information.

**SAFEGUARDS:**

Access is limited to authorized Treasury and IRS personnel who have a need to know. Paper records are stored in locked file containers, in rooms that are locked after business hours or when unoccupied. Access to electronic media is controlled by computer passwords. Security procedures are in accord with IRM 1(16)1, Manager's Security Handbook and IRM 2.1.10, Information Systems Security.

**RETENTION AND DISPOSAL:**

Records are maintained in accordance with IRM 1.15.2, Records Disposition Handbook.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Commissioner's Complaint Processing and Analysis Group, Internal Revenue Service, N:ADC:C, 1111 Constitution Avenue, NW., Washington, DC 20224.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if this system of records contains a record pertaining to them may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Records Access Procedures" below.

**RECORDS ACCESS PROCEDURES:**

Individuals seeking access to any record maintained in this system, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Inquiries should be addressed to the Director, Commissioner's Complaint Processing and Analysis Group, Internal Revenue Service, N:ADC:C, 1111 Constitution Avenue, NW., Washington, DC 20224.

**CONTESTING RECORD PROCEDURES:**

See "Records Access Procedures" above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

**RECORD SOURCE CATEGORIES:**

This system of records is exempt from the Privacy Act provision which requires that record source categories be

reported. (See "Exemptions Claimed for the System," below.)

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

This system is exempt from (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f)

of the Privacy Act pursuant to U.S.C. 552a(k)(2). (See 31 CFR 1.36.)

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# Federal Register

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**Tuesday,  
May 28, 2002**

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**Part II**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 17  
Endangered and Threatened Wildlife and  
Plants; Designations of Critical Habitat  
for Plant Species From the Island of  
Hawaii, HI; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AH02**

**Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Hawaii, Hawaii**

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

**ACTION:** Proposed rule concerning designation of critical habitat.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for 47 of the 58 plant species known historically from the island of Hawaii that are listed under the Endangered Species Act of 1973, as amended.

Critical habitat is not proposed for seven species as they no longer occur on the island of Hawaii, and we are unable to identify any habitat essential to their conservation on the island. Critical habitat is not proposed for two species of loulou palm, *Pritchardia affinis* and *Pritchardia schattaueri*, for which we determine that critical habitat designation is not prudent because it would likely increase the threats from vandalism or collection of these species on the island of Hawaii. Critical habitat is not proposed for two species, *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis*, because they have not been seen recently in the wild and no

viable genetic material is known to exist.

We propose critical habitat designations for 47 species within 28 critical habitat units totaling approximately 176,968 hectares (ha) (437,285 acres (ac)) on the island of Hawaii.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations, and the reasons why critical habitat for any of these species is prudent or not prudent. We may revise or further refine this rule, including critical habitat boundaries, prior to final designation based on habitat and plant surveys, public comment on the proposed critical habitat rule, and new scientific and commercial information.

**DATES:** We will accept comments until July 29, 2002. Public hearing requests must be received by July 12, 2002.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of the following methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3-122, P.O. Box 50088, Honolulu, HI 96850-0001.

You may hand-deliver written comments to our Pacific Islands Office at the address given above.

You may send comments by electronic mail (e-mail) to: *FW1PIE\_Hawaii\_Island\_Crithab@r1.fws.gov*. See the *Public Comments Solicited* section in **SUPPLEMENTARY INFORMATION** below for file format and other information about electronic filing.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone 808/541-3441; facsimile 808/541-3470).

**SUPPLEMENTARY INFORMATION:**

**Background**

In the Lists of Endangered and Threatened Plants (50 FR 17.12), there are 58 plant species that, at the time of listing, were reported from the island of Hawaii (Table 1). Twenty-seven of these species are endemic to the island of Hawaii, while 31 species are reported from 1 or more other islands, as well as the island of Hawaii.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 58 SPECIES FROM HAWAII

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Hawaiian Islands, Kahoolawe, Niihau
<i>Achyranthes mutica</i> (NCN) .....	H					C	
<i>Adenophorus periens</i> (pendent kiihi fern).	C	H	C	R	R	C	
<i>Argyroxiphium kauense</i> (Mauna Loa silversword).						C	
<i>Asplenium fragile</i> var. <i>insulare</i> (NCN).					H	C	
<i>Bonamia menziesii</i> (NCN) .....	C	C	H	C	C	C	
<i>Cenchrus agrimonioides</i> (kamanomano).		C		H	C	R	NW Islands (H)
<i>Clermontia drepanomorpha</i> (oha wai).						C	
<i>Clermontia lindseyana</i> (oha wai).					C	C	
<i>Clermontia peleana</i> (oha wai)					H	H	
<i>Clermontia pyrularia</i> (oha wai)						C	
<i>Colubrina oppositifolia</i> (kaula)		C			C	C	
<i>Ctenitis squamigera</i> (pauoa) ...	H	C	C	C	C	H	
<i>Cyanea copelandii</i> ssp. <i>copelandii</i> (haha).						H	

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 58 SPECIES FROM HAWAII—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Hawaiian Islands, Kahoolawe, Niihau
<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i> (haha).						C	
<i>Cyanea platyphylla</i> (haha) .....						C	
<i>Cyanea shipmanii</i> (haha) .....						C	
<i>Cyanea stictophylla</i> (haha) .....						C	
<i>Cyrtandra giffardii</i> (haiwale) ....						C	
<i>Cyrtandra tintinnabula</i> (haiwale).						C	
<i>Delissea undulata</i> (NCN) .....	C				H	C	
<i>Diellia erecta</i> (NCN) .....	H	C	C	H	C	C	
<i>Flueggea neowawraea</i> (mehamehame).	C	C	H		C	C	
<i>Gouania vitifolia</i> (NCN) .....		C			H	C	
<i>Hedyotis cookiana</i> (awiwi) .....	C	H	H			H	
<i>Hedyotis coriacea</i> (kioele) .....		H			C	C	
<i>Hibiscadelphus giffardianus</i> (hau kuahiwi)*.						H	
<i>Hibiscadelphus hualalaiensis</i> (hau kuahiwi)*.						H	
<i>Hibiscus brackenridgei</i> (mao hau hele).	H	C	H	C	C	C	Ka (R)
<i>Ischaemum byrone</i> (Hilo ischaemum).	R	H	C		C	C	
<i>Isodendron hosakae</i> (aupaka)						C	
<i>Isodendron pyriform</i> (wahine noho kula).		H	H	H	H	C	Ni (H)
<i>Mariscus fauriei</i> (NCN) .....			C	H		C	
<i>Mariscus pennatifolius</i> (NCN)	H	H			C	H	NW (C)
<i>Melicope zahlbruckneri</i> (alani)						C	
<i>Neraudia ovata</i> (NCN) .....						C	
<i>Nothocestrum breviflorum</i> (aiea).						C	
<i>Ochrosia kilauaeensis</i> (holei) ..						H	
<i>Phlegmariurus mannii</i> (wawaeiole).	H				C	H	
<i>Phyllostegia parviflora</i> (NCN) ..		C			H	H	
<i>Phyllostegia racemosa</i> (NCN)						C	
<i>Phyllostegia velutina</i> (NCN) ....						C	
<i>Phyllostegia warshaueri</i> (NCN)						C	
<i>Plantago hawaiiensis</i> (laukahi kuahiwi).						C	
<i>Plantago princeps</i> (laukahi kuahiwi).	C	C	C		C	H	
<i>Pleomele hawaiiensis</i> (halapepe).						C	
<i>Portulaca sclerocarpa</i> (poe) ....				C		C	
<i>Pritchardia affinis</i> (loulou) .....						C	
<i>Pritchardia schattaueri</i> (loulou) ..						C	
<i>Sesbania tomentosa</i> (ohai) .....	C	C	C	H	C	C	NW, Ka, Ni (H)
<i>Sicyos alba</i> (anunu) .....						C	
<i>Silene hawaiiensis</i> (NCN) .....						C	
<i>Silene lanceolata</i> (NCN) .....	H	C	C	H		C	
<i>Solanum incompletum</i> (popolo ku mai).	H		H	H	H	C	
<i>Spermolepis hawaiiensis</i> (NCN).	C	C	C	C	C	C	
<i>Tetramolopium arenarium</i> (NCN).					H	C	
<i>Vigna o-wahuensis</i> (NCN) .....		H	C	C	C	C	Ni (H), Ka (C)
<i>Zanthoxylum dipetalum</i> var. <i>tomentosum</i> (ae).						C	
<i>Zanthoxylum hawaiiense</i> (ae)	C		C	H	C	C	

## KEY

C (Current)—population last observed within the past 30 years

H (Historical)—wild population not seen for more than 30 years

R (Reported)—reported from undocumented observations

NW—NW Hawaiian Islands

Ka—Kahoolawe  
 Ni—Nihoa  
 NCN—no common name  
 \* Taxon only known in cultivation

In previously published proposals we proposed that critical habitat was prudent for 31 (*Achyranthes mutica*, *Adenophorus periens*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Clermontia lindseyana*, *Clermontia peleana*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis cookiana*, *Hedyotis coriacea*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Mariscus pennatifolius*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, *Plantago princeps*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) of the 58 species reported from the island of Hawaii. No change is made to the 31 proposed prudency determinations in this proposal and they are hereby incorporated in this proposal (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492).

In this proposal, we determine that critical habitat is prudent for 23 species (*Argyroxiphium kauense*, *Clermontia drepanomorpha*, *Clermontia pyrularia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Isodendron hosakae*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothocestrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Sicyos alba*, *Silene hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum*), for which prudency determinations have not been made previously, because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks that may result from human activity because of critical habitat designation.

In this proposal, we determine that critical habitat designation is not prudent for two species, *Pritchardia affinis* and *Pritchardia schattaueri*, because it would likely increase the threat from vandalism or collection of these species on the island of Hawaii. In addition, we propose that critical habitat designation is not prudent for

two species, *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis*, known only from the island of Hawaii, that have not been seen in the wild since 1957 and 1927, respectively, and for which no viable genetic material is known to exist.

In this proposal, we propose designation of critical habitat for 47 of the 58 species reported from the island of Hawaii: *Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyrularia*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothocestrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*.

Critical habitat is not proposed for 4 (*Pritchardia affinis*, *Pritchardia schattaueri*, *Cyanea copelandii* ssp. *copelandii*, and *Ochrosia kilaueaensis*) of the 58 species reported from the island of Hawaii for which we determine that designation of critical habitat is not prudent for the reasons given above.

Critical habitat is not proposed for 7 (*Cenchrus agrimonioides*, *Ctenitis squamigera*, *Hedyotis cookiana*, *Mariscus pennatifolius*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, and *Plantago princeps*) of the 58 species on the island of Hawaii because these plants no longer occur on the island of Hawaii and we are unable to identify any habitat essential to their conservation on this island. However, proposed critical habitat designations, or non-designations, for these species

will be included in other Hawaiian plants proposed critical habitat rules (Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH CRITICAL HABITAT DESIGNATIONS OR NON-DESIGNATIONS WILL BE PROPOSED FOR SEVEN SPECIES FOR WHICH WE ARE UNABLE TO DETERMINE HABITAT THAT IS ESSENTIAL FOR THEIR CONSERVATION ON THE ISLAND OF HAWAII

Species	Proposed rules in which critical habitat designations or non-designations will be made.
<i>Cenchrus agrimonioides</i> .	Maui; Lanai; Oahu.
<i>Ctenitis squamigera</i> ..	Kauai; Maui; Lanai; Molokai; Oahu.
<i>Hedyotis cookiana</i> .....	Kauai; Molokai; Oahu.
<i>Mariscus pennatifolius</i> .	Kauai; Maui; NW Hawaiian Islands; Oahu.
<i>Phyllostegia mannii</i> ...	Kauai; Maui.
<i>Phyllostegia parviflora</i>	Maui; Oahu.
<i>Plantago princeps</i> .....	Kauai; Maui; Molokai; Oahu.

#### The Island of Hawaii

This largest island of the Hawaiian archipelago comprises 10,458 square kilometers (km) (4,038 square miles (mi)) or two-thirds of the land area of the State of Hawaii giving rise to its common name, the "Big Island." The Hawaiian Islands are volcanic islands formed over a "hot spot," a fixed area of pressurized molten magma deep within the Earth. As the Pacific Plate, a section of the Earth's surface many miles thick, has moved to the northwest, the islands of the chain have separated. Currently, this hot spot is centered under the southeast part of the island of Hawaii, which is one of the most volcanic areas on Earth. Five large shield volcanoes make up the island of Hawaii: Mauna Kea at 4,205 meters (m) (13,796 feet (ft)), and Kohala at 1,670 m (5,480 ft), both extinct; Hualalai at 2,521 m (8,271 ft), which is dormant and could erupt again; and Mauna Loa, at 4,169 m (13,677 ft) and Kilauea at 1,248 m (4,093 ft), both of which are currently active and adding land area to the island (McDonald *et al.* 1983; 59 FR 10305; United States Fish and Wildlife Service (Service) 1996a).

The island of Hawaii lies within the trade wind belt. Moisture derived from the Pacific Ocean is carried to the island by north-easterly trade winds. Heavy rains fall when the moisture in clouds makes contact with windward mountain slopes (Wagner *et al.* 1999). Considerable moisture reaches the leeward slopes of the saddle area between Mauna Loa and Mauna Kea, but dries out rapidly as elevation increases. The orographic effect reaches an elevation of about 2,000 to 3,000 m (6,500 to 9,850 ft) and tends to go around rather than over the high mountains. Thus, leeward and saddle areas of Mauna Kea and Mauna Loa tend to be dry (Service 1996a).

A rain shadow effect is created by Mauna Kea and Mauna Loa on the leeward side of the island, removing the Kona coast from trade winds. However, warm air generated from the island land mass rises and condenses, resulting in convective showers. A major source of rainfall is provided by winter storms which develop south of the island. Kona storms impact the island when trade winds subside during the winter months. Areas of the saddle are protected from these storms by Hualalai volcano and, therefore, droughts in the saddle area are common. Fog drip, the condensation of moisture on vegetation, can be a significant source of precipitation as well as an effective contributor in reducing evapotranspiration losses, especially in dry areas (Service 1996a; Wagner *et al.* 1999).

The Kau Desert is located on the southeastern side of the island of Hawaii and leeward to the slopes of Kilauea volcano. Lying in the volcano's rain shadow, Kau Desert receives less than 1,200 millimeters (mm) (47 inches (in)) of moisture per year. However, the barren conditions are not attributed to lack of moisture but, rather, to acid rain-forming sulphur dioxide vented from the caldera. Small seasonal variation in temperature occurs on the island. Average daily temperatures differ between the warmest and the coolest day only by about 4° C (7.2° F). However, daily extremes are pronounced, reflecting time of day, elevation, and weather. Wagner *et al.* (1999) reported that night is winter in Hawaii. The highest recorded temperature of 37.7° C (100° F) occurred at Pahala and the lowest of -12.7° C (9° F) on Mauna Kea (Service 1996a; Wagner *et al.* 1999).

#### Discussion of the Plant Taxa

##### Species Endemic to Hawaii

*Argyroxiphium kauense* (Mauna Loa silversword)

*Argyroxiphium kauense*, a long-lived perennial and a member of the aster family (Asteraceae), is a primarily monocarpic (flowering and fruiting only once and then dying, usually after several years) giant rosette plant with leaves covered with grayish-silver hairs. It differs from *Argyroxiphium sandwicense* ssp. *sandwicense* and *Argyroxiphium sandwicense* ssp. *macrocephalum* primarily by having the vegetative rosette of leaves elevated on an erect stem, longer and thinner leaves which are triangular rather than flat in cross-section, and somewhat sparser leaf pubescence (hairs) (Carr 1985; Carr 1999; Meyrat 1982).

The species is primarily monocarpic, that is, most individuals grow and flower from a large rosette. The plant increases in rosette diameter and stem height for a number of years, and then produces a single, tall inflorescence (flowering part of plant) with hundreds of capitula (heads), each containing up to 200 florets (small flowers that are part of a dense cluster). After fruit set, the entire plant dies. In the Upper Waiakea population, only 4 of the 86 plants in 1990 had more than a single rosette (that is, were branched). Three of these had two rosettes and one plant had three rosettes. At Keapohina, 30 percent (62) of the 205 plants examined in 1984 were branched. About 71 percent (44) of the branched silverswords had suffered browse damage to the apical meristem (the growing point at the tip of a stem, gives rise to stem, leaves and flowers). Branching is a common response to mechanical (browse) damage to the apical meristem in monocarpic silverswords, but may also be a trait with a genetic component. The majority of individuals of the *Argyroxiphium kauense* are monocarpic, unbranched plants. Adult individuals that have branched in response to browse damage may produce small flowering stalks. Fruits collected in 1991 from inflorescences of branched individuals were not viable. Fruits collected in 1984 from Keapohina were primarily from the small inflorescences produced on browsed plants, and the number of fruits that had seeds with embryos was low (Service 1996c; 58 FR 18029; Joan Canfield, formerly with the Service, pers. comm. 1992).

Historically, *Argyroxiphium kauense* may have once occurred in subalpine forests, bogs, and mountain parkland between 1,585 and 2,500 m (5,200 and 8,000 ft) elevation in a band from the

southwest rift to the northeast slope of Mauna Loa and on Hualalai. The species is currently extant in three wild populations containing a total of fewer than 500 individuals on private land on Kahuku Ranch and on State owned land in the Upper Waiakea and Kapapala Forest Reserves. In addition, the Kapapala population has been augmented with approximately 1,000 individuals and there is an outplanted population of about 1,000 individuals in Hawaii Volcanoes National Park (Bryan *in litt.* 1974; Carr 1985; Hawaii Natural Heritage Program (HINHP) Database 2000; Marie Brueggemann, Service, pers. comm. 2001; Geographic Decision Systems International (GDSI) 2000).

The habitat of this species includes moist open forest, subalpine mesic shrubland, bogs, and weathered, old pahoehoe (smooth) or aa (rough) lava with well developed pockets of soil in subalpine mountain vegetation between 1,625 and 2,774 m (3,330 and 9,100 ft) elevation. Associated native plant species include *Coprosma montana* (pilo), *Plantago hawaiiensis* (laukahi kuahiwi), *Silene hawaiiensis* (No Common Name (NCN)), *Asplenium fragile* var. *insulare* (NCN), *Metrosideros polymorpha* (ohia), *Styphelia tameiameia* (pukiawe), *Coprosma ernodeoides* (nene), *Vaccinium reticulatum* (ohelo ai), *Dubautia ciliolata* (naenae), *Geranium cuneatum* (nohoanu), *Carex montis-eeka* (NCN), *Carex alligata* (NCN), *Rhynchospora chinensis* (kuolohia), *Dodonaea viscosa* (aalii), *Gahnia gahniiformis* (NCN), or *Deschampsia nubigena* (hair grass) (HINHP Database 2000; Linda Pratt, U.S. Geological Survey—Biological Resources Division, *et al.*, pers. comm. 2001; 58 FR 18029).

The threats to this species are browsing by cattle (*Bos taurus*), goats (*Capra hircus*), and mouflon sheep (*Ovis musimon*); habitat disruption by feral pigs (*Sus scrofa*); insects (including fruit parasites); drought; human disturbance; competition with non-native plants; disease; and vulnerability to extinction from chance events (such as volcanic activity, earthquakes, hurricanes, fires or other natural disasters) due to the small population size and limited distribution (J. Canfield, pers. comm. 1992; Mitchell 1981; Cuddihy and Stone 1999; Service 1996c; 58 FR 18029; Medeiros *et al.* 1991).

*Clermontia drepanomorpha* (ohai wai).

*Clermontia drepanomorpha*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a terrestrial or epiphytic (not rooted in the soil) branching tree with stalked leaves. This species is

distinguished from others in this endemic Hawaiian genus by similar sepals (outermost or lowermost whorl of flower parts) and petals, the long drooping inflorescence, and large blackish purple flowers (Lammers 1999).

No life history information is available for *Clermontia drepanomorpha* at this time (Service 1998c).

Historically, *Clermontia drepanomorpha* was known only from the State of Hawaii's Puu O Umi Natural Area Reserve (NAR) in the Kohala Mountains (puu = summit, hill). Currently there is a single large population containing approximately 200 individuals. It is located in the Puu O Umi NAR and Kohala Forest Reserve on State and privately owned lands. This species has also been outplanted in the State-owned Waimanu bog in the Kohala Mountains (HINHP Database 2000; Stemmermann and Jacobson 1987; GDSI 2000; Steve Perlman, National Tropical Botanical Garden (NTBG) *in litt.* 1995; Lyman Perry, Hawaii Division of Forestry and Wildlife (DOFAW), pers. comm. 2000; L. Pratt *et al.*, pers. comm. 2001).

This species typically grows in *Metrosideros polymorpha*, *Cheirodendron trigynum* (olapa), and *Cibotium glaucum* (hapuu) dominated montane wet forests, sometimes epiphytically, at elevations between 808 and 1,676 m (2,650 and 5,500 ft). Associated native plant taxa include *Carex alligata*, *Melicope clusiifolia* (alani), *Styphelia tameiameia*, *Astelia menziesii* (painiu), *Rubus hawaiiensis* (akala), *Cyanea pilosa* (haha), *Coprosma* sp. (pilo), or native sphagnum moss (Corn 1983; HINHP Database 2000; Service 1998c, L. Pratt *et al.*, pers. comm., 2001).

The threats to this species are competition from non-native plant taxa such as *Rubus rosifolius* (thimbleberry), habitat disturbance by feral pigs, girdling of the stems by rats (*Rattus* spp.), and a risk of extinction from naturally occurring events (such as hurricanes) due to its narrow distribution (Service 1998c; 61 FR 53137).

*Clermontia pyrularia* (oha wai)

*Clermontia pyrularia*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a tree with finely toothed leaves attached to a winged stalk. This species is separated from the other taxa in the genus that occur on the island of Hawaii by winged leaf stalks (petioles), two-lipped flowers, green-white petals, and a pear-shaped berry (Lammers 1991, 1999).

*Clermontia pyrularia* was observed in fruit and flower during December and November. No other life history information is currently available (Service 1996a).

Historically, *Clermontia pyrularia* was known only from the western and northeastern slope of Mauna Kea, the western slope of Mauna Loa and the saddle between the two. Currently this species is known from one population with several individuals on the boundary of the Hilo Forest Reserve on State-owned land. There are also two outplanted populations, at Piha on State owned land, adjacent to the Hakalau Forest National Wildlife Refuge (NWR) and in Hawaii Volcanoes National Park (HVNP) (Service 1996a; 59 FR 10305; HINHP Database 2000; GDSI 2000; Jack Jeffrey, Hakalau NWR, and Steve Bergfeld, DOFAW, pers. comm. 1999; Patty Moriyasu, Hawaii Center for Conservation Research and Training, University of Hawaii (CCRT-UH), pers. comm. 2000).

The habitat for this species includes wet and mesic montane forest dominated by *Acacia koa* (koa) and/or *Metrosideros polymorpha*, and subalpine dry forest dominated by *Metrosideros polymorpha*, at elevations between 1,628 and 2,061 m (5,340 to 6,760 ft). Associated native plants taxa are *Coprosma* sp., *Dryopteris wallichiana* (io nui), *Rubus hawaiiensis*, or *Hedyotis* sp. (NCN) (HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001; 59 FR 10305).

The threats to this plant are competition with non-native plants, particularly *Passiflora mollissima* (banana poka), pigs, fruit and seed predation by *Rattus* sp. (black rat), scattered distribution, few populations, and small number of individuals making this taxon highly vulnerable to extinction caused by random naturally occurring events and human impacts, loss of pollinators, and cattle (59 FR 10305; Service 1996a).

*Cyanea copelandii* ssp. *copelandii* (haha).

*Cyanea copelandii* ssp. *copelandii*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a small epiphytic shrub which roots at the nodes and grows on rocks and tree trunks. This species is distinguished from other members of the genus by the size, shape, and dark red hairs of the petals and by the reclining habit. This taxon is easily distinguished by its narrow leaves from the only other subspecies, *Cyanea copelandii* ssp. *haleakalaensis*, which is relatively prolific on Maui (Lammers 1999).

*Cyanea copelandii* ssp. *copelandii* was observed in fruit and flower during December. No other life history information is currently available (Service 1996a).

Historically, *Cyanea copelandii* ssp. *copelandii* was found at two sites on the southeastern slope of Mauna Loa, near Glenwood. It has not been observed in the wild since 1957 (Lammers 1999).

*Cyanea copelandii* ssp. *copelandii* was found in montane wet forest, epiphytic on mossy *Cibotium* spp. (hapuu) between an elevation of 658 and 881 m (2,160 and 2,890 ft). Associated native plant species included *Metrosideros polymorpha*, *Acacia koa*, *Cheirodendron trigynum*, *Broussaisia arguta* (kanawao), or *Melicope clusiifolia* (59 FR 10305, L. Pratt *et al.*, pers. comm. 2001).

The threats to *Cyanea copelandii* ssp. *copelandii* included grazing by feral ungulates and fruit and seed predation by rats. The loss of pollinators may have contributed to lack of regeneration (Service 1996a).

*Cyanea hamatiflora* (haha).

*Cyanea hamatiflora*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a palm-like tree with tan sap and leaves without stalks. This species is composed of two subspecies: *Cyanea hamatiflora* ssp. *carlsonii*, endemic to the island of Hawaii, and *Cyanea hamatiflora* ssp. *hamatiflora*, endemic to East Maui. *Cyanea hamatiflora* ssp. *carlsonii* is distinguished from *C. hamatiflora* ssp. *hamatiflora* by calyx (collective term for sepals, outermost or lowermost whorl of flower parts) lobes that are longer and wider and by its longer pedicels (flower stalk) (Lammers 1999).

This taxon was observed in flower during December and August. Seeds have been collected in October and November. No other life history information is currently available (Service 1996a).

Historically, *Cyanea hamatiflora* ssp. *carlsonii* was known only from the west side of the island of Hawaii. Currently, it occurs in three populations containing approximately 14 individuals on the State's Honouaule Forest Reserve and South Kona Forest Reserve. It has also been reported from Federal land on the Kona unit of Hakalau Forest National Wildlife Refuge. There are also individuals of this taxon outplanted at Puu Waawaa and the Kipahoehoe NAR (GDSI 2000; HINHP Database 2000; Jon Giffin, DOFAW, *in litt.* 2000; L. Perry, pers. comm. 2000).

The habitat of *Cyanea hamatiflora* ssp. *carlsonii* is mesic montane forest dominated by *Metrosideros polymorpha*



or *Acacia koa* at elevations between 1,350 to 1,783 m (4,430 to 5,850 ft). Associated native plants include *Myoporum sandwicense* (naio), *Clermontia clermontoides* (oha wai), *Coprosma* sp., *Ilex anomala* (kawau), *Hedyotis* sp., *Sophora chrysophylla* (mamane), *Cibotium* spp., *Dryopteris* sp. (NCN), or *Athyrium* (*Diplazium*) sp. (NCN) (Lammers 1999; HINHP Database 2000, L. Pratt *et al.*, pers. comm. 2001).

The threats to *Cyanea hamatiflora* ssp. *carlsonii* are competition with non-native plants, especially *Passiflora mollissima*; grazing and trampling by domestic and escaped cattle; rooting by feral pigs; and consumption of fruits by rats and non-native birds; seed damage by an undetermined species of caterpillar; and depressed reproductive vigor due to the limited gene pool. The small remaining numbers of individuals and their limited and scattered distribution make this species vulnerable to extinction by a single natural or human-induced event (59 FR 10305; Service 1996a).

*Cyanea platyphylla* (haha).

*Cyanea platyphylla*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched palm-like shrub with stems that are covered with short, sharp, pale spines on the upper portions, especially when juvenile. The species differs from others in this endemic Hawaiian genus by its juvenile and adult leaves, precocious flowering, and smaller flowers (Lammers 1999).

No life history information is available for *Cyanea platyphylla* at this time (Service 1998c).

Historically, *Cyanea platyphylla* was found in the Kohala Mountains near Hiilawe Falls and also the Hamakua Ditch Trail, in Honaunau, in the Puna District near Glenwood, on Kalapana Road in Pahoa, and in Puu Kauka; in Waiakea Forest Reserve; and in an unknown location called "Kalanilehua." Currently there are a total of nine populations and fewer than 50 individuals on State and private lands. This species is extant in the Laupahoehoe NAR, Hilo Forest Reserve, and Punahoa Ahupuaa. There is also an outplanted population in the Waiakea Forest Reserve (Service 1998c; GDSI 2000; HINHP Database 2000).

This species is typically found in open *Metrosideros polymorpha*-*Acacia koa* lowland and montane wet forests at elevations between 137 and 1,082 m (450 and 3,550 ft). Associated native plant taxa include *Coprosma* sp., *Psychotria hawaiiensis* (kopiko), *Perrottetia sandwicensis* (olomea), *Scaevola* spp. (naupaka), *Cibotium* sp., *Antidesma platyphyllum* (hame),

*Clermontia* spp. (oha wai), *Hedyotis* sp., or *Cyrtandra* spp. (haiwale) (Lammers 1999; HINHP Database 2000; Service 1998c, L. Pratt *et al.*, pers. comm. 2001).

The threats to this plant are habitat degradation by feral pigs; competition with the introduced plant taxa *Psidium cattleianum* (strawberry guava), *Psidium guajava* (guava), *Passiflora ligularis* (sweet granadilla), and *Rubus rosifolius*; consumption of fruits by rats; volcanic activity; risk of extinction from naturally occurring events; and/or reduced reproductive vigor due to the low numbers of populations and individuals (Service 1998c; 61 FR 53137).

*Cyanea shipmanii* (haha).

*Cyanea shipmanii*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a small unbranched or sparsely branched shrub with leaves that are deeply divided towards the midrib. This taxon is easily distinguishable from other members of the genus by its small flowers, slender stems, and stalked and divided leaves (Lammers 1999).

No life history information is available for *Cyanea shipmanii* at this time (Service 1996a).

Historically, *Cyanea shipmanii* was known only from the eastern slopes of Mauna Kea. Currently there are a total of five populations with 12 individuals on State land in north Hilo, Upper Waiakea Forest Reserve; on Federal land in the Hakalau Unit of the Hakalau Forest National Wildlife Refuge; and on private land at Papaikou, south Hilo (Lammers 1999; GDSI 2000; HINHP Database 2000).

*Cyanea shipmanii* is found in montane mesic forest dominated by *Acacia koa*-*Metrosideros polymorpha* on the windward slopes of the island, at elevations between 1,619 and 2,027 m (5,310 and 6,650 ft). Associated native plants include *Ilex anomala*, *Myrsine lessertiana* (kolea), or *Cheirodendron trigynum* (59 FR 10305, HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

This plant is threatened by pig rooting, vulnerability to extirpation by random events, and a loss of pollinators. Small numbers of extant individuals and localized distribution may result in a limited gene pool and reduced reproductive vigor (59 FR 10305).

*Cyanea stictophylla* (haha).

*Cyanea stictophylla*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a small tree or shrub with sparsely branched stems that are occasionally equipped with sharp outgrowths. *Cyanea stictophylla* is distinguished from other species in the genus by its large, deeply lobed petals and small calyx lobes (Lammers 1999).

*Cyanea stictophylla* was observed in flower during March. No other life history information is currently available (Service 1996a).

*Cyanea stictophylla* is known historically from the western, southern, southeastern, and eastern slopes of Mauna Loa. Since 1975, the species has been found near Keauhou, Honokua, and Puu Waawaa in five populations totaling 10 individuals on State and private lands (Lammers 1999; GDSI 2000; HINHP Database 2000).

The species is found in *Acacia koa* or wet *Metrosideros polymorpha* forests at elevations between 1,183 and 1,942 m (3,880 and 6,370 ft). Associated native plant species include *Melicope* spp. (alani), *Cibotium* sp., or *Urera glabra* (opuhe) (HINHP Database 2000; Lammers 1999; Service 1996a, L. Pratt *et al.*, pers. comm. 2001).

The primary reasons for decline of this species are habitat destruction by cattle grazing and habitat degradation by feral pigs. In addition, the small number of plants and the scattered distribution of populations makes the species susceptible to extinction caused by naturally occurring random events and decreased reproductive vigor (Service 1996a).

*Cyrtandra giffardii* (haiwale).

*Cyrtandra giffardii*, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a small shrubby tree with oppositely-arranged leaves positioned on the upper nodes of the stem. *Cyrtandra giffardii* is distinguished from other closely aligned taxa by papery textured and elliptically shaped leaves, small, cylindrical petals, small calyx, three to five flowers per cluster, the presence of hairs on leaves and flower clusters, and an almost round berry shape (Wagner *et al.* 1999).

*Cyrtandra giffardii* was observed in fruit and flower during June and November, and in flower during January and December. No other life history information is currently available (Service 1996a).

*Cyrtandra giffardii* is known from the northeastern slope of Mauna Kea south to the eastern slope of Mauna Loa. Since 1975, seven populations have been identified with the total number of individuals estimated at less than 500. These populations occur near Puu Makaala, Stainback Highway, Kilau Stream in Laupahoehoe NAR, and in Hawaii Volcanoes National Park on State, Federal, and privately owned lands (Wagner *et al.* 1999; GDSI 2000; HINHP Database 2000).

The habitat of *Cyrtandra giffardii* is wet montane forest dominated by *Cibotium* sp. or *Metrosideros polymorpha* and *Metrosideros*

*polymorpha*-*Acacia koa* lowland wet forests between 637 and 1,676 m (2,090 and 5,500 ft) elevation. Associated native plant species include *Hedyotis terminalis* (manono), *Astelia menziesiana*, *Diplazium sandwicensis* (hoio), *Perrottetia sandwicensis*, or other species of *Cyrtandra* (HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

Major threats to *Cyrtandra giffardii* are habitat degradation, rooting, and trampling by feral pigs and competition from non-native plant species such as *Andropogon virginicus* (broomsedge). The species is also susceptible to extinction due to naturally occurring random events and decreased reproductive vigor due to small numbers of populations and individuals (Service 1996a).

*Cyrtandra tintinnabula* (haiwale).

*Cyrtandra tintinnabula*, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a small shrub. *Cyrtandra tintinnabula* can be distinguished from the other species in the genus that occur on the island of Hawaii by its petal size and shape, calyx size and shape, the number of flowers per cluster, and the presence of hairs. The species differs from *Cyrtandra giffardii* in its shrubby habit, larger leaves, and shorter main cluster stalks and flower stalks (Wagner *et al.* 1999).

*Cyrtandra tintinnabula* was observed in flower during July and August, and in fruit during December. No other life history information is currently available (Service 1996a).

*Cyrtandra tintinnabula* is known from three locations on the northeastern slopes of Mauna Kea. Since 1975, three populations have been identified in the State's Laupahoehoe NAR. Currently, a total of six populations with close to 25 individuals are known on State and private lands (59 FR 10305; GDSI 2000; HINHP Database 2000).

*Cyrtandra tintinnabula* grows in lowland wet forest dominated by dense *Acacia koa*, *Metrosideros polymorpha*, and *Cibotium* spp. at elevations between 390 and 1,430 m (1,280 and 4,690 ft). Several other *Cyrtandra* or *Hedyotis* species are associated with *Cyrtandra tintinnabula*. (Wagner *et al.* 1999; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The main threat to *Cyrtandra tintinnabula* is rooting and browsing by feral pigs that directly damage and disturb its habitat and break its weak and delicate stems. Pigs also disturb native vegetation which increases invasion and establishment of non-native plant taxa. Continued disturbance exacerbates the non-native plant problem and eventually precludes the survival of native taxa. Additionally,

because much of the native habitat is lost, appropriate pollinators may be absent as well. The loss of native pollination vectors is a probable cause for the species' demise. *Cyrtandra tintinnabula* is also vulnerable to extinction due to naturally occurring events and decreased reproductive vigor due to small population sizes and a limited distribution (Service 1996a; 59 FR 10305).

*Hibiscadelphus giffardianus* (hau kuahiwi).

*Hibiscadelphus giffardianus*, a member of the mallow family (Malvaceae) and a long-lived perennial, is a small tree with whitish bark. This species differs from others in this endemic Hawaiian genus by its flower color, flower size, and the presence of filamentous bracts (Bates 1999).

No life history information is available for *Hibiscadelphus giffardianus* at this time.

Only one tree of *Hibiscadelphus giffardianus* has ever been known in the wild, from Kipuka Puauulu (or Bird Park) in Hawaii Volcanoes National Park (kipuka = vegetated area surrounded by bare lava flows), which died in 1930. Individuals were cultivated by Territorial Forestry (Hawaii's Department of Land and Natural Resources (DLNR) prior to statehood in 1959) from this parent tree. Approximately eleven plants were outplanted into Kipuka Puauulu somewhere between 1951 and 1964, and there are currently 100 outplanted plants surviving at this site in Hawaii Volcanoes National Park. This species only persists through cultivation efforts (GDSI 2000; L. Pratt *et al.*, pers. comm. 2001; Service 1998c).

*Hibiscadelphus giffardianus* grows in mixed montane mesic forest at elevations between 1,192 and 1,277 m (3,910 and 4,190 ft). Associated native plant taxa include *Metrosideros polymorpha*, *Acacia koa*, *Sapindus saponaria* (manele), *Coprosma rhynchocarpa* (pilo), *Pipturus albidus* (mamaki), *Psychotria* sp. (kopiko), *Nestegis sandwicensis* (olopua), *Melicope* spp., *Dodonaea viscosa*, or *Myoporum sandwicense* (Service 1998c; L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Hibiscadelphus giffardianus* are bark, flower, and fruit feeding by black rats; leaf damage in the form of stippling and yellowing by *Sophonia rufofascia* (two-spotted leafhopper) and yellowing by the native plant bug *Hyalopeplus pellucidus*; competition from the non-native grasses *Ehrharta stipoides* (meadow ricegrass), *Paspalum conjugatum* (Hilo grass), and *Paspalum dilatatum* (Dallis grass); and possible habitat modification from

volcanic activity. This species also faces a risk of extinction from naturally occurring events or reduced reproductive vigor due to the small number of existing cultivated individuals. Cattle were known in the area before it became a national park and probably had a large destructive influence on the habitat as well. However, cattle are not a threat to this species now because they are no longer allowed to roam freely through the park (Service 1998c; 61 FR 53137).

*Hibiscadelphus hualalaiensis* (hau kuahiwi).

*Hibiscadelphus hualalaiensis*, a member of the mallow family (Malvaceae) and a long-lived perennial, is a small tree with whitish bark. The species is distinguished from others in the genus by its flower color, smaller flower size, and tooth-like bracts (Bates 1999).

No life history information is available for *Hibiscadelphus hualalaiensis* at this time (Service 1998c).

*Hibiscadelphus hualalaiensis* was historically known from three populations located in the Puu Waawaa region of Hualalai. This species only persists through cultivation efforts. There are currently two outplanted populations on the island of Hawaii on State owned land (HINHP Database 2000; L. Perry, pers. comm. 2000).

*Hibiscadelphus hualalaiensis* grows in dry mesic to dry *Metrosideros* forest on rocky substrate in deep soils at elevations between 509 and 1,241 m (1,670 and 4,070 ft). Associated native plant species include *Nototrichium breviflorum*, *Metrosideros polymorpha*, *Diospyros sandwicensis*, or *Sophora chrysophylla* (Service 1998c; L. Pratt *et al.*, pers. comm. 2001).

Threats to this species include fire, flower and seed predation by rats, competition from non-native plants, ranching activity, habitat change due to volcanic activity, and reduced reproductive vigor due to a small number of individuals from a single parent (Service 1998c).

*Isodendron hosakae* (aupaka).

*Isodendron hosakae* is a short-lived perennial member of the violet family (Violaceae). It is a branched, upright, evergreen shrub. Reproductively mature plants range from 8 to 82 centimeters (cm) (3 to 32 in) in height, and flowers and fruit occur on the woody stems. The leathery leaves are lance-shaped and the stipules are persistent and conspicuously cover the ends of the stems. The flowers are yellowish-green to white and the fruit is a red-tinged, green, elliptical capsule (Wagner *et al.* 1999).

The plants are often found within the crown outline of other native shrubs suggesting that there may be a beneficial association between *Isodendron hosakae* and these other plants. Nothing is known about the mechanisms of sexual reproduction utilized by this species. No pollinating agents have been identified, although the white flowers produce a sweet scent and numerous moths have been seen in the habitat at night. Although it has been suggested that the seeds may be wind dispersed, seedlings found underneath mature plants in windy areas may indicate that this is not the dispersal mechanism. There are no reports of vegetative reproduction of this species in nature. Attempts to grow *Isodendron hosakae* from cuttings using several techniques have failed. Production of fruit and viable seed may be low. Nagata (1982) found that the number of fruits per plant was very low and that 8 mature fruits collected in April 1982 contained only 14 seeds. In a subsequent germination trial, only 3 of 20 seeds germinated. However, it should be noted that these observations may have been made before the peak of the fruiting season. Field observations noting phenology of *Isodendron hosakae* have been made in the months of January, February, March, April, and November. Flowers are reported in all of these months, and fruits were seen in all of these months except January. Nagata (1982) reported that flowering and fruiting occur from November through June. Greenhouse-grown plants are known to have flowered in March and other months, and to have set new leaves in January. Clearly, these data are far too few for a reliable picture of this species' phenology (Service 1994).

The known range of this species has changed very little in the 44 years since it was first discovered in 1948 by E.Y. Hosaka on an unspecified cinder cone in Waikoloa, South Kohala. This species was again collected in 1980 in Waikoloa, sparking further searches by DOFAW botanists. These searches led to the discovery of a major population at a nearby site and a lesser colony at another site described as less than 1.6 km (1 mile) northeast of the first site and near the second site, all on privately owned land. Cuddihy *et al.* (1983) speculated that Hosaka's original collections were made at the third site. There are approximately 200 individuals in the largest population and 8 to 9 individuals at both of the other two sites. The number of plants at the other two sites are sufficiently small that they may be considered relictual or ephemeral. Only two *Isodendron*

*hosakae* plants are known in cultivation, and there are no other germ plasm reserves (56 FR 1454; Service 1994, HINHP Database 2000).

The existing populations of *Isodendron hosakae* occur on the western slope of Mauna Kea. The regional vegetation is cinder cones with montane dry shrubland and elevations between 655 and 1,259 m (2,150 and 4,130 ft). Associated native plant taxa include *Dodonaea viscosa*, *Styphelia tameiameia*, *Wikstroemia pulcherrima* (akia), *Dubautia linearis* (naenae), *Sophora chrysophylla*, *Osteomeles anthyllidifolia* (ulei), *Wollastonia venosa* (nehe), *Bidens menziesii* (kookoolau), or *Santalum ellipticum* (iliahi). (HINHP Database 2000; Service 1994; 56 FR 1454; L. Pratt *et al.*, pers. comm. 2001).

The principal threats to this species include habitat destruction by fire; feral ungulates; cinder mining; military activity; competition by introduced plant species, particularly *Pennisetum setaceum* (fountain grass); and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of individuals in the two remaining populations (Service 1994; HINHP Database 2000; 56 FR 1454).

*Melicope zahlbruckneri* (alani).

*Melicope zahlbruckneri*, of the citrus family (Rutaceae), is a long-lived perennial and a medium-sized tree 10 to 12 m (33 to 40 ft) tall. New growth is covered with yellowish brown, fine, short, curly hairs. The opposite, stalked, elliptically oblong leaves have well defined lateral veins. Clusters of two to five flowers top the main flowering stalks. The fruit is squarish. *Melicope zahlbruckneri* is distinguished from other species of the genus by its branching habit, large leaves, and very large, squarish capsules (Stone *et al.* 1999).

No life history information is available for *Melicope zahlbruckneri* at this time (Service 1998c).

Historically, *Melicope zahlbruckneri* was known from three populations: Near Glenwood, in Kipuka Puauulu, and at Moaula in Kau. It is currently known from two sites: in Kipuka Puauulu within Hawaii Volcanoes National Park and a recently located population on State land in Laupahoehoe. Two individuals are known from the Laupahoehoe site. The Kipuka Puauulu population consists of approximately 30 to 45 individuals with reproducing and juvenile plants (GDSI 2000; 61 FR 53137; L. Pratt *et al.*, pers. comm. 2001; HINHP Database 2000; Service 1998c).

This species is found in *Acacia koa*-*Metrosideros polymorpha* dominated

montane mesic forest at elevations between 692 and 1,393 m (2,270 and 4,570 ft). Associated native plant taxa include *Sapindus saponaria*, *Coprosma rhynchocarpa*, *Zanthoxylum dipetalum* (ae), *Pipturus albidus*, *Psychotria hawaiiensis*, *Nestegis sandwicensis*, *Myoporum sandwicense*, *Pisonia brunoniana* (papala kepa), or *Melicope* spp. (61 FR 53137; HINHP Database 2000; Service 1998c; L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Melicope zahlbruckneri* are disease transmitted by the two-spotted leafhopper, competition from introduced grasses (*Paspalum scrobiculatum* (ricegrass), *Paspalum conjugatum*, and *Paspalum dilatatum*), fire; habitat modification due to volcanic activity; and potential fruit damage by rats. This species also faces a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of individuals in the two remaining populations (61 FR 53137; Service 1998c).

*Neraudia ovata* (NCN).

*Neraudia ovata*, of the nettle family (Urticaceae), is a short-lived perennial and a sprawling or rarely erect shrub to a small tree, with stems 1 to 3 m (3 to 10 ft) long, and branches bearing short, somewhat erect hairs. The alternate, thin, stalked leaves have smooth margins, are grayish on the undersurface, and have spreading, curved, nearly translucent hairs. Male and female flowers are found on separate plants. The fruit is an achene (a dry, one-seeded fruit that does not open at maturity). This species is distinguished from others in this endemic Hawaiian genus by the density, length, and posture of the hairs on the lower leaf surface, smooth leaf margin, and the boat-shaped calyx of the female flower (Wagner *et al.* 1999).

No life history information is available for this *Neraudia ovata* at this time (Service 1998c).

Historically, *Neraudia ovata* was found from North Kona all the way to Kau. There are currently three known locations. One population of four individuals is known from privately owned land in Kaloko, North Kona. Three subpopulations with a total of 11 individuals occur on land that is under Federal jurisdiction at Pohakuloa Training Area. One individual is known from the State's Manuka NAR. In addition, five individuals are currently in cultivation at Pohakuloa Training Area (61 FR 53137; GDSI 2000; HINHP Database 2000; Bill Stormont, DOFAW, pers. comm. 2000).

*Neraudia ovata* grows in open *Metrosideros polymorpha*-*Sophora*

*chrysophylla* dominated lowland, montane dry forests, and *Metrosideros*-shrub woodland at elevations of 115 m (380 ft) at Kaloko and 1,325 and 1,829 m (4,350 to 6,000 ft) at Pohakuloa Training Area. Associated native plant taxa include *Reynoldsia sandwicensis* (ohe), *Myoporum sandwicense*, *Cocculus triloba* (huehue), *Myrsine lessertiana*, *Myrsine lanaiensis* (kolea), *Capparis sandwichiana* (maiapilo), *Fimbristylis hawaiiensis* (NCN), or *Bidens micrantha* ssp. *ctenophylla* (kookoolau) as well as the federally endangered *Nothoecstrum breviflorum* (aiea) or *Pleomele hawaiiensis* (halapepe), (61 FR 53137; HINHP Database 2000; Service 1998c; L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Neraudia ovata* are heavy browsing and habitat modification by feral sheep (*Ovis aries*) and feral goats; competition from non-native plants such as *Schinus terebinthifolius* (Christmasberry), *Leucaena leucocephala* (koa haole), and *Pennisetum setaceum*; habitat modification due to volcanic activity; residential development; insect damage by the non-native spiraling whitefly (*Aleurodicus dispersus*); and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals in the three remaining populations (61 FR 53137; Service 1998c).

*Nothoecstrum breviflorum* (aiea).

*Nothoecstrum breviflorum* is a long-lived perennial of the nightshade family (Solanaceae). It is a stout tree with a soft, sappy wood with dark brown bark. The leaves are relatively thick and papery in texture. The upper leaf surface is glabrous (smooth) to sparsely whitish pubescent (downy), and the lower surface is often densely whitish pubescent. Several to numerous flowers appear in clusters at the tips of shortened, spur-like branches. Fruits remain enclosed by the calyx and are orange-red, round berries about 6 to 8 mm (0.2 to 0.3 in) in diameter. This species is distinguished from other Hawaiian members of the genus by leaf shape, number of flowers (more than three) in the flower clusters at tips of short spur-like branches, and the fruit remaining enclosed in the calyx (Symon 1999).

This species was observed in flower during February, and in fruit and flower during December and January. No other life history information is currently available (HINHP Database 2000; Service 1996a).

*Nothoecstrum breviflorum* is historically known from the southern Kohala mountains, the western,

southern, and eastern slopes of Mauna Loa, and the northern slopes of Hualalal. There are 10 currently known populations totaling more than 150 individuals from State and privately owned lands in north Kona at Kaupulehu, Puu Waawaa, Kaloko, Kealakehe, Kahauloa; in Kau at Kamaoa-Puueo, in the Kohala Mountains at Kiholo and Honopue. In addition, plants were cultivated at Kipuka Puauulu in Hawaii Volcanoes National Park for ornamental purposes and there are outplanted individuals on State owned land in Puu Waawaa (59 FR 10305; Service 1996a HINHP Database 2000; GDSI 2000; L. Perry, pers. comm. 2000).

*Nothoecstrum breviflorum* is found in lowland dry forest, montane dry forest, and montane mesic forest dominated by *Metrosideros polymorpha*, *Acacia koa*, and/or *Diospyros sandwicensis* (lama). Individuals occur on aa lava substrates at elevations ranging from 152 to 1,948 m (500 to 6,390 ft). Associated native plant species include *Sophora chrysophylla*, *Reynoldsia sandwicensis*, *Psydrax odorata* (alahee), *Myoporum sandwicense*, *Bidens micrantha*, *Dodonaea viscosa*, *Osteomeles anthyllidifolia*, *Santalum paniculatum* (iliahi), *S. ellipticum*, *Caesalpinia kavaensis* (uhiuhi), or *Erythrina sandwicensis* (wiliwili). In addition, in the Puu Waawaa area the federally endangered *Colubrina oppositifolia* (kauila), *Kokia drynarioides* (kokio), *Hibiscadelphus hualalalensis* (hau kuahiwi), *Delissea undulata* (NCN), or *Pleomele hawaiiensis* (hala pepe) are also known from the area where *N. breviflorum* occurs (Gagne and Cuddihy 1999; Symon 1999; 59 FR 10305; Service 1996a; HINHP Database 2000, Pratt *et al.*, pers. comm. 2001).

*Nothoecstrum breviflorum* is negatively impacted by cattle and sheep grazing and by non-native plant taxa such as *Schinus terebinthifolius*, *Pennisetum setaceum*, *Lantana camara* (lantana), and *Leucaena leucocephala*. The presence of these invasive plant taxa may afford enough fuel to support a destructive fire. Increased residential and recreational developments have reduced available habitat. This species is also threatened by a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals in the three remaining populations (59 FR 10305; HINHP Database 2000; Service 1996a).

*Ochrosia kilaueaensis* (holei).

*Ochrosia kilaueaensis*, a long-lived perennial of the dogbane family (Apocynaceae), is a tree with milky sap that grows to about 15 to 18 m (49 to 59 ft) tall. Elongated, egg- or lance-

shaped leaf blades are arranged three to four at a node. Conspicuous secondary veins are almost perpendicular to the mid-vein. Numerous flowers are arranged in clusters and subtended by main flower cluster stalks divided into two sections, primary stalks (peduncles), and secondary branch stalks. The calyx is deeply 5-lobed and the green-white, trumpet-shaped flowers have five lobes fused at the base into a cylindrical tube. Lance-shaped fruits have a fleshy inner layer, a stony single seed, and may be yellow-brown when mature. This species can be separated from other Hawaiian taxa of the genus by the greater height of mature trees, open flower clusters, longer flower stalks, and larger calyx and petal lobes (Wagner *et al.* 1999).

No life history information is available for *Ochrosia kilaueaensis* at this time (59 FR 10305).

*Ochrosia kilaueaensis* is known historically only from Puu Waawaa and at Kipuka Puauulu in Hawaii Volcanoes National Park. It has not been seen in the wild since 1927 (59 FR 10305; M. Bruegmann pers. comm. 2000).

*Ochrosia kilaueaensis* was found in *Acacia-Metrosideros-Sapindus* montane mesic forest between the elevations of 668 and 1,222 m (2,190 and 4,010 ft) (HINHP Database 2000; Wagner *et al.* 1999).

This species was threatened by fire, feral goats, predation of fruits by rats, and competition with fountain grass (Service 1996a).

*Phyllostegia racemosa* (NCN).

*Phyllostegia racemosa*, a short-lived perennial of the mint family (Lamiaceae), is a climbing vine with many-branched, square stems. Leaves are opposite, moderately covered with short, soft hairs, dotted with small glands, and with shallow, rounded teeth. The leaf stalks are covered densely with short hairs. This species is distinguished from others in this genus by its leaf shape, lack of a main stalk to the flower clusters, and calyx teeth that are rounded and shallow (Wagner *et al.* 1999).

No life history is available for this *Phyllostegia racemosa* at this time (61 FR 53137).

Historically, *Phyllostegia racemosa* was found in the Hakalau and Saddle Road areas of Mauna Kea and the Kulani-Keauhou and Kipuka Ahiu areas of Mauna Loa. Currently, seven populations with a total of approximately 10 individuals are known to occur on private and State lands in the Kulani-Keauhou area, on Federal lands in the Hakalau Unit of the Hakalau Forest National Wildlife Refuge and in Hawaii Volcanoes National Park

(61 FR 53137; HINHP Database 2000; GDSI 2000).

*Phyllostegia racemosa* is typically found epiphytically in *Acacia koa*, *Metrosideros polymorpha*, and *Cibotium* sp. dominated montane mesic or wet forests at elevations between 1,369 and 1,966 m (4,490 to 6,450 ft). Associated native plant taxa include *Vaccinium calycinum* (ohelo), *Rubus hawaiiensis*, or *Dryopteris wallichiana* (61 FR 53137; Service 1998c; L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Phyllostegia racemosa* are habitat disturbance by feral pigs and cattle; logging; competition from non-native plant taxa, such as *Passiflora mollissima*, *Pennisetum clandestinum* (kikuyu grass), *Anthoxanthum odoratum* (sweet vernalgrass), and *Paspalum urvillei* (vasey grass); habitat modification due to volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations and individuals (61 FR 53137; Service 1998c; HINHP Database 2000).

*Phyllostegia velutina* (NCN).

*Phyllostegia velutina*, a short-lived perennial of the mint family (Lamiaceae), is a climbing vine with dense, backward-pointing hairs on the leaves and square stems. This species is distinguished from others in this genus by its silky hairs, lack of a main stalk to the flower clusters, and calyx teeth that are narrow and sharply pointed (Wagner *et al.* 1999).

No life history information is available for this *Phyllostegia velutina* at this time (61 FR 53137).

Historically, *Phyllostegia velutina* was found on the southern slopes of Hualalai and the eastern, western, and southern slopes of Mauna Loa.

*Phyllostegia velutina* is currently known from five locations with approximately 100 individuals; on State and privately owned lands in the Olaa-Kilauea area, Upper Waiakea Forest Reserve, Kapapala Forest Reserve, Kau Forest Reserve, Puu Waawaa; and from Federal lands in the Hakalau Unit of the Hakalau Forest National Wildlife Refuge (61 FR 53137; GDSI 2000; HINHP Database 2000; Service 1998c).

*Phyllostegia velutina* typically grows in *Metrosideros polymorpha*-*Acacia koa* dominated montane mesic and wet forests at elevations between 908 and 1,887 m (2,980 and 6,190 ft). Associated native plant taxa include *Cibotium* spp., *Cheirodendron trigynum*, *Vaccinium calycinum*, *Coprosma* sp., *Dryopteris wallichiana*, *Rubus hawaiiensis*, *Pipturus albidus*, *Athyrium microphyllum* (akolea) or other native

wet forest terrestrial ferns, *Myrsine lessertiana*, or *Ilex anomala* (61 FR 53137; HINHP Database 2000; Service 1998c; L. Pratt *et al.*, pers. comm. 2001).

Threats to *Phyllostegia velutina* are habitat damage by cattle, feral pigs and sheep; prison facility expansion, road clearing, and logging; competition from non-native plants, such as *Pennisetum clandestinum*, *Rubus ellipticus* (yellow Himalayan raspberry), *Paspalum urvillei*, and *Pennisetum setaceum*; fire; habitat modification due to volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations and individuals (61 FR 53137; HINHP Database 2000; Service 1998c).

*Phyllostegia warshaueri* (NCN).

*Phyllostegia warshaueri*, a short-lived perennial of the mint family (Lamiaceae), is either a sprawling or climbing vine with end branches turning up, covered with upward-pointing fine, short hairs on the square stems. This species is distinguished from others in this genus by its long main stalk to the flower clusters, toothed leaves, and the distribution of hairs (Wagner *et al.* 1999).

No life history information is available for *Phyllostegia warshaueri* at this time (61 FR 53137).

Historically, *Phyllostegia warshaueri* was found in the Hamakua region on the northern slopes of Mauna Kea and in the Kohala Mountains. The only known individuals occur in 7 locations on State and privately owned lands; 3 populations with 12 individuals in Laupahoehoe NAR near the Waipunalei boundary; 2 populations in the Hilo Forest Reserve with an unknown number of individuals; and 1 population with 2 individuals in the Kohala Forest Reserve at the Ookala Trail and near the Hamakua Ditch Trail; and 1 population on private land just outside the Kohala Forest Reserve in Waipio Valley near Kaiwainui Stream. In addition, individuals have been outplanted on State land in Waimanu (61 FR 53137; HINHP Database 2000; GDSI 2000; Service 1998c; L. Perry, pers. comm. 2000).

*Phyllostegia warshaueri* grows in *Metrosideros polymorpha* and *Cibotium* montane and lowland wet forest in which *Acacia koa* or *Cheirodendron trigynum* may co-dominate, at elevations between 730 and 1,150 m (2,400 and 3,770 ft). Associated native plant taxa include *Antidesma platyphyllum*, *Psychotria hawaiiensis*, *Hedyotis* sp., *Coprosma* sp., *Sadleria pallida* (amau), *Broussaisia arguta*, *Pipturus albidus*, *Clermontia parviflora* (oha wai), *Athyrium sandwicensis*

(NCN), *Machaerina angustifolia* (uki), *Cyanea pilosa*, or other *Cyanea* spp. (haha) (61 FR 53137; Service 1998c; HINHP Database 2000).

The major threats to *Phyllostegia warshaueri* are habitat destruction by feral pigs; competition from non-native plant taxa, such as *Rubus rosifolius*, *Psidium cattleianum*, *Setaria palmifolia* (palm grass), *Juncus planifolius* (NCN), or *Tibouchina herbacea* (glorybush); ditch improvements and road clearing; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations and individuals (61 FR 53137; Service 1998c; HINHP Database 2000).

*Plantago hawaiiensis* (laukahi kuahiwi).

*Plantago hawaiiensis* is a short-lived perennial herb in the plantain family (Plantaginaceae) with a short stem and red-brown woolly hairs. The thick leathery basal leaves are narrowly elliptic. This species is distinguished from other members of the genus in Hawaii by several characters including ascending to sub-erect flowers, thick leathery leaves, and a fruit that is longer than the calyx (Wagner *et al.* 1999).

No life history information is available for *Plantago hawaiiensis* at this time (59 FR 10305).

Historically, *Plantago hawaiiensis* occurred on the southern slope of Mauna Kea, northeastern, southeastern and southern slopes of Mauna Loa, and the western slope of Hualalai. Currently, 8 populations have been identified totaling approximately 5,000 individuals on State and federally owned lands. One population is known from Kipuka Ainahou Wildlife Sanctuary, two populations each are known from Upper Waiakea Forest Reserve, Hawaii Volcanoes National Park, and Puu Waawaa and one population is known from Kapapala Forest Reserve. In addition, *Plantago hawaiiensis* is currently in cultivation at Hawaii Volcanoes National Park (59 FR 10305; GDSI 2000; Warshauer 2000; HINHP Database 2000; M. Brueggemann, pers. comm. 2000).

The habitat of *Plantago hawaiiensis* is somewhat variable. The taxon grows in montane wet sedge land with mixed sedges and grasses, montane mesic forest, dry subalpine woodland, or *Metrosideros* and native shrub, at elevations of 1,512 to 2,585 m (4,960 to 8,480 ft). Associated native plant species include stunted *Acacia koa* and *Metrosideros polymorpha*, *Styphelia tameiameia*, *Vaccinium reticulatum*, *Dodonaea viscosa*, *Coprosma montana*, or *Coprosma ernodeoides*. *Plantago hawaiiensis* is often found growing in

damp cracks of pahoehoe lava (59 FR 10305; HINHP Database 2000; Service 1996a; L. Pratt *et al.*, pers. comm. 2001).

Mouflon sheep, feral pigs, and goats threaten most of the populations. The two populations within Hawaii Volcanoes National Park are protected from feral pigs and goats by fenced exclosures but recently mouflon sheep have compromised the fence. Browsing by ungulates may affect the viability of these plants, preclude the establishment of juveniles, and damage the habitat, thereby opening suitable sites for the establishment of non-native weeds. Decreased reproductive ability due to the small number of individuals in most populations, as well as their widely scattered distribution, threaten this species. A risk of extinction from naturally occurring events and/or human activities is possible (59 FR 10305; HINHP Database 2000; Service 1996a).

*Pleomele hawaiiensis* (halapepe).

*Pleomele hawaiiensis*, a long-lived perennial of the agave family (Agavaceae), is a branching tree with leaves spirally clustered at the branch tips which leave large brown leaf scars as they fall off. This species differs from other Hawaiian species in this genus by its pale yellow flowers, the size of the flowers, the length of the constricted base of the flower, and the width of the leaves (Wagner *et al.* 1999).

No life history information is available for this *Pleomele hawaiiensis* at this time (61 FR 53137).

Historically, *Pleomele hawaiiensis* was found ranging from the Kohala mountains to Kau. Eight locations with a total of 300 to 400 individuals are currently known from State and private lands. Two populations are known from State and private lands in the Kohala mountains in Pololu Valley, three populations are known from State land in the Puu Waawaa and Puu Anahulu area, two populations are known from State and private lands in the Kaupulehu lava flow area, and one population is known from private land in the Huehue area (61 FR 53137; HINHP Database 2000; GDSI 2000; Service 1998c, L. Pratt *et al.*, pers. comm. 2001).

*Pleomele hawaiiensis* typically grows on open aa lava in diverse lowland dry forests and *Metrosideros-Diospyros* lowland dry forest at elevations between 152 and 969 m (500 and 3,180 ft). Associated native plant taxa include *Metrosideros polymorpha*, *Reynoldsia sandwicensis*, *Dodonaea viscosa*, *Diospyros sandwicensis*, *Sophora chrysophylla*, *Psydrax odorata*, *Cocculus trilobus*, *Myoporum sandwicense*, *Nestegis sandwicensis*,

*Bobea timonioides* (ahakea), *Nototrichium sandwicense* (kului), *Sida fallax* (ilima), *Erythrina sandwicensis*, *Santalum paniculatum*, *Osteomeles anthyllidifolia*, or *Bidens micrantha* ssp. *ctenophylla* as well as the federally endangered *Caesalpinia kavaensis*, *Colubrina oppositifolia*, *Kokia drynarioides*, *Nothocestrum breviflorum*, or *Neraudia ovata* (61 FR 53137; HINHP Database 2000; Service 1998c; L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Pleomele hawaiiensis* are habitat conversion associated with residential and recreational development; seed predation from weevils; habitat destruction by feral pigs, sheep, and goats; fire; competition from non-native plant taxa, such as *Pennisetum setaceum*, *Leucaena leucocephala*, *Schinus terebinthifolius*, or *Lantana camara*; habitat change due to volcanic activity; and the lack of reproduction in all but two populations (61 FR 53137; HINHP Database 2000; Service 1998c).

*Pritchardia affinis* (loulou).

*Pritchardia affinis* is a long-lived perennial in the palm family (Arecaceae) that grows from 10 to 25 m (33 to 82 ft) tall. Its orbicular and wedge-shaped, hairless leaf blades are green on the upper surface and pale green on the lower surface, with a few yellow scales. Pale, long, soft, tangled hairs extend along the fan-like folds of the leaf segments to the leaf stalk. One or more hairless flower clusters are branched and re-branched. Each flower cluster is subtended by a main flower cluster stalk (peduncle) that has bracts at the base. Upper flower cluster branches also are subtended by small membranous bracts bearing a single flower. The calyx is cup-shaped and three-lobed. Three petals are fused at the base to the stamen tube, which is comprised of six stamens (the organ of the flower which bears the pollen-grains). The immature fruit has a three-lobed stigma (the part of the female reproductive structure (pistil) of a flower on which pollen is normally deposited). The fruit is brown to black, almost round and about 2.3 cm (0.9 in) in diameter. This taxon can be distinguished from other species of *Pritchardia* by several characters including long tangled hair on the lower blade surface and leaf stalk, stout hairless flower clusters borne among wedge-shaped leaves, and an almost round fruit that is smaller than fruits of other species (Read and Hodel 1999).

No life history information is available for this *Pritchardia affinis* at this time (59 FR 10305).

Historically, *Pritchardia affinis* was known from the Kohala Mountains and

along the southern and western coasts of the island of Hawaii. Currently, an unknown number of individuals are scattered along the western coast of the island of Hawaii, in Kealahou, and in Hilo on State and private lands. Due to the use of this species as a landscape specimen and its locations in the "wild" near prehistoric and historic house lots, we are unable to determine the number of wild individuals or the number of wild populations. All of the extant populations may be outplanted. In addition, this palm has been propagated by the National Tropical Botanical Garden, Volcano Rare Plant Facility, and DOFAW (59 FR 10305; Service 1996a; M. Brueggemann, pers. comm. 2000).

*Pritchardia affinis* typically grows in coastal mesic forest, possibly near brackish water, at elevations of 0 to 610 m (0 to 2,000 ft). The trees occur in cultivated and/or developed sites, perhaps planted by Hawaiians, or may occur naturally. Because most coastal land had been historically cleared for cultivation, native associates are largely unknown (59 FR 10305; Service 1996a; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

Major threats to *Pritchardia affinis* are development and human activities including over collection and vandalism, rat predation of fruits and seeds, feral pigs, and non-native plant species. Fire is a serious threat. The small number of populations and individuals may compromise the reproductive viability of these individuals and increase the vulnerability of the taxon to random events. Lethal yellowing is a disease particular to palms that represents a potential threat if the disease ever reaches Hawaii (59 FR 10305; HINHP Database 2000; Service 1996a).

*Pritchardia schattaueri* (loulou).

*Pritchardia schattaueri*, a long-lived perennial in the palm family (Arecaceae), is a large tree, 30 to 40 m (100 to 130 ft) tall with a gray, longitudinally grooved trunk 30 cm (12 in) in diameter. Leaves form a spherical crown and are sometimes persistent after death. Leaves are fan-shaped, glossy green, with small brown scales on the lower surface. Flowers are on two- to four-branched inflorescences with a main stalk 1.2 to 1.75 m (3.9 to 5.7 ft) long and individual branches 1 to 1.4 m (3.2 to 4.6 ft) long. The five bracts are lance-shaped, the lowest one 60 cm (2 ft) long, and the uppermost one 20 to 30 cm (9 to 12 in) long. The calyx is green, fading to yellow-green at the tip and is three-toothed. Fruits are round or pear-shaped and black with brown spots when mature. This species differs from

its closest relative, *Pritchardia beccariana*, by its slender inflorescence branches, more deeply divided leaves, and pendulous rather than stiff tips of the leaf blade segments (Read and Hodel 1999).

No life history information is available for *Pritchardia schattaueri* at this time (61 FR 53137).

Historically, *Pritchardia schattaueri* was known from the South Kona Forest Reserve on State land. Currently there is one mature individual with and fewer than 12 immature plants on privately owned land near the South Kona Forest Reserve. In addition, individuals have been propagated at the Volcano Rare Plant Facility, National Tropical Botanical Garden, Lyon Arboretum, and by DOFAW (61 FR 53137; Service 1998c; GDSI 2000; HINHP Database 2000).

*Pritchardia schattaueri* grows in *Metrosideros polymorpha*-dominated lowland mesic forest, at elevations between 600 and 800 m (1,970 to 2,600 ft). Associated native plant taxa include *Nestegis sandwicensis*, *Charpentiera obovata* (papala), *Cibotium* sp., *Myrsine* sp. (kolea), or *Pittosporum hosmeri* (hoawa) (61 FR 53137; Service 1998c; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Pritchardia schattaueri* are development and human activities including over collection and vandalism, grazing and trampling by cattle and feral pigs; competition from non-native plant taxa, such as *Psidium cattleianum*, *Psidium guajava*, *Pennisetum clandestinum*, *Schinus terebinthifolius*, or *Rubus rosifolius*; seed predation by rats; residential, commercial, or agricultural development; and habitat modification due to volcanic activity. There is also a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations and individuals, and the lack of successful regeneration. Lethal yellowing is a disease particular to palms that represents a potential threat if the disease ever reaches Hawaii (61 FR 53137; Service 1998c; HINHP Database 2000).

*Sicyos alba* (anunu).

*Sicyos alba*, an annual in the gourd family (Cucurbitaceae), is a minutely hairy, black-spotted vine. Leaves are pale, broadly heart-shaped and shallowly to deeply three- to five-lobed. This species can be distinguished from its nearest relative, *Sicyos cucumerinus*, by its white fruit without bristles and 10 or fewer female flowers per cluster (Telford 1999).

No life history is available for *Sicyos alba* at this time (61 FR 53137).

Historically, *Sicyos alba* was found in the Kilauea area. Currently, this species is known from four locations with a total of approximately 30 individuals on State and Federal lands in the Puna District. One population is known from Puu Makaala NAR, two populations from Olaa tract in Hawaii Volcanoes National Park, and one population from Olaa Forest Reserve, (61 FR 53137; HINHP Database 2000; GDSI 2000; L. Pratt *in litt.* 2000).

*Sicyos alba* typically grows in *Metrosideros polymorpha*-*Cibotium glaucum* dominated montane wet forests, at elevations between 896 and 1,576 m (2,940 and 5,170 ft). Associated native plant taxa include *Coprosma* sp., *Astelia menziesii* (painiu), *Athyrium* sp., *Psychotria* sp., *Cheirodendron trigynum*, *Pritchardia beccariana*, *Platydesma spathulata* (pilo kea), *Broussaisia arguta*, *Cyrtandra lysiosepala* (haiwale), *Stenogyne* sp. (NCN), *Perrottetia sandwicensis*, *Cyanea tritomantha* (aku), or *Athyrium microphyllum* or other ferns (61 FR 53137; Service 1998c; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Sicyos alba* are habitat damage by feral pigs; trail clearing; competition from non-native plant taxa, such as *Passiflora mollissima*, *Setaria palmifolia*, *Psidium cattleianum*, or *Rubus ellipticus*; habitat modification due to volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals (61 FR 53137; Service 1998c; HINHP Database 2000).

*Silene hawaiiensis* (NCN).

*Silene hawaiiensis*, a short-lived member of the pink family (Caryophyllaceae), is a sprawling shrub with climbing or clambering stems. Stems, generally, are covered with short, sticky hairs and arise from an enlarged root. Leaves are slender, often recurved and stalkless. Flowers are arranged in loose, elongate clusters that are very sticky. *Silene hawaiiensis* can be distinguished from other species of the genus in Hawaii by several characters: sprawling habit, presence of sticky hairs, leaf shape, and color of the petals (green-white with maroon-colored backs) (Wagner *et al.* 1999).

This species was observed in flower in September and August. No other life history is known for this species (Service 1996a).

Historically, *Silene hawaiiensis* was known from the western slopes of Mauna Kea; the summit of Hualalai; Humuula Saddle; northern, southern,

western, and northwestern slopes of Mauna Loa; and Kilauea Crater. Currently, at least 23 populations with a total of approximately 2,540 individuals are known from private, State, and Federal lands in the Mauna Kea Forest Reserve, Keauhou, Pohakuloa Training Area, and Hawaii Volcanoes National Park (59 FR 10305; GDSI 2000; HINHP Database 2000; Service 1996a).

*Silene hawaiiensis* typically occurs in montane and subalpine dry shrubland on weathered lava, but is found on variously aged lava flows and cinder substrates as well, at elevations between 896 and 3,011 m (2,940 and 9,880 ft). Associated native plant taxa are *Metrosideros polymorpha*, *Sophora chrysophylla*, *Vaccinium reticulatum*, *Styphelia tameiameia*, *Rumex giganteus* (pawale), or *Dodonaea viscosa* (59 FR 10305; HINHP Database 2000; Service 1996a, L. Pratt *et al.*, pers. comm. 2001).

Feral goats, pigs, and sheep are detrimental to the taxon's survival. Individuals on the lower northern slope of Mauna Loa were observed having tender new growth browsed and new leaves stripped away, thus compromising the viability of these individuals. Non-native plant taxa, particularly *Pennisetum setaceum*, are a major threat imperiling the survival of *Silene hawaiiensis*. In certain areas where new lava is flowing from Kilauea, plants may be enveloped by molten lava rock and/or consumed by fire. Military training may jeopardize plants on Pohakuloa Training Area (59 FR 10305; HINHP Database 2000; Service 1996a).

*Zanthoxylum dipetalum* var. *tomentosum* (ae).

*Zanthoxylum dipetalum* var. *tomentosum* is a long-lived perennial and a tree in the citrus family (Rutaceae). It has alternate leaves comprised of three to seven leathery, elliptical, gland-dotted, smooth-edged leaflets. The undersurface of the leaflets is densely covered with fine, short hairs, and the lowest pair of leaflets is often strongly reduced. This variety is distinguished from *Zanthoxylum dipetalum* var. *dipetalum* by the hairs on the undersurface of the leaflets. It is distinguished from other Hawaiian species of the genus by its reduced lower leaflets, the presence of only one joint on some of the leaflet stalks, and the large seeds (Stone *et al.* 1999).

No life history information is available for *Zanthoxylum dipetalum* var. *tomentosum* at this time (61 FR 53137).

Only one population of *Zanthoxylum dipetalum* var. *tomentosum* has ever been known, at Puu Waawaa on

Hualalai. Currently there are eight to nine individuals located on this State owned land. In addition, two to three individuals have been outplanted in the same location (61 FR 53137; GDSI 2000; HINHP Database 2000; Service 1998c; L. Perry, pers. comm. 2000).

*Zanthoxylum dipetalum* var. *tomentosum* grows in *Metrosideros polymorpha* dominated montane mesic forest, often on aa lava, at elevations between 872 and 1,210 m (2,860 and 3,970 ft). Associated native plant species include *Sophora chrysophylla*, *Diospyros sandwicensis*, *Pouteria sandwicensis*, *Santalum paniculatum*, *Reynoldsia sandwicensis*, *Myrsine* sp., or *Psychotria* sp. (61 FR 53137; HINHP Database 2000; Service 1998c; L. Pratt *et al.*, pers. comm. 2001).

Threats to *Zanthoxylum dipetalum* var. *tomentosum* include browsing, trampling, and habitat disturbance by cattle, feral pigs, and sheep; competition from non-native plant species, such as *Pennisetum clandestinum*, *Pennisetum setaceum*, *Lantana camara*, *Leucaena leucocephala*, or *Grevillea robusta* (silk oak); habitat modification due to volcanic activity; and fire. In addition, *Zanthoxylum dipetalum* var. *tomentosum* is threatened by a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals in only one population (61 FR 53137; HINHP Database 2000; Service 1998c).

#### Multi-Island Species

*Achyranthes mutica* (NCN).

*Achyranthes mutica*, a member of the amaranth family (Amaranthaceae) and a short-lived perennial, is a many-branched shrub with egg-shaped leaves and stalkless flowers. This species is distinguished from others in the genus by the shape and size of the sepals and by characteristics of the spike, which is short and congested (Wagner *et al.* 1999).

No life history information is available for *Achyranthes mutica* at this time (Service 1999).

Historically, *Achyranthes mutica* was known from three collections from opposite ends of the main archipelago, Kauai and the island of Hawaii. Currently, this species is known only from the island of Hawaii, from the Kiloana Gulch on private land. This one population has a total of between 20 and 50 individuals (61 FR 53108; HINHP Database 2000; GDSI 2000).

*Achyranthes mutica* is found in *Acacia koaia* (koaia) lowland dry forest primarily in gulches but also in remnant stands of forest at elevations between 643 and 1,518 m (2,110 and 4,990 ft).

Associated native plant species include *Dodonaea viscosa*, *Myoporum sandwicense*, *Osteomeles anhyllidifolia*, *Nestegis sandwicensis*, *Metrosideros polymorpha*, *Santalum ellipticum*, *Erythrina sandwicensis*, or *Sophora chrysophylla* (Service 1999; L. Pratt *et al.*, pers. comm. 2001).

The primary threats to *Achyranthes mutica* on the island of Hawaii are habitat degradation and/or destruction by cattle and feral goats, competition with non-native plants, a risk of extinction from naturally occurring events (such as landslides or hurricanes), and/or reduced reproductive vigor due to the small number of existing individuals and populations.

*Adenophorus periens* (pendant kihi fern).

*Adenophorus periens*, a member of the grammitis family (Grammitidaceae) and a short-lived perennial, is a small, pendant, epiphytic fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (the leaflet of a pinnate leaf (a compound leaf, having leaflets or pinnae, arranged in a single row along each side of a common axis)) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori (a group or cluster of sporanges (sac containing spores), spore-bearing structures) on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. *Adenophorus periens* appears to be susceptible to volcanic emissions and/or the resultant acid precipitation. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not available (Linney 1989).

Historically, *Adenophorus periens* was known from Kauai, Oahu, Lanai, East Maui, and Hilo and Waimea on the island of Hawaii. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. On the island of Hawaii, it is found in a total of 13 populations containing an unknown

number of individuals in the Kahaualea NAR and adjoining areas and in Hawaii Volcanoes National Park on State, Federal, and privately owned lands (Lorence and Flynn 1991; HINHP Database 2000; 59 FR 56333; GDSI 2000).

*Adenophorus periens*, an epiphyte usually growing on *Metrosideros polymorpha* or *Ilex anomala* or possibly other native tree trunks, is found in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forest at elevations between 338 and 1,180 m (1,110 and 3,870 ft). Associated native plant species include *Broussasia arguta*, *Cheirodendron trigynum*, *Cyanea* sp. (haha), *Cyrtandra* sp. (haiwale), *Dicranopteris linearis* (uluhe), *Freycinetia arborea* (ieie), *Hedyotis terminalis*, *Labordia hirtella* (NCN), *Machaerina angustifolia*, *Psychotria* sp., or *Psychotria hawaiiensis* (Linney 1989; 59 FR 56333; L. Pratt *et al.*, pers. comm. 2001).

The threats to *Adenophorus periens* on the island of Hawaii are habitat degradation by feral pigs and goats, competition with the non-native plant *Psidium cattleianum*, and fires and fumes from volcanic eruptions (59 FR 56333).

*Asplenium fragile* var. *insulare* (NCN).

*Asplenium fragile* var. *insulare*, a short-lived perennial and a member of the spleenwort family (Aspleniaceae), is a fern with a short sub-erect stem with a dull gray or brown main axis with two greenish ridges. This Hawaiian fern species is most similar to *Asplenium macraei*. The two can be distinguished by the size and shape of the pinnae and the number of sori per pinna (Wagner and Wagner 1992).

Little life history information is available for *Asplenium fragile* var. *insulare*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown. Researchers have collected information on species composition, extent of cover, and age-class structure in six sub-populations at Pohakuloa Training Area in order to describe the populations. No gametophytes (gamete-producing life stage) were found, and the age-class structure of the sub-populations sampled was determined to be 100 percent reproductive adults because all the sporophytes (spore-producing life stage) had sori on some fronds (Service 1998a; Shaw 1992).

*Asplenium fragile* var. *insulare* was known historically from East Maui and on the island of Hawaii below Kalaieha, Laumaia, Keanakolu and Umikoa on Mauna Kea, Puu Waawaa on Hualalai, west Keawewai, above Kipuka Ahiu on



Mauna Loa, and near Hilo. Currently, on the island of Hawaii it is found in a total of 17 populations with more than 300 individuals. There are 13 populations in the Pohakuloa Training Area, 1 population in Hawaii Volcanoes National Park, 2 populations just south of the Upper Waiakea Forest Reserve and the Mauna Loa Forest Reserve, and 1 population in the Keokea section of the South Kona District on State, Federal, and private lands (GDSI 2000; HINHP Database 2000; Shaw 1992; 59 FR 49025).

On the island of Hawaii, *Asplenium fragile* var. *insulare* is found in *Metrosideros polymorpha* dry montane forest, *Dodonaea viscosa* dry montane shrubland, *Myoporum sandwicense-Sophora chrysophylla* dry montane forest, *Metrosideros polymorpha-Acacia koa* forest as well as subalpine dry forest and shrubland between elevations of 930 and 2,710 m (3,050 and 8,990 ft). It grows almost exclusively in big, moist lava tubes (from 3 m to 4.5 m (10 to 15 ft) in diameter), pits, deep cracks, and lava tree molds, with at least a moderate soil or ash accumulation, associated with mosses and liverworts. Infrequently, this fern has been found growing on the interface between younger aa lava flows and much older pahoehoe lava or ash deposits. Although this taxon is found in habitats with three different moisture regimes (dry, mesic and wet), the microhabitat for this plant is fairly consistent. The fern generally occurs in areas that are moist and dark. Associated native plant species include *Phyllostegia ambigua* (NCN), *Styphelia tameiameia*, *Vaccinium reticulatum*, mosses, or liverworts (Gagne and Cuddihy 1999; Shaw 1992; Service 1998a; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The primary threats to *Asplenium fragile* var. *insulare* on the island of Hawaii are feral sheep, pigs and goats; military operations and/or fires resulting from these operations; construction due to military activities; volcanic activity; the non-native plant *Pennisetum setaceum*; bulldozing of jeep roads; filling in of lava tubes; and a risk of extinction due to random naturally occurring events due to the small number of existing individuals (Service 1998a; 59 FR 49025; Shaw 1992).

*Bonamia menziesii* (NCN).

*Bonamia menziesii*, a member of the morning glory family (Convolvulaceae) and a short-lived perennial, is a climbing vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and

differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Reproductive cycles, longevity, specific environmental requirements, limiting factors and other aspects of life history are unknown for *Bonamia menziesii* (Service 1999).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, West Maui, and eastern Hawaii. Currently, it is known on Kauai, Oahu, Lanai, Maui, and the island of Hawaii. On the island of Hawaii there is a single population containing six to eight naturally occurring individuals and 10 outplanted individuals at Kaupulehu on private land (HINHP Database 2000; L. Pratt, *et al.*, pers. comm. 2001; Mick Castillo, Service, pers. comm. 2000; GDSI 2000).

*Bonamia menziesii* is found in dry forest at elevations between 421 and 704 m (1,380 and 2,310 ft). Associated native plant species include *Diospyros sandwicensis*, *Erythrina sandwicensis*, *Xylosma hawaiiense* (maua), *Myrsine lanaiensis*, *Metrosideros polymorpha*, *Santalum paniculatum*, *Sapindus saponaria*, *Pouteria sandwicensis* (alaa), *Nototrichium sandwicense*, *Chenopodium oahuense* (aheahea), *Senna gaudichaudii* (kolomona), *Sophora chrysophylla*, *Sida fallax*, *Osteomeles anthyllidifolia*, *Dodonaea viscosa*, *Canavalia hawaiiensis* (awikiwiki), *Argemone glauca* (pua kala), *Peperomia blanda* var. *floribunda* (alaala wai nui), or *Psilotum nudum* (moa) (HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The primary threats to *Bonamia menziesii* on the island of Hawaii are habitat degradation and possible predation by wild and feral pigs, goats, and cattle; competition with a variety of non-native plant species, particularly *Pennisetum setaceum*; and fire (Service 1999).

*Cenchrus agrimonoides* (kamanomano).

*Cenchrus agrimonoides*, a member of the grass family (Poaceae), is a short-lived perennial grass with leaf blades which are flat or folded and have a prominent midrib. The two varieties, *C. agrimonoides* var. *laysanensis* and *C. agrimonoides* var. *agrimonioides*, differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. *Cenchrus agrimonoides* var. *agrimonioides* is only known from the main Hawaiian Islands, while *Cenchrus agrimonoides* var. *laysanensis* is known only from the Northwestern Hawaiian Islands. This species is distinguished from others in the genus by the cylindrical to lance-

shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonoides*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown; however, this species has been observed to produce fruit all year, though the fruit does not appear to bear viable seeds in most cases (Service 1999).

Historically, *Cenchrus agrimonoides* var. *agrimonioides* was known from Oahu, Lanai, Maui, and an undocumented report from island of Hawaii. Currently, var. *agrimonioides* is known only from Oahu and Maui. *Cenchrus agrimonoides* var. *laysanensis* has not been seen in the Northwestern Hawaiian Islands (Laysan, Kure Atoll, Midway Atoll) since about 1950. The undocumented report of *Cenchrus agrimonoides* var. *agrimonioides* on the island of Hawaii was made in 1800 (65 FR 79192; Kapua Kawelo, U.S. Army Environmental, pers. comm. 1997; Robert Hobdy, DOFAW, pers. comm. 1997; 61 FR 53108; Service 1999; HINHP Database 2000; O'Connor 1999).

Information on the physical and biological features that are essential to the conservation of *Cenchrus agrimonoides* var. *agrimonioides* on the island of Hawaii is not available.

Threats to *Cenchrus agrimonoides* on the island of Hawaii include competition with non-native plant species and risk of extinction from naturally occurring events, and/or reduced reproductive vigor due to the small number of existing individuals (Service 1999).

*Clermontia lindseyana* (haha).

*Clermontia lindseyana*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a small, branched tree which is either terrestrial or epiphytic (living on the surface of other plants). It is easily separable from the other taxa within this genus by several characters: much larger leaves and flowers, similar petals and sepals, leaves which are conspicuously hairy beneath, and spreading floral lobes (Cuddihy *et al.* 1983; Lammers 1999, 1991).

*Clermontia lindseyana* was observed in fruit from June to October, and in flower from February to August. No other life history information is currently available (HINHP Database 2000; Service 1996a).

Currently and historically, *Clermontia lindseyana* is known from Maui and on the island of Hawaii from the eastern slope of Mauna Kea and eastern, southeastern, and southwestern slopes of Mauna Loa. Currently, on Hawaii

there are a total of 17 populations containing more than 100 individuals in or near the Kau Forest Reserve and the South Kona Forest Reserve on State land, the Kona Forest Unit of the Hakalau Forest National Wildlife Refuge on land under Federal jurisdiction, and the Hakalau Unit of the Hakalau Forest National Wildlife Refuge on Federal land (GDSI 2000; HINHP Database 2000; 59 FR 10305).

The extant populations of *Clermontia lindseyana* grow in slightly open forest cover in wet and mesic *Metrosideros polymorpha-Acacia koa* forest, *Metrosideros polymorpha* forest, and mixed montane mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 1,314 and 2,256 m (4,310 and 7,400 ft). Associated native plant taxa include: *Styphelia tameiameia*, *Cheirodendron trigynum*, *Rubus hawaiiensis*, *Coprosma* sp., *Athyrium* sp., or *Peperomia* sp. (alaala wai nui) (HINHP Database 2000; Pratt *et al.*, pers. comm. 2001).

The threats to *Clermontia lindseyana* on the island of Hawaii are trampling and grazing by cattle; trampling and browsing by goats, rooting and trampling by pigs, competition with the non-native plants *Pennisetum clandestinum* or *Passiflora mollissima*, and fruit consumption by black rats (Service 1996a; Cuddihy *et al.* 1983).

*Clermontia peleana* (haha).

*Clermontia peleana*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an epiphytic shrub or tree that grows on native trees and tree ferns. Two subspecies are recognized, *C. peleana* ssp. *singuliflora* (greenish-white petals) and *C. peleana* ssp. *peleana* (blackish-purple petals). This species can be separated from other Hawaiian members of the genus by its epiphytic growth, small triangular green calyx lobes, and single-lipped flowers (Lammers 1999, 1991).

*Clermontia peleana* has been observed in flower during June and November, and in fruit during November. No other life history information is currently available (Service 1996a; HINHP Database 2000).

Historically, *Clermontia peleana* ssp. *peleana* was known from the island of Hawaii, where it was found on the northeastern and southeastern slopes of Mauna Kea and from the eastern slopes of Mauna Loa (59 FR 10305). This subspecies was last collected by Ken Wood along Saddle Road in 1998 but that population was not relocated during a 1999 survey. There are records of this plant in five locations but all are believed to be dead. There were four populations in Hakalau Forest National Wildlife Refuge, four populations in the

Hilo Forest Reserve and one scattered population in the Upper Waiakea Forest Reserve on Federal and State lands, but this subspecies is now known only in cultivation. *Clermontia peleana* ssp. *singuliflora* was formerly found on the island of Hawaii on the northern slope of Mauna Kea and on East Maui, but the taxon (ssp. *singuliflora*) has not been seen in either place since the early 1900s (HINHP Database 2000; Wagner *et al.* 1999, L. Perry, pers. comm. 2000).

*Clermontia peleana* grows in montane wet *Metrosideros-Cibotium* forest at elevations between 436 and 1,728 m (1,430 and 5,670 ft). Associated native plant species include *Clermontia hawaiiensis* (oha kepau), *Cheirodendron trigynum*, *Cyrtandra platyphylla* (haiwale), *Cibotium menziesii* (hapuu), *C. chamissoi* (hapuu), *Ilex anomala*, *Sadleria* spp. (amau), or *Coprosma pubens* (pilo) (L. Pratt *et al.*, pers. comm. 2001).

*Colubrina oppositifolia* (kauila).

*Colubrina oppositifolia*, a member of the buckthorn family (Rhamnaceae) and a long-lived perennial, is a tree with extremely hard, red wood. This species is readily distinguished from the other species in Hawaii by characters such as opposite leaf position, dull leaf surface, and entire 2leaf margins (Wagner *et al.* 1999).

*Colubrina oppositifolia* was observed in fruit and flower during September and June, and in flower during December and January. No other life history information is currently available (HINHP Database 2000; Service 1996a).

Currently and historically, *Colubrina oppositifolia* is known from Oahu, Maui and the island of Hawaii. Currently, on the island of Hawaii there are a total of eight populations containing a total of fewer than 500 individuals on State and private lands. Populations are located in Kaupulehu, Puu Waawaa, Kapua, Manuka NAR, and Kamaoa-Puueo (59 FR 10305; GDSI 2000; HINHP Database 2000).

Habitats of *Colubrina oppositifolia* on the island of Hawaii are lowland dry and mesic forests dominated by *Diospyros sandwicensis* and/or *Metrosideros polymorpha*, found at elevations between 162 and 945 m (530 and 3,100 ft). Associated native plant species include *Nototrichium sandwicense*, *Bobea timoniodes*, *Rauvolfia sandwicensis* (hao), *Erythrina sandwicensis*, *Sophora chrysophylla*, *Nestegis sandwicensis*, *Peperomia* sp., *Psudrax odorata*, *Reynoldsia sandwicensis*, or *Styphelia tameiameia* or the endangered species *Nothocestrum breviflorum* or *Pleomele hawaiiensis*

(HINHP Database 2000, L. Pratt *et al.*, pers. comm. 2001).

The threats to *Colubrina oppositifolia* on the island of Hawaii are habitat destruction by feral pigs; competition with the non-native plants *Lantana camara*, *Pennisetum setaceum*, *Phymatosorus scolopendria* (bracken fern), *Passiflora suberosa* (huehue haole), or *Schinus terebinthifolius*; the introduction of *Xylosandrus compactus* (black twig borer); *Adoretus sinicus* (Chinese rose beetles); fire; small population numbers; limited distributions; and disturbance by military and unauthorized personnel such as collectors (59 FR 10305; Service 1996a).

*Ctenitis squamigera* (pauoa).

*Ctenitis squamigera* is a short-lived perennial of the spleenwort family (Aspleniaceae). It has a rhizome (horizontal stem) 5 to 10 mm (0.2 to 0.4 in) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are densely clothed with tan-colored scales up to 1.8 cm (0.7 in) long and 1 mm (0.04 in) wide. The sori are tan-colored when mature and are in a single row one-third of the distance from the margin to the midrib of the ultimate segments. The indusium (the membrane enclosing the sori) is whitish before wrinkling, thin, suborbicular with a narrow sinus extending about half way, glabrous except for a circular margin which is ciliate (provided with minute marginal hairs) with simple several-celled glandular and nonglandular hairs arising directly from the margin or from the deltoid base. *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera*. Flowering cycles, pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. It was last collected on the island of Hawaii in 1909, at "Kalua", an indeterminable place name (HINHP Database 2001; Service 1998a).

Information on the physical and biological features that are essential to the conservation of *Ctenitis squamigera* or the primary threats to the island of Hawaii is not available (HINHP Database 2001; Service 1998a).

*Delissea undulata* (NCN).

*Delissea undulata*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched, palm-like, woody-stemmed tree, with a dense cluster of leaves at the tips of the stems. One or two knob-like structures often occur on the back of the flower tube. Three subspecies, all but the last of which are considered extinct, may be separated on the basis of leaf shape and margin characters: *D. undulata* var. *kauaiensis* (leaf blades are oval and flat-margined with sharp teeth) (Kauai), *D. undulata* var. *niihauensis* (leaf blades are heart shaped and flat-margined with shallow, rounded teeth) (Niihau), and *D. undulata* var. *undulata* (leaf blades are elliptic to lance-shaped and wavy-margined with small, sharply pointed teeth) (Maui, Hawaii). This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases. *Delissea undulata* ssp. *undulata* is the only subspecies found on the island of Hawaii (Lammers 1990).

*Delissea undulata* var. *undulata* was observed in fruit and flower during December. No other life history information is currently available (Service 1996a; HINHP Database 2000).

*Delissea undulata* var. *undulata* was known from southwestern Maui and western Hawaii in North and South Kona. Currently it is only known on the island of Hawaii from a single individual in Puu Waawaa on State land. Several individuals have been outplanted in this area (GDSI 2000; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

*Delissea undulata* var. *undulata* on the island of Hawaii occurs on dry cinder cones and in open *Sophora chrysophylla* and *Metrosideros polymorpha* forest at elevations between 890 to 1,747 m (2,920 to 5,730 ft). Associated native plant species include *Diospyros sandwicensis*, *Dodonaea viscosa*, *Psychotria mariniana* (kopiko), *P. greenwelliae* (kopiko), *Santalum paniculatum*, *Sophora chrysophylla*, or *Acacia koa* or the endangered *Nothocestrum breviflorum* (61 FR 53124; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The threats to *Delissea undulata* var. *undulata* on the island of Hawaii are feral sheep, goats, or pigs; cattle; small population size; competition with the non-native plant species *Passiflora mollissima*, *Delairea odorata* (Cape ivy), or *Pennisetum clandestinum*; fire; slugs; seed predation by rats; seed predation by introduced game birds; and extinction due to random events (Service 1996a; HINHP Database 2000).

*Diellia erecta* (NCN).

*Diellia erecta*, a member of the spleenwort family (Aspleniaceae) and a short-lived perennial, is a fern that grows in tufts of three to nine lance-shaped fronds which emerge from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1992).

Little is known about the life history of *Diellia erecta*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known from Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is only known from Molokai, Maui, and Hawaii. On the island of Hawaii there are three populations containing a total of more than 20 individuals on State lands in the South Kona Forest Reserve and the Manuka Natural Area Reserve (GDSI 2000; Service 1996b; Service 1999; 59 FR 56333).

*Diellia erecta* on the island of Hawaii is found in *Metrosideros polymorpha*-*Nestegis sandwicensis* lowland mesic forest at elevations between 448 and 982 m (1,470 and 3,220 ft). Associated native plant species include *Diospyros sandwicensis*, *Psydrax odorata*, *Antidesma platyphyllum*, *A. pulvinatum* (hame), *Microlepis* sp. (NCN), *Nestegis sandwicensis*, *Wikstroemia sandwicensis* (akia), *Wikstroemia phillyreifolia* (akia), or *Nephrolepis* spp. (kupukupu) (HINHP Database 2000, L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Diellia erecta* on the island of Hawaii are habitat degradation by pigs, goats, and cattle; competition with non-native plant species, including *Blechnum occidentale* (NCN); random naturally occurring events causing extinction; and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 56333; Service 1999).

*Flueggea neowawraea* (meameame).

*Flueggea neowawraea*, a member of the spurge family (Euphorbiaceae) and a long-lived perennial, is a large tree with white oblong pores covering its scaly, pale brown bark. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size; scaly bark; the shape, size, and color of the leaves; flowers clustered

along the branches; and the size and shape of the fruits (Hayden 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999; Service 1999).

Historically, *Flueggea neowawraea* was known on Molokai, Oahu, Kauai, and the island of Hawaii. Currently, it is extant on Kauai, Oahu, Maui, and the island of Hawaii. On the island of Hawaii, there are a total of four populations containing around 16 to 23 individuals in Honomalino, Manuka NAR, Papa, and Huehue Ranch in North Kona on State and private lands (GDSI 2000; HINHP Database 2000).

*Flueggea neowawraea* on the island of Hawaii occurs in mesic *Metrosideros polymorpha* forest at elevations between 424 to 820 m (1,390 to 2,690 ft). Associated native plant species include *Nestegis sandwicensis*, *Psychotria hawaiiensis*, *Pittosporum hosmeri*, *Pipturus albidus*, *Pisonia* spp. (papala kepa), *Diospyros sandwicensis*, *Psydrax odorata*, *Antidesma platyphyllum*, *A. pulvinatum*, or *Nephrolepis* spp. (HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The threats to *Flueggea neowawraea* on the island of Hawaii are the black twig borer; habitat degradation by feral pigs, goats, and cattle; competition with non-native plant species such as *Schinus terebinthifolius* or *Psidium cattleianum*; fire; small population size; depressed reproductive vigor; military activities; and rat predation of the fruit (59 FR 56333; Service 1999; HINHP Database 2000).

*Gouania vitifolia* (NCN).

*Gouania vitifolia*, a member of the buckthorn family (Rhamnaceae) and a short-lived perennial, is a climbing shrub with tendriled flowering branches. This species differs from other members of its genus by having flowering branches with a tendril and coarsely crenate (wavy) to serrate-dentate (toothed) leaf margins (Wagner *et al.* 1999).

In winter and late spring the main vine of *Gouania vitifolia* produces new young side shoots which soon die. Plants have been observed flowering from late November to January, but flowering probably depends on precipitation (Service 1998b).

Historically, *Gouania vitifolia* was known from West Maui, the Kau District of the island of Hawaii, and Oahu. The species currently occurs on Oahu and

on the island of Hawaii. On the island of Hawaii, there is a single population within the State owned Manuka Natural Area Reserve containing three individuals (GDSI 2000; J. Giffin *in litt.* 2000).

The preferred habitat of *Gouania vitifolia* on the island of Hawaii is dry, rocky ridges and slopes in dry shrubland or dry to mesic *Nestegis-Metrosideros* forests on old substrate kipuka (vegetated area surrounded by bare lava flows) between 503 and 1,039 m (1,650 and 3,410 ft). Associated native plant species include *Nestegis sandwicensis*, *Wikstroemia sandwicensis* (akia), *Wikstroemia phillyreifolia*, *Nephrolepis* spp., or *Pipturus albidus* (J. Giffin *in litt.* 2000; Service 1998b; L. Pratt *et al.*, pers. comm. 2001).

The major threats to *Gouania vitifolia* on the island of Hawaii are competition with non-native plants, habitat destruction by feral pigs, and a threat of extinction due to randomly occurring natural events or reduced reproductive vigor due to the small number of extant individuals (Service 1998b; 59 FR 32932).

*Hedyotis cookiana* (awiwi).

*Hedyotis cookiana*, a member of the coffee family (Rubiaceae) and a short-lived perennial, is a small shrub with many branches and papery-textured leaves which are fused at the base to form a sheath around the stem. This plant is distinguished from other species in the genus by being entirely hairless (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis cookiana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a).

Historically, *Hedyotis cookiana* was known from Hawaii, Molokai, Oahu, and Kauai. Currently, this species is only extant on the island of Kauai. It was last collected on the island of Hawaii in 1816 at Kealakekua (HINHP Database 2000).

Nothing is known of the preferred habitat for or species associated with *Hedyotis cookiana* on the island of Hawaii (Service 1995a).

Threats to *Hedyotis cookiana* included modification of habitat by feral pigs, competition with non-native plant species, extinction due to naturally occurring events, and reduced reproductive vigor due to small numbers of individuals (Service 1995a).

*Hedyotis coriacea* (kioele).

*Hedyotis coriacea*, a member of the coffee family (Rubiaceae) and a short-lived perennial, is a small, erect herb

with leathery, oval-shaped leaves. *Hedyotis coriacea* is distinguished from other species of the genus by its small, triangular leaf-like appendages below the flower (calyx lobes), which do not enlarge in fruit, the combination of fruits that are longer than wide, and flower buds that are square in cross section (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis coriacea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997a).

Until recent rediscoveries, the latest collection of *Hedyotis coriacea* was made in 1949 on the 1859 lava flow, on the island of Hawaii. A single specimen was rediscovered in the Lihau section of the West Maui NAR, and the species conceivably could exist elsewhere on Maui as well. Individuals have also been rediscovered on the island of Hawaii on the 1859 lava flow in the Pohakuloa Training Area. Currently, there are a total of 11 populations containing approximately 150 individuals all located on land under Federal jurisdiction at Pohakuloa Training Area (GDSI 2000; HINHP Database 2000; Shaw 1992).

The habitat of *Hedyotis coriacea* on the island of Hawaii is geologically young (less than 3,000 years old) Mauna Loa pahoehoe lava with sparse *Metrisuderos* forest, open *Metrisuderos* forest with sparse shrub understory or open *Metrisuderos* forest with dense shrub understory at elevations of 1,506 to 1,780 m (4,940 to 5,840 ft). Associated native plant species include *Sophora chrysophylla*, *Myoporum sandwicense*, *Dodonaea viscosa*, *Chenopodium oahuense*, *Styphelia tameiameia*, *Eragrostis deflexa* (NCN), *Festuca hawaiiensis* (NCN), or the endangered *Portulaca sclerocarpa* (poe) (Shaw 1997; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

On the island of Hawaii, *Hedyotis coriacea* has been almost extirpated by the combination of cattle, fires, invasion of non-native plant species such as *Pennisetum setaceum*, and feral ungulates. Other current threats to *Hedyotis coriacea* include the very small remaining number of individuals and the limited distribution of the species which make it susceptible to extinction caused by a single natural or human-caused environmental disturbance, the limited gene pool which may depress reproductive vigor, fire accidentally set by hunters or military activities within Pohakuloa Training Area, and habitat disturbance caused by military exercises at

Pohakuloa Training Area (Service 1997a).

*Hibiscus brackenridgei* (mao hau hele).

*Hibiscus brackenridgei*, a member of the mallow family (Malvaceae) and a short-lived perennial, is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Two subspecies of *Hibiscus brackenridgei* are recognized, *brackenridgei* and *mokuleianus*. Subspecies *brackenridgei* is the only one currently or historically found on the island of Hawaii (HINHP Database 2000; Bates 1990).

*Hibiscus brackenridgei* is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

*Hibiscus brackenridgei* ssp.

*brackenridgei* was known historically from Molokai, Lanai, West Maui, and the island of Hawaii. Currently, *Hibiscus brackenridgei* ssp. *brackenridgei* is extant on the islands of Lanai, Maui, and Hawaii. On the island of Hawaii, *Hibiscus brackenridgei* ssp. *brackenridgei* is known from four populations containing a total of less than 20 individuals; one population at Puu Anahulu, one population at Puu Huluhulu, one population near the Kaupulehu Lava Flow, and one population outside Waimea town on State and privately owned lands (GDSI 2000; HINHP Database 2000).

*Hibiscus brackenridgei* on the island of Hawaii occurs in *Acacia koa* lowland mesic forest at elevations between 457 and 793 (1,500 and 2,600 ft). Associated native plant species include *Sida fallax* or *Reynoldsia sandwicensis* (HINHP Database 2000, L. Pratt *et al.*, pers. comm. 2001).

The primary threats to *Hibiscus brackenridgei* on the island of Hawaii are habitat degradation and possible predation by feral pigs, goats, sheep, cattle, or rats; competition with non-native plant species; road construction; fire; and susceptibility to extinction caused by randomly occurring natural events or reduced reproductive vigor due to small population size and a

limited number of populations (Service 1999; 59 FR 56333).

*Ischaemum byrone* (Hilo ischaemum).

*Ischaemum byrone*, a member of the grass family (Poaceae), is a short-lived perennial species with creeping underground and erect stems.

*Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units which are awned, and a two-flowered, di- or trichotomously-branched (two- or three-tiered) inflorescence (O'Connor 1999).

No life history information is available for this *Ischaemum byrone* at this time (59 FR 10305).

*Ischaemum byrone* was historically distributed on Kauai, Oahu, Molokai, Maui, and the island of Hawaii. Currently, this species is found on Kauai, Molokai, Maui, and the island of Hawaii. On the island of Hawaii, there are a total of five populations containing approximately 3,000 individuals located along the eastern coast from Hilo to Hawaii Volcanoes National Park on private, State and federally owned lands. In addition, there are some outplanted individuals in Hawaii Volcanoes National Park (59 FR 10305; GDSI 2000; HINHP Database 2000; L. Pratt, *in litt.*, 2000).

*Ischaemum byrone* on the island of Hawaii is found in coastal wet to dry shrubland, near the ocean, among rocks or on pahoehoe lava in cracks and holes, and elevations between sea level and 137 m (0 and 460 ft). Associated native plant taxa include *Scaevola sericea* (naupaka kahakai), or *Fimbristylis cymosa* (mau u akiaki) (Service 1996a; 59 FR 10305; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The threats to *Ischaemum byrone* on Hawaii island are competition by non-native grasses, predation by goats, and elimination and degradation of habitat through fire and residential development (59 FR 10305; Service 1996a).

*Isodendron pyrifolium* (wahine noho kula).

*Isodendron pyrifolium*, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade is moderately hairy beneath (at least on the veins) and stalked. The stalk (petiole) is subtended by oval, hairy, bract-like structures (stipules). Fragrant, bilaterally symmetrical flowers are solitary. The flower stalk (pedicel) is white-hairy, and subtended by two bracts. Bracts arise at the tip of the main flower stalk (peduncle). The five sepals are lance-shaped, membranous-edged and fringed with white hairs. Five green-yellow

petals are somewhat unequal, and lobed, the upper being the shortest and the lower the longest. The fruit is a three-lobed, oval capsule, which splits to release olive-colored seeds.

*Isodendron pyrifolium* is distinguished from other taxa in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. No other life history information is currently available for this species (Service 1996a).

*Isodendron pyrifolium* is known historically from six of the Hawaiian Islands: Niihau, Molokai, Lanai, Oahu, Maui, and on the western slope of Hualalai mountain on the island of Hawaii. Currently on Hawaii island, one population is known from State land in Kealakehe homesteads with 9 individuals. In addition, seven individuals are in cultivation at botanical gardens (59 FR 10305; GDSI 2000; Service 1996a; HINHP Database 2000; M. Brueggemann pers. comm. 2000).

*Isodendron pyrifolium* grows in dry forests at elevations between 18 to 137 m (60 to 450 ft). This species was formerly associated predominantly with native plant taxa such as *Psydrax odorata*, *Sida fallax*, *Myoporum sandwicense*, *Sophora chrysophylla*, or *Waltheria indica* (uhaloa) (59 FR 10305; Service 1996a; Pratt *et al.*, pers. comm. 2001).

The conversion of this species' natural habitat to residential and recreational developments is of grave concern, as is the presence of the aggressive non-native *Pennisetum setaceum*. Drying stands of this and other weedy species greatly increase the fire load and fire potential. Competition for nutrients with non-native plant taxa such as *Leucaena leucocephala* is a threat. Numbers of individuals are not abundant enough to maintain reproductive vigor, thus making random extirpation a possibility (Service 1996a; 59 FR 10305).

*Mariscus fauriei* (NCN).

*Mariscus fauriei*, a member of the sedge family (Cyperaceae), is a short-lived perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 10 to 50 cm (4 to 20 in) tall. It has leaves shorter than or the same length as the stems and 1 to 3.5 mm (0.04 to 0.1 in) wide. This species differs from others in the genus in Hawaii by its smaller size and its narrower, flattened, and more

spreading spikelets (Koyama 1990; 59 FR 10305).

No life history information is available for *Mariscus fauriei* at this time (Service 1996b).

Historically and currently, *Mariscus fauriei* is found on east Molokai and on the island of Hawaii. This species is believed to be no longer extant on Lanai. Currently on Hawaii island, two populations with a total of 100 to 200 plants occur at South Point and in Kaloko on State and privately owned lands (59 FR 10305; HINHP Database 2000; GDSI 2000).

This species typically grows in *Diospyros sandwicensis*-*Metrosideros polymorpha*-*Sapindus saponaria* dominated lowland dry forests, often on a lava substrate, between elevations of 107 and 402 m (350 and 1,320 ft). Associated native plant species include *Sophora chrysophylla*, *Myoporum sandwicense*, *Psydrax odorata*, *Peperomia blanda* var. *floribunda*, *Osteomeles anthyllidifolia*, or *Rauvolfia sandwicensis* (59 FR 10305; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

The threats to *Mariscus fauriei* on Hawaii island are predation and habitat degradation by feral goats and competition from non-native plant species such as *Schinus terebinthifolius*, *Pennisetum setaceum*, and *Leucaena leucocephala*. Because there are only two currently known populations on Hawaii island, the species is threatened by the risk of extinction through random environmental events and through reduced reproductive vigor (Service 1996a; 59 FR 10305).

*Mariscus pennatiformis* (NCN).

*Mariscus pennatiformis*, a short-lived perennial member of the sedge family (Cyperaceae), has a woody root system covered with brown scales. *Mariscus pennatiformis* is subdivided into two subspecies, ssp. *bryanii* and ssp. *pennatiformis*, which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the achenes. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1990).

*Mariscus pennatiformis* is known to flower from November to December after heavy rainfall. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (Service 1999).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East

Maui (Keanae Valley, Hana, and Nahiku), and from Laysan in the Northwestern Hawaiian Islands and reported from the island of Hawaii.

*Mariscus pennatiformis* ssp.

*pennatiformis* has not been seen on the island of Hawaii since the middle of the last century (Wagner *et al.* 1999; HINHP Database 2000; 59 FR 56333; Brueggemann, in litt., 2000).

Nothing is known of the preferred habitat for or species associated with *Mariscus pennatiformis* on the island of Hawaii (Service 1999).

The threats to *Mariscus pennatiformis* on the island of Hawaii are unknown.

*Phlegmariurus mannii* (wawae iole).

*Phlegmariurus mannii*, a member of the clubmoss family (Lycopodiaceae) and a short-lived perennial, is a hanging plant with clustered, delicate red stems and forked reproductive spikes. These traits distinguish it from others in the genus in Hawaii (Holub 1991).

Little is known about the life history of *Phlegmariurus mannii*. Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997a).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui, and Hawaii island (Captain Cook-Kona). Currently, this species is extant on Maui. The last collection of this species on the island of Hawaii was in 1949 from South Kona near Papaloa (HINHP Database 2000).

Nothing is known of the preferred habitat of or species associated with *Phlegmariurus mannii* on the island of Hawaii (Service 1997a).

This species was threatened by habitat degradation by feral pigs and goats and stray domestic cattle, and by non-native plants such as *Rubus argutus* (blackberry), *Cyathea cooperi* (Australian tree fern), or *Psidium cattleianum*. (Service 1997a).

*Phyllostegia parviflora* (NCN).

*Phyllostegia parviflora*, a member of the mint family (Lamiaceae), is a short-lived perennial herb. The leaves are egg-shaped and wrinkled. The species is distinguished from others of the genus by the leaf shape and length of the leaf stalk and lower corolla lip. *Phyllostegia parviflora* var. *glabriuscula* has fewer glandular hairs in the inflorescence, less pubescent (hairy) leaves, and usually unbranched inflorescences, as compared to *P. parviflora* var. *parviflora*. A recently discovered, unnamed variety of *Phyllostegia parviflora* has shorter leaf stalks, spreading hairs on the leaf stalks, and fewer gland-tipped hairs in the inflorescence (Wagner *et al.* 1990).

Nothing is known of the preferred habitat of or species associated with

*Phyllostegia parviflora* on the island of Hawaii (Service 1996a).

Historically *Phyllostegia parviflora* was known from three islands: Oahu, Maui, and the island of Hawaii. This species is now known only from two populations on Oahu. *Phyllostegia parviflora* has not been observed on the island of Hawaii since the 1800s (61 FR 53108; HINHP Database 2000; GDSI 2000).

Nothing is known of the preferred habitat of or species associated with *Phyllostegia parviflora* on the island of Hawaii (Service 1999).

Threats to *Phyllostegia parviflora* include habitat degradation or destruction by feral pigs, competition with non-native plant species, risk of extinction from naturally occurring events, and/or reduced reproductive vigor due to the small number of remaining individuals (Service 1999).

*Plantago princeps* (laukahi kuahiwi).

*Plantago princeps*, a member of the plantain family (Plantaginaceae), is a small shrub or robust, short-lived perennial herb. Its erect or ascending stems are hollow, about 2 to 250 centimeters (1 to 100 inches) long, and often branched with internodes that are more or less woolly with reddish brown hairs when young. The oblong to elliptic, thick, leathery leaves are tufted near the ends of the stems. The leaves have smooth or minutely-toothed margins, a pointed tip, and primary veins that converge at the base of the leaves. Numerous stalkless flowers are densely arranged in a cluster, with each cluster on a stalk. Each flower spreads at an angle of nearly 90 degrees to the axis of the stalk, or grows upright. The sepals are somewhat distinct and elliptic in shape. The fruits are capsules, which contain three or four tiny black seeds. The surface of the seed is covered with a sticky membrane. This species differs from other native members of the genus by its large-branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties (*anomala*, *laxiflora*, *longibracteata*, and *princeps*) are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (59 FR 56333).

*Plantago princeps* was historically found on Kauai, Oahu, Molokai, Maui, and the island of Hawaii. It has not been seen on the island of Hawaii since the 1860s (59 FR 56333; HINHP Database 2000).

Nothing is known of the preferred habitat of or species associated with *Plantago princeps* on the island of Hawaii.

Threats to *Plantago princeps* included habitat degradation by feral pigs and goats and competition with non-native plant species (Service 1999)

*Portulaca sclerocarpa* (poe).

*Portulaca sclerocarpa*, a short-lived perennial member of the portulaca family (Portulacaceae), has a fleshy, tuberous taproot that becomes woody with maturity. Leaves are narrowly oblance-shaped to linear (strap-like), almost round in cross-section, succulent, gray-green, and stalkless. Dense tufts of yellow-brown hairs occur in the axil between stem and leaf. Three to six flowers occur at the end of the stem and form a dense white or pink flower cluster. *Portulaca sclerocarpa* is distinguished from other species of the genus in Hawaii by its woody taproot, narrow leaves, petal color, seed color (dark, reddish-brown), and thick-walled fruit (Wagner *et al.* 1999).

Little is known of the life history of *Portulaca sclerocarpa*. This species was observed in flower in March, June, and December. The presence of juveniles indicate that pollination and germination are occurring (Service 1996a).

Historically, *Portulaca sclerocarpa* was known from the islands of Lanai and the island of Hawaii. Populations were found on an islet off of the south coast of Lanai, and the Kohala mountains, the northern slopes of Hualalai, the northwestern slopes of Mauna Loa, and near Kilauea Crater on Hawaii island. One extant population is known to occur off the coast of Lanai on Poopoo Islet. Nineteen extant populations with approximately 1,000 individuals are known to occur on Federal, State, and private lands on Hawaii island. One population occurs at Puupa on private land; two at Nohona O Hae on private land; nine at Puu Anahulu on private, State and Federal lands (Pohakuloa Training Area); three populations on private land at Keauhou; and four populations on Federal land at Hawaii Volcanoes National Park (59 FR 10305; GDSI 2000; HINHP Database 2000; Service 1996a).

*Portulaca sclerocarpa* grows on weathered Mauna Kea soils, cinder cones, or geologically young lavas in montane dry shrubland. The species often is found on bare cinder, near

steam vents, and in open *Metrosideros polymorpha* dominated woodlands, at elevations between 351 and 2,274 m (1,150 to 7,460 ft). Associated native plant taxa are *Sophora chrysophylla*, *Wollastonia venosa*, or *Dodonaea viscosa* (59 FR 10305; HINHP Database 2000; Service 1996a; L. Pratt *et al.*, pers. comm. 2001).

A major threat to *Portulaca sclerocarpa* is competition from non-native grasses such as *Pennisetum setaceum* and *Andropogon virginicus*. Although no browsing has been observed, goats, pigs and sheep trample and disturb the habitat, damaging the understory and providing suitable sites for non-native plant invaders. Fire is also a pervasive problem in such dry habitat. The unknown reason for the decrease in numbers from 4,300 in 1983 to 970 in 1994 in the Puhimau geothermal (fumarole) area within Hawaii Volcanoes National Park is of concern. Small numbers of populations and individuals, and their scattered distribution, decrease reproductive viability and increase vulnerability to random events (59 FR 10305; Service 1996a; HINHP Database 2000).

*Sesbania tomentosa* (ohai).

*Sesbania tomentosa*, a short-lived perennial and a member of the pea family (Fabaceae), is typically a sprawling shrub but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon-tinged with yellow, orange-red, scarlet or rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *Sesbania sesban* (Egyptian rattlepod) by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and the

island of Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). It is no longer extant on Niihau and Lanai. On the island of Hawaii, *Sesbania tomentosa* is known from 11 populations with less than 500 individuals. Two populations occur at South Point on Federal (Government Services Administration) and State lands; one population at Hapuna Bay and another at Mahaiula Bay on State lands, and the remaining seven populations occur on Federal land at Hawaii Volcanoes National Park (59 FR 56333; Service 1999; HINHP Database 2000; GDSI 2000).

*Sesbania tomentosa* is found in open, dry *Metrosideros polymorpha* forest with mixed native grasses, *Scaevola sericea* coastal dry shrubland on windswept slopes, and weathered basaltic slopes between sea level and 954 m (0 and 3,130 ft) elevation. Associated native plant species include *Sporobolus virginicus* (akiaki), *Styphelia tameiameia*, *Wollastonia integrifolia* (nehe), *Jacquemontia sandwicensis* (pauohiiaka), *Sida fallax*, *Ipomoea pes-caprae* (pohuehue), *Dodonaea viscosa*, *Fimbristylis hawaiiensis*, *Myoporum sandwicense*, or *Waltheria indica* (59 FR 56333; HINHP Database 2000; Service 1999; L. Pratt *et al.*, pers. comm. 2001).

The primary threats to *Sesbania tomentosa* on the island of Hawaii are competition with various non-native plant species such as *Cynodon dactylon* (Bermuda grass), *Chloris barbata* (swollen finger grass), *Bothriochloa pertusa* (pitted beardgrass), *Cenchrus ciliaris* (buffelgrass), *Portulaca pilosa* (pigweed), *Desmodium triflorum* (tick clover), or *Lantana camara*; fire; habitat degradation by feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, non-native insects; and destruction by random environmental events (*e.g.*, fire) and by human activities (*e.g.*, use of off-road vehicles and development) (HINHP Database 2000; 59 FR 56333; Service 1999).

*Silene lanceolata* (NCN).

*Silene lanceolata*, a member of the pink family (Caryophyllaceae), is an upright, short-lived perennial plant with stems 15 to 50 cm (6 to 20 in) long, which are woody at the base. The narrow leaves are smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters. The flowers are white with deeply-lobed, clawed petals. The capsule opens at the top to release reddish-brown seeds. This species is distinguished from *S. alexandri* by its smaller flowers and capsules and its stamens, which are

shorter than the sepals (Wagner *et al.* 1999).

No life history information is available for *Silene lanceolata* at this time (57 FR 46325; Service 1996b).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and the island of Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and the island of Hawaii. On the island of Hawaii, 10 populations with a total of approximately 2,500 individuals are known from land under Federal jurisdiction at Pohakuloa Training Area. In addition, individuals are in cultivation at the Army's greenhouse at Pohakuloa Training Area (57 FR 46325; GDSI 2000; USAG-HI 2000b; Service 1996a).

On the island of Hawaii, this species grows on rocky tumuli or outcrops, on aa lava, in deep ash deposits over pahoehoe lava, and in Mauna Kea substrate in dry montane shrubland at elevations between 1,253 and 1,320 m (4,110 and 4,330 ft). Associated native plant species include, *Eragrostis* sp. (lovegrass), *Metrosideros polymorpha*, *Chamaesyce* sp. (akoko), *Myoporum sandwicense*, *Sophora chrysophylla*, *Chenopodium oahuense*, *Dodonaea viscosa*, *Styphelia tameiameia*, or *Dubautia linearis* (57 FR 46325; HINHP Database 2000; Service 1996b; L. Pratt *et al.*, pers. comm. 2001).

Habitat destruction by feral ungulates (goats, mouflon sheep, and pigs), fires, competition by invading non-native plants such as *Pennisetum setaceum*, and military activity are immediate threats to *Silene lanceolata* on the island of Hawaii (57 FR 46325; Service 1996b).

*Solanum incompletum* (popolo ku mai).

*Solanum incompletum*, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves have prominent veins on the lower surface and lobed leaf margins. Numerous flowers grow in loose branching clusters with each flower on a stalk. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

No life history information is available for *Solanum incompletum* at this time (59 FR 56333).

Historically, *Solanum incompletum* was known from central and northeastern Lanai, scattered locations on Maui, and the Kohala Mountains, Kona, Puu Waawaa, Puu Ikaaka Crater, Kanehaha, Puu Huluhulu, and Omaokaili on the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from one population of 35 individuals, recently discovered on the Army's Pohakuloa Training Area on the island of Hawaii. In addition, nine individuals are currently in cultivation in the greenhouse at Pohakuloa Training Area (59 FR 56333; HINHP Database 2000; Service 1999; GDSI 2000; USAG-HI 2000b).

*Solanum incompletum* grows in dry to mesic forest, diverse mesic forest, and subalpine forest between elevations of 1,192 and 2,259 m (3,910 and 7,410 ft) and is associated with *Myoporum sandwicense*, *Myrsine lanaiensis*, or *Sophora chrysophylla* (59 FR 56333; Service 1999; L. Pratt *et al.*, pers. comm. 2001).

The primary threats to the few remaining individuals of *Solanum incompletum* are habitat degradation by feral sheep and mouflon, competition with various non-native plants, random naturally-occurring mass mortality events, and reduced reproductive vigor due to the extremely small number of existing plants. *Solanum incompletum* is potentially threatened by military activities and fire resulting from these activities at the Pohakuloa Training Area (59 FR 56333; Service 1999; HINHP Database 2000).

*Spermolepis hawaiiensis* (NCN).

*Spermolepis hawaiiensis*, an annual member of the parsley family (Apiaceae), is a slender herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound, umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 56333; Service 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Molokai, Maui, Lanai and the island of Hawaii (HINHP Database 2000). Currently, it is extant on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. On the island of Hawaii, there are approximately four known populations with between 5,000 and 10,000 individuals on land under Federal jurisdiction at Pohakuloa Training Area and State land at Puuanahulu (59 FR 56333; HINHP Database 2000; GDSI 2000; Service 1999).

*Spermolepis hawaiiensis* is known from shady spots in *Dodonaea viscosa* lowland dry shrubland, on pahoehoe lava at elevations between 1,134 and 2,140 m (3,720 and 7,020 ft). Associated native plant species include *Myoporum sandwicense*, *Osteomeles anthyllidifolia*, or *Sophora chrysophylla* (59 FR 56333; HINHP Database 2000; Service 1999; L. Pratt *et al.*, pers. comm. 2001).

The primary threats to *Spermolepis hawaiiensis* on the island of Hawaii are habitat degradation by feral goats, pigs and sheep; competition with various non-native plants such as *Melinis minutiflora* (molasses grass) and other grasses; military impacts; and habitat destruction and extinction due to natural environmental events such as erosion, landslides, and rock slides due to natural weathering (59 FR 56333; Service 1999).

*Tetramolopium arenarium* (NCN).

*Tetramolopium arenarium* is a short-lived perennial and an upright, branched shrub in the sunflower family (Asteraceae). Alternate leaves are lance-shaped, hairy, glandular, and gray-green. This species is separated from other taxa of the genus in the Hawaiian Islands by several characters: upright habit; number of heads per flower cluster (5 to 11); presence and type of glands and hairs; size of male ray flowers (1.3 to 2.2 mm (.05 to .09 in); number of bisexual disk flowers (5 to 9) and their maroon color; and a wide, 2- to 4-nerved fruit with white hairs at the tip. Three infra-specific taxa are recognized: *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* (Maui and Hawaii), *T. arenarium* ssp. *arenarium* var. *confertum* (Hawaii), and *T. arenarium* ssp. *laxum* (Maui). These taxa are distinguished one from the other by a combination of characters. *T. arenarium* ssp. *arenarium* var. *confertum* and *T. arenarium* ssp. *laxum* have not been seen the late 1800s (Lowrey 1999).

No life history information is available for *Tetramolopium arenarium* at this time (59 FR 10305).

*Tetramolopium arenarium* was historically known from the islands of Maui and Hawaii. Individuals were found on the western slope of Haleakala, Maui, and on the Kohala mountains, the northwestern slopes of Mauna Kea, Mauna Loa, and Hualalai, Hawaii. The taxon was considered extinct until *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* was recently rediscovered in Kipuka Kalawamauna at Pohakuloa Training Area. Two populations with approximately 400 individuals of *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* are currently extant. In addition, five individuals are in cultivation in the greenhouse at Pohakuloa Training Area (59 FR 10305; HINHP Database 2000; Service 1996a; GDSI 2000; USAG-HI 2000b).

The habitat of *Tetramolopium arenarium* on island of Hawaii is lowland and montane dry shrublands dominated by *Dodonaea viscosa*, at elevations between 1,363 and 1,762 m (4,470 and 5,780 ft). Associated native plant taxa are *Styphelia tameiameia*, *Dubautia linearis*, *Chamaesyce olowaluana* (akoko), *Sida fallax*, *Chenopodium oahuense* or the endangered *Haplostachys haplostachya* (honohono) (59 FR 10305; Service 1996a; HINHP Database 2000; L. Pratt *et al.*, pers. comm. 2001).

Feral goats, sheep, and pigs have caused habitat destruction by browsing, trampling, and rooting. All known populations are transected by feral animal trails. Habitat decimation has resulted in opportunities for invasions by non-native plant taxa, particularly *Pennisetum setaceum*. The occurrence of *Pennisetum setaceum* increases the probability and intensity of fire. Military activity may threaten the species. The small number of extant individuals and the restricted distribution of this taxon make it extremely vulnerable to random events and/or reduction of reproductive vigor (59 FR 10305; Service 1996a; HINHP Database 2000).

*Vigna o-wahuensis* (NCN).

*Vigna o-wahuensis*, a member of the pea family (Fabaceae), is a slender twining short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish-yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain 7 to 15 gray to black seeds. This species



differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, Maui, Molokai, Lanai, Kahoolawe, and the island of Hawaii. Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and island of Hawaii. There are no currently known populations on Niihau or Oahu. On the island of Hawaii, one population with 10 individuals occurs on privately owned land at Nohona O Hae (59 FR 56333; HINHP Database 2000; GDSI 2000).

On the island of Hawaii, *Vigna o-wahuensis* occurs in *Dodonaea viscosa* lowland dry shrubland at elevations between 351 and 2,274 m (1,150 to 7,460 ft). Associated native plant species include *Chenopodium oahuense*, *Dodonaea viscosa*, *Osteomeles anthyllidifolia*, *Wikstroemia* sp., (akia) or *Sida fallax* (59 FR 56333; HINHP Database 2000; Service 1999).

The primary threats to *Vigna o-wahuensis* on Hawaii island are

competition with various non-native plant species, a risk of extinction due to random environmental events (primarily fire), and/or reduced reproductive vigor due to the small number of existing populations and individuals (Service 1999; 59 FR 56333).

*Zanthoxylum hawaiiense* (ae). *Zanthoxylum hawaiiense*, a long-lived perennial in the rue family (Rutaceae), is a medium-size tree with pale to dark gray bark, and lemon-scented leaves. Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaflets with surfaces usually without hairs. *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shaped fruits with a rounded tip (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (59 FR 10305; Service 1996a).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, the southern and southwestern slopes of Haleakala on Maui, and the island of Hawaii. Currently, *Zanthoxylum hawaiiense* is extant on Kauai, Molokai, Maui, and the

island of Hawaii. On the island of Hawaii, the four extant populations with less than 250 individuals are located on State lands and on lands under Federal jurisdiction at Pohakuloa Training Area (59 FR 10305; HINHP Database 2000; GDSI 2000).

On the island of Hawaii, *Zanthoxylum hawaiiense* is found in *Metrosideros polymorpha* dry forest with *Dodonaea viscosa* or *Myoporum sandwicense*, or with *Dubautia linearis* in open *Myoporum-Dodonaea* shrubland on rough aa lava at elevations between 1,204 and 1,756 m (3,950 and 5,760 ft) (HINHP Database 2000; 59 FR 10305; L. Pratt *et al.*, pers. comm. 2001).

The threats to *Zanthoxylum hawaiiense* on the island of Hawaii include browsing, grazing, and trampling by feral goats, pigs and sheep; competition with non-native plant species; habitat degradation and destruction by humans, including military impacts; and extinction from naturally occurring events (primarily fire) and/or from reduced reproductive vigor due to the small number of individuals and populations (59 FR 10305; Service 1996a).

A summary of populations and landownership for the 58 plant species on the island of Hawaii is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS OCCURRING ON THE ISLAND OF HAWAII, AND LANDOWNERSHIP FOR 58 SPECIES REPORTED FROM THE ISLAND OF HAWAII

Species	Number of current populations	Landownership/Jurisdiction		
		Federal	State	Private
<i>Achyranthes mutica</i> .....	1 .....	.....	.....	X
<i>Adenophorus periers</i> .....	13 .....	X <sup>1</sup>	X	X
<i>Argyroxiphium kauense</i> .....	3 .....	X <sup>1</sup>	X	X
<i>Asplenium fragile</i> var. <i>insulare</i> .....	17 .....	X <sup>1 2</sup>	X	X
<i>Bonamia menziesii</i> .....	1 .....	.....	.....	X
<i>Cenchrus agrimonoides</i> .....	0.	.....	.....	.....
<i>Clermontia drepanomorpha</i> .....	1 .....	.....	X	X
<i>Clermontia lindseyana</i> .....	17 .....	X <sup>3</sup>	X	.....
<i>Clermontia peleana</i> .....	0.	.....	.....	.....
<i>Clermontia pyralaria</i> .....	1 .....	X <sup>1</sup>	X	.....
<i>Colubrina oppositifolia</i> .....	8 .....	.....	X	X
<i>Cyanea copelandii</i> ssp. <i>copelandii</i> .....	0.	.....	.....	.....
<i>Ctenitis squamigera</i> .....	0.	.....	.....	.....
<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i> .....	3 .....	X <sup>3</sup>	X	.....
<i>Cyanea platyphylla</i> .....	9 .....	.....	X	X
<i>Cyanea shipmanii</i> .....	5 .....	X <sup>3</sup>	X	X
<i>Cyanea stictophylla</i> .....	5 .....	.....	X	X
<i>Cyrtandra giffardii</i> .....	7 .....	X <sup>1</sup>	X	X
<i>Cyrtandra tintinnabula</i> .....	6 .....	.....	X	X
<i>Delissea undulata</i> .....	1 .....	.....	X	.....
<i>Diellia erecta</i> .....	3 .....	.....	X	.....
<i>Flueggea neowawraea</i> .....	4 .....	.....	X	X
<i>Gouania vitifolia</i> .....	1 .....	.....	X	.....
<i>Hedyotis cookiana</i> .....	0.	.....	.....	.....
<i>Hedyotis coriacea</i> .....	11 .....	X <sup>2</sup>	.....	.....
<i>Hibiscadelphus giffardianus</i> .....	1 (planted) ...	X <sup>1</sup>	.....	.....
<i>Hibiscadelphus hualalaiensis</i> .....	2 (planted) ...	.....	X	.....
<i>Hibiscus brackenridgei</i> .....	4 .....	.....	X	X
<i>Ischaemum byrone</i> .....	5 .....	X <sup>1</sup>	X	X

TABLE 3.—SUMMARY OF POPULATIONS OCCURRING ON THE ISLAND OF HAWAII, AND LANDOWNERSHIP FOR 58 SPECIES REPORTED FROM THE ISLAND OF HAWAII—Continued

Species	Number of current populations	Landownership/Jurisdiction		
		Federal	State	Private
<i>Isodendron hosakae</i>	3			X
<i>Isodendron pyriform</i>	1		X	
<i>Mariscus fauriei</i>	2		X	X
<i>Mariscus pennatifolius</i>	0			
<i>Melicope zahlbruckneri</i>	2	X <sup>1</sup>	X	
<i>Neraudia ovata</i>	3	X <sup>1 2</sup>	X	X
<i>Nothoecstrum breviflorum</i>	10	X <sup>1 3</sup>	X	X
<i>Ochrosia kilauaeaensis</i>	0			
<i>Phlegmariurus mannii</i>	0			
<i>Phyllostegia parviflora</i>	0			
<i>Phyllostegia racemosa</i>	7	X <sup>1 3</sup>	X	X
<i>Phyllostegia velutina</i>	5	X <sup>3</sup>	X	X
<i>Phyllostegia warshaueri</i>	7		X	X
<i>Plantago hawaiiensis</i>	8	X <sup>1</sup>	X	
<i>Plantago princeps</i>	0			
<i>Pleomele hawaiiensis</i>	8	X <sup>1</sup>	X	X
<i>Portulaca sclerocarpa</i>	19	X <sup>1 2</sup>	X	X
<i>Pritchardia affinis</i>	unknown.			
<i>Pritchardia schattaueri</i>	1			X
<i>Sesbania tomentosa</i>	11	X <sup>1 4</sup>	X	
<i>Sicyos alba</i>	4	X <sup>1</sup>	X	
<i>Silene hawaiiensis</i>	23	X <sup>1 2</sup>	X	X
<i>Silene lanceolata</i>	10	X <sup>2</sup>		
<i>Solanum incompletum</i>	1	X <sup>2</sup>		
<i>Spermolepis hawaiiensis</i>	4	X <sup>1 2</sup>	X	
<i>Tetramolopium arenarium</i>	2	X <sup>2</sup>		
<i>Vigna o-wahuensis</i>	1			X
<i>Zanthoxylum dipetalum</i> var. <i>tomentosum</i>	1		X	
<i>Zanthoxylum hawaiiense</i>	4	X <sup>2</sup>	X	

<sup>1</sup> Hawaii Volcanoes National Park.

<sup>2</sup> Pohakuloa Training Area.

<sup>3</sup> Hakalau Forest National Wildlife Refuge.

<sup>4</sup> Government Services Administration.

#### Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens*, *Argyroxiphium kauense*, *Bonamia menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii* (as *Cyanea carlsonii*), *Cyanea platyphylla* (as *Cyanea bryanii*), *Cyanea shipmanii*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. "from Hawaii"), *Ischaemum byrone*, *Melicope zahlbruckneri* (as *Pelea zahlbruckneri*), *Neraudia ovata*, *Nothoecstrum breviflorum* (as *Nothoecstrum breviflorum* var.

*breviflorum*), *Portulaca sclerocarpa*, *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Silene lanceolata*, *Solanum incompletum* (as *Solanum haleakalense* and *Solanum incompletum* var. *glabratum*, var. *incompletum*, and var. *mauiensis*), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citriodora*) were considered endangered; *Cyrtandra giffardii*, *Diellia erecta*, *Silene hawaiiensis* (as *Silene hawaiiensis* var. *hawaiiensis*), *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and, *Asplenium fragile* var. *insulare* (as *Asplenium fragile*), *Clermontia pyricularia*, *Delissea undulata* (as *Delissea undulata* var. *argutidentata* and var. *undulata*), *Gouania vitifolia*, *Hedyotis coriacea*, *Isodendron hosakae*, *Isodendron pyriform*, *Nothoecstrum breviflorum* (as *Nothoecstrum breviflorum* var. *longipes*), and *Tetramolopium arenarium* (as

*Tetramolopium arenarium* var. *arenarium*, var. *confertum*, and var. *dentatum*) were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except for *Cyrtandra giffardii* and *Silene hawaiiensis*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR

17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal

that had not been made final, along with four other proposals that had expired. We published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). A

summary of the status categories for these 58 plant species in the 1980 through 1996 notices of review can be found in Table 4(a). We listed the 58 species as endangered or threatened between 1991 and 1996. A summary of the listing actions can be found in Table 4(b).

TABLE 4(a).—SUMMARY OF CANDIDACY STATUS FOR 58 PLANT SPECIES FROM THE ISLAND OF HAWAII

Species	Federal Register Notice of Review			
	1980	1985	1990	1993
<i>Achyranthes mutica</i> .....				
<i>Adenophorus periens</i> .....	C1	C1	C1	
<i>Argyroxiphium kauense</i> .....	C1	C1	C1	
<i>Asplenium fragile</i> var. <i>insulare</i> .....	C1*	C1*	C1	
<i>Bonamia menziesii</i> .....	C1	C1	C1	
<i>Cenchrus agrimonioides</i> .....				
<i>Clermontia drepanomorpha</i> .....	C1	C1	C1	C2
<i>Clermontia lindseyana</i> .....	C1	C1	C1	
<i>Clermontia peleana</i> .....	3C	3C	C1	
<i>Clermontia pyrularia</i> .....	C1	C1	C1	
<i>Colubrina oppositifolia</i> .....	C1	C1	C1	
<i>Cyanea copelandii</i> ssp. <i>copelandii</i> .....			C1	
<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i> .....	C1	C1	C1	
<i>Cyanea platyphylla</i> .....	C1	C1	C1	
<i>Cyanea shipmanii</i> .....	C1	C1	C1	
<i>Cyanea stictophylla</i> .....	C1	C1	C1	
<i>Cyrtandra giffardii</i> .....	C2	C2	C1	
<i>Cyrtandra tintinnabula</i> .....			C1	
<i>Delissea undulata</i> .....	C1	C1*	C1*	C2*
<i>Diellia erecta</i> .....	C1	C1	C1	
<i>Flueggea neowawraea</i> .....	C1	C1	C1	
<i>Gouania vitifolia</i> .....	C1*	C1*	C1*	
<i>Hedyotis cookiana</i> .....	3A	3A	C1	
<i>Hedyotis coriacea</i> .....	C1	C1	C1	
<i>Hibiscadelphus giffardianus</i> .....	C1	C1	C1	C1
<i>Hibiscadelphus hualalaiensis</i> .....	C1	C1	C1	C1
<i>Hibiscus brackenridgei</i> .....	C1	C1	C1	
<i>Ischaemum byrone</i> .....	C1	C1	C1	
<i>Isodendron hosakae</i> .....	C1			
<i>Isodendron pyriform</i> .....	C1*	C1*	3A	
<i>Mariscus fauriei</i> .....			C1	
<i>Mariscus pennatiflorus</i> .....		C1	C1	
<i>Melicope zahlbruckneri</i> .....		C1	C2	C2
<i>Neraudia ovata</i> .....	C1	C1	C1	C2
<i>Nothoestrum breviflorum</i> .....	C1	C1	C1	
<i>Ochrosia kilauaeaensis</i> .....		C2	C1	
<i>Phlegmariurus mannii</i> .....	C1	C1	C1	
<i>Phyllostegia parviflora</i> .....				
<i>Phyllostegia racemosa</i> .....			C2	C2
<i>Phyllostegia velutina</i> .....			C2	C2
<i>Phyllostegia warshaueri</i> .....			C2	C2
<i>Plantago hawaiiensis</i> .....			C1	
<i>Plantago princeps</i> .....	C2	C2	C1	
<i>Pleomele hawaiiensis</i> .....	C1	C1	C1	C2
<i>Portulaca sclerocarpa</i> .....	C1	C1	C1	
<i>Pritchardia affinis</i> .....			C1	
<i>Pritchardia schattaueri</i> .....		C2	C2	C2
<i>Sesbania tomentosa</i> .....	C1*	C1*	C1	
<i>Sicyos alba</i> .....			C2	C2
<i>Silene hawaiiensis</i> .....	C1	C1	C1	
<i>Silene lanceolata</i> .....	C1	C1	C1	
<i>Solanum incompletum</i> .....	C1*	C1*	C1	
<i>Spermolepis hawaiiensis</i> .....			C1	
<i>Tetramolopium arenarium</i> .....	C1*	C1*	3A	
<i>Vigna o-wahuensis</i> .....	C1	C1	C1	
<i>Zanthoxylum dipetalum</i> var. <i>tomentosum</i> .....			C2	C2
<i>Zanthoxylum hawaiiense</i> .....	C1	C1	C1	

## Key:

C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

C1\*: Taxa of known vulnerable status in the recent past that may already have become extinct.

C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

C2\*: Taxa of known vulnerable status in the recent past that may already have become extinct.

3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat.

**Federal Register** Notice of Review

1980: 45 FR 82479 1990: 55 FR 6183 1996: 61 FR 7596

1985: 50 FR 39525 1993: 58 FR 51144

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 58 PLANT SPECIES FROM THE ISLAND OF HAWAII

Species	Federal status	Proposed Rule		Final Rule		Prudency determination and proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
<i>Achyranthes mutica</i> .....	E .....	10/02/1995 .....	60 FR 51417 .....	10/10/1996 .....	61 FR 53108 .....	11/07/2000 .....	65 FR 66808.
<i>Adenophorus periens</i> ...	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	11/07/2000, 12/18/2000, 12/29/2000.	65 FR 66808, 65 FR 82086, 66 FR 83157.
<i>Argyroxiphium kauense</i>	E .....	08/06/1990 .....	55 FR 31860 ...	04/07/1993 .....	58 FR 18029 ...	.....	.....
<i>Asplenium fragile</i> var. <i>insulare</i> .	E .....	06/24/1993 .....	58 FR 34231 ...	09/09/1994 .....	59 FR 49025 ...	12/18/2000 .....	65 FR 79192.
<i>Bonamia menziesii</i> .....	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	11/07/2000, 12/18/2000, 12/27/2000.	65 FR 66808, 65 FR 79192, 65 FR 82086.
<i>Cenchrus agrimonioides</i> .	E .....	10/02/1995 .....	60 FR 51417 ...	10/10/1996 .....	61 FR 53108 ...	12/18/2000 .....	65 FR 79192.
<i>Clermontia drepanomorpha</i> .	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Clermontia lindseyana</i>	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	12/18/2000 .....	65 FR 79192.
<i>Clermontia peleana</i> .....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	12/18/2000 .....	65 FR 79192.
<i>Clermontia pyrularia</i> .....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Colubrina oppositifolia</i>	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	12/18/2000 .....	65 FR 79192.
<i>Ctenitis squamigera</i> .....	E .....	06/24/1993 .....	58 FR 34231 ...	09/09/1994 .....	59 FR 49025 ...	12/18/2000, 12/27/2000, 12/29/2000, 1/28/2002.	65 FR 79192, 65 FR 82086, 66 FR 83157, 67 FR 3940.
<i>Cyanea copelandii</i> ssp. <i>copelandii</i> .	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i> .	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Cyanea platyphylla</i> .....	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Cyanea shipmanii</i> .....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Cyanea stictophylla</i> .....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Cyrtandra giffardii</i> .....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Cyrtandra tintinnabula</i> ..	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Delissea undulata</i> .....	E .....	06/27/1994 .....	59 FR 32946 ...	10/10/1996 .....	61 FR 53124 ...	11/07/2000 .....	65 FR 66808.
<i>Diellia erecta</i> .....	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	12/18/2000, 12/29/2000, 1/28/2002.	65 FR 79192, 65 FR 83158, 67 FR 3940.
<i>Flueggea neowawraea</i>	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	11/07/2000, 12/18/2000.	65 FR 66808, 65 FR 79192.
<i>Gouania vitifolia</i> .....	E .....	12/14/1992 .....	57 FR 39066 ...	06/27/1994 .....	59 FR 32932 ...	.....	.....
<i>Hedyotis cookiana</i> .....	E .....	10/30/1991 .....	56 FR 5562 .....	02/25/1994 .....	59 FR 09304 ...	11/07/2000 .....	65 FR 66808.
<i>Hedyotis coriacea</i> .....	E .....	05/24/1991 .....	56 FR 23842 ...	05/15/1992 .....	57 FR 20787 ...	12/18/2000 .....	65 FR 79192.
<i>Hibiscadelphus giffardianus</i> .	E .....	09/25/1995 .....	60 FR 4937 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Hibiscadelphus hualalaiensis</i> .	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Hibiscus brackenridgei</i>	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	12/18/2000, 12/27/2000, 1/28/2002.	65 FR 79192, 65 FR 82086, 67 FR 3940.
<i>Ischaemum byrone</i> .....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	12/18/2000, 12/29/2000, 1/28/2002.	65 FR 79192, 65 FR 83158, 67 FR 3940.
<i>Isodendron hosakae</i> ...	E .....	10/10/1989 .....	54 FR 41470 ...	01/14/1991 .....	56 FR 1457 .....	.....	.....
<i>Isodendron pyriformis</i> ..	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Mariscus fauriei</i> .....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	12/29/2000 .....	65 FR 83158.
<i>Mariscus pennatifloris</i>	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	12/18/2000, 1/28/2002.	65 FR 79192, 67 FR 3940.
<i>Melicope zahlbruckneri</i>	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Neraudia ovata</i> .....	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Nothoctrum brevilorum</i> .	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 58 PLANT SPECIES FROM THE ISLAND OF HAWAII—Continued

Species	Federal status	Proposed Rule		Final Rule		Prudency determination and proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
<i>Ochrosia kilauaeensis</i> ..	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Phlegmariurus mannii</i> ..	E .....	5/24/1991 .....	56 FR 23842 ...	5/15/1992 .....	57 FR20772 ...	12/18/2000, 1/28/2002.	65 FR 79192, 67 FR 3940.
<i>Phyllostegia parviflora</i> ..	E .....	10/02/1995 .....	60 FR 51417 ...	10/10/1996 .....	61 FR 53108 ...	.....	.....
<i>Phyllostegia racemosa</i> ..	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Phyllostegia velutina</i> ....	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Phyllostegia warshaueri</i> ..	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Plantago hawaiiensis</i> ....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Plantago princeps</i> .....	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	11/07/2000, 12/18/2000.	65 FR 66808, 65 FR 79192.
<i>Pleomele hawaiiensis</i> ..	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Portulaca sclerocarpa</i> ..	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	12/27/2000 .....	65 FR 82086.
<i>Pritchardia affinis</i> .....	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10324 ...	.....	.....
<i>Pritchardia schattaueri</i> ..	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Sesbania tomentosa</i> ....	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	11/07/2000, 12/18/2000, 12/29/2000.	65 FR 66808, 65 FR 79192, 65 FR 83158.
<i>Sicyos alba</i> .....	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Silene hawaiiensis</i> .....	T .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	.....	.....	59 FR 10305
<i>Silene lanceolata</i> .....	E .....	09/20/1991 .....	56 FR 47718 ...	10/08/1992 .....	57 FR 46325 ...	12/29/2000, 1/28/2002.	65 FR 83158, 67 FR 3940.
<i>Solanum incompletum</i> ..	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	.....	.....
<i>Spermolepis hawaiiensis</i> .	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	11/07/2000, 2/18/2000, 12/27/2000, 12/29/2000.	65 FR 6680, 65 FR 79192, 65 FR 82086, 65 FR 83158.
<i>Tetramolopium arenarium</i> .	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	.....	.....
<i>Vigna o—wahuensis</i> ....	E .....	09/14/1993 .....	58 FR 48012 ...	11/10/1994 .....	59 FR 56333 ...	12/18/2000, 12/29/2000, 1/28/2002.	65 FR 79192, 65 FR 83158, 67 FR 3940.
<i>Zanthoxylum dipetalum</i> var. <i>tomentosum</i> .	E .....	09/25/1995 .....	60 FR 49377 ...	10/10/1996 .....	61 FR 53137 ...	.....	.....
<i>Zanthoxylum hawaiiense</i> .	E .....	12/17/1992 .....	57 FR 59951 ...	03/04/1994 .....	59 FR 10305 ...	11/07/2000, 12/18/2000, 12/29/2000.	65 FR 66808, 65 FR 79192, 65 FR 83158.

Key: E = Endangered; T = Threatened

### Critical Habitat

Section 4 (a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations for the 58 species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including the 58 species reported from the island of Hawaii (*Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Cenchrus agrimoiodes*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyricularia*, *Colubrina oppositifolia*, *Ctenis squamigera*, *Cyanea copelandii* ssp. *copelandii*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea*

*neowawraea*, *Gouania vitifolia*, *Hedyotis cookiana*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Mariscus pennatifolius*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothocestrum breviflorum*, *Ochrosia kilauaeensis*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Plantago princeps*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Pritchardia affinis*, *Pritchardia schattaueri*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*). Among other things, the

court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, and State and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the DOWFAW, county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air

Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On September 7, 2000, we mailed letters to over 1,200 landowners on the island of Hawaii requesting any information considered germane to the management of any of the 58 plants on their property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on their property, and a handout containing general information on critical habitat. We received 300 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on the following: control of human access, ungulate control, fencing, hunting, weeding, rat control, scientific research, fire control, and propagation and/or planting of native plants. A few respondents expressed support for the designation of critical habitat. We held three open houses on the island of Hawaii, at Yano Hall in Captain Cook, the Waimea Civic Center in Waimea, and the State Building in Hilo, on August 1 to 3, 2000, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of 84 people attended the three open houses. In addition, we met with Hawaii County Division of Forestry and Wildlife staff and discussed their management activities on the island.

On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical

habitat designations or non-designations for 76 Kauai and Niihau plants (65 FR 66808). The prudency determinations and proposed critical habitat designations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086) and for Molokai plants on December 29, 2000 (65 FR 83157). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court's order.

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting an extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. We published revised critical habitat proposals on January 28, 2002 (Kauai and Niihau, 67 FR 3940), March 4, 2002 (Lanai, 67 FR 9806), April 3, 2002 (Maui and Kahoolawe, 67 FR 15856), and April 5, 2002 (Molokai, 67 FR 16492). In those proposals we determined that critical habitat was prudent for 31 species (*Achyranthes mutica*, *Adenophorus periens*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Clermontia lindseyana*, *Clermontia peleana*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis cookiana*, *Hedyotis coriacea*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron pyriformis*, *Mariscus fauriei*, *Mariscus pennatifolius*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, *Plantago princeps*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) that are reported from the island of Hawaii as well as on Kauai, Niihau, Maui, Kahoolawe, Lanai, and/or Molokai.

The prudency determinations and proposed critical habitat designations for plants from the Northwestern Hawaiian Islands were published on May 14, 2002. Publication of this proposal for plants from the island of Hawaii is consistent with the August 10, 1998, the court order.

### Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

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 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be “essential to the conservation of the species.” Critical habitat

designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, “The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.”

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is

unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in 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, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

#### A. Prudency Redeterminations

In other proposed rules we determined that designation of critical habitat was prudent for 31 species that are reported from the island of Hawaii as well as from Kauai, Niihau, Maui, Kahoolawe, Lanai, and/or Molokai. These 31 plants are: *Achyranthes mutica*, *Adenophorus periens*, *Asplenium fragile* var. *insulare*, *Bonania menziesii*, *Cenchrus agrimonoides*, *Clermontia lindseyana*, *Clermontia peleana*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis cookiana*, *Hedyotis coriacea*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron pyriformis*, *Mariscus fauriei*, *Mariscus pennatifolius*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, *Plantago princeps*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*. No change is made to these 31 proposed prudency determinations and they are hereby incorporated into this proposal (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492).

To determine whether critical habitat would be prudent for each of the 27 species (*Argyroxiphium kauense*, *Clermontia drepanomorpha*, *Clermontia pyrularia*, *Cyanea copelandii* ssp. *copelandii*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Hibiscadelphus giffardianus*, *Hibiscadelphus*

*hualalaiensis*, *Isodendron hosakae*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothocestrum breviflorum*, *Ochrosia kilaueaensis*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Pritchardia affinis*, *Pritchardia schattaueri*, *Sicyos alba*, *Silene hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum*) for which prudence determinations have not been made previously, we analyzed the potential threats and benefits for each species in accordance with the court's order. These 27 plants were listed as endangered species under the Endangered Species Act of 1973, as amended (Act) between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We have examined the evidence currently available for each of these taxa and have found specific evidence of vandalism, disturbance, and/or the threat of unrestricted collection for two species of *Pritchardia*, the native palm. At the time of listing, we determined that designation of critical habitat was not prudent for *Pritchardia affinis* and *P. schattaueri* because it would increase the degree of threat from vandalism or collecting, and would provide no benefit (59 FR 10305; 61 FR 53137). Since publication of the listing rule, we learned of specific instances of vandalism, collection, and commercial trade involving these two species of *Pritchardia*. In the 1990s, seeds of *P. schattaueri* were removed from two of the three locations of this species known at that time (Nick Agorastos, DOFAW, pers. comm. 2000; L. Perry, pers. comm. 2000). Recently we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, Service, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia*. Seven of these species are federally protected, including *P. affinis* and *P. schattaueri*. In light of this information, we believe that designation of critical habitat would likely increase the threat from vandalism or collection to these two species of *Pritchardia* on the island of Hawaii. First, these plants are easy to identify, and second, they are attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). We believe that the evidence shows that these species of palm may be attractive to such collectors. The final listing rules

for these two species contained only general information on their distribution, but the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these species more vulnerable to incidents of vandalism or collection, and, therefore, contribute to the decline of these species and make recovery more difficult (59 FR 10305; 61 FR 53137).

In addition, we believe that designation would not provide significant benefits that would outweigh these increased risks. First, *Pritchardia affinis* and *P. schattaueri* do not occur on Federal lands. *Pritchardia schattaueri* is reported on privately owned land that is zoned for agriculture, and two of the approximately 12 individuals have been fenced. In addition, the privately owned land is currently farmed, with 10 of the plants located in pasture and two located in macadamia nut orchards, and is unlikely to be developed. *Pritchardia affinis* occurs on State and privately owned lands that are zoned for conservation and agriculture. Since there does not appear to be any actions in the future that would involve a Federal agency, designation of critical habitat would not provide any additional protection to these species that they do not already have through listing alone. If however in the future any Federal involvement did occur, such as through the permitting process or funding by the Department of Agriculture, the U.S. Department of the Interior, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development or the Federal Highway Administration, the actions would be subject to consultation under Section 7 of the Act.

We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for these two species, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we propose that designation of critical habitat for *Pritchardia affinis* and *P. schattaueri* is not prudent.

To determine whether critical habitat would be prudent for *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis*, two species endemic to the island of Hawaii and which are no longer extant in the wild, we analyzed the potential threats and benefits for

these species in accordance with the court's order. These plants were listed as endangered species under the Endangered Species Act of 1973, as amended (Act) in 1994. At the time *C. copelandii* ssp. *copelandii* and *O. kilaueaensis* were listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to these species and/or would not benefit these plants. *Cyanea copelandii* ssp. *copelandii* was last seen in the wild in 1957 in the Glenwood area. *Ochrosia kilaueaensis* was last observed in the wild in 1927, in an area that is now part of Hawaii Volcanoes National Park. Neither of these two species is known to be in storage or under propagation. Given these circumstances, we determine that designation of critical habitat would be of no benefit to these species. If these species are rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532 (5) (B); 50 CFR 424.13(f)).

We have examined the evidence available for the other 23 taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 23 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include (1) triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of these 23 species there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Thirteen of these 23 species are reported from federally owned lands or



lands under Federal jurisdiction on the island of Hawaii (*Argyroxiphium kauense*, *Cyanea shipmanii*, *Cyrtandra giffardii*, *Hibiscadelphus giffardianus*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoecstrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Sicyos alba*, and *Silene hawaiiensis*) (see Table 3), where actions would be subject to section 7 consultation. While many of the species are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for 23 plant species: *Argyroxiphium kauense*, *Clermontia drepanomorpha*, *Clermontia pyrularia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Isodendron hosakae*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoecstrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Sicyos alba*, *Silene hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum*.

#### B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyrularia*, *Colubrina oppositifolia*, *Ctenitis squamigena*, *Cyanea hamatiflora* ssp. *carlsonii*,

*Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis cookiana*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrrone*, *Isodendron hosakae*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Mariscus pennatiflorus*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoecstrum breviflorum*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Plantago princeps*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna owahuensis*, *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the CPC's rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide GIS coverages, (e.g. vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 54 species; recent biological surveys and reports; our recovery plans for these 54 species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Hawaii; discussions with botanical experts; and recommendations from the Hawaii Pacific Plants Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999; S. Perlman, pers. comm. 2000, R. Hobdy, pers. comm. 2000, L. Pratt *et al.*, pers. comm. 2001).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999 we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of

important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species and species of concern) while we have only delineated areas that are essential for the conservation of the 47 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

#### C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As described in the discussions for each of the 47 species (*Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Clermontia drepanomorpha*, *Clermontia*

*lindseyana*, *Clermontia peleana*, *Clermontia pyrularia*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoestrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*) for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas in which the plant species are reported from, as described by the type of plant community, associated native plant species, locale information (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the Supplementary Information: *Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on the island of Hawaii.

We are unable to identify the primary constituent elements for *Cenchrus agrimonioides*, *Ctenitis squamigera*, *Hedyotis cookiana*, *Mariscus pennatiformis*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, and *Plantago princeps*, which no longer occur on the island of Hawaii, because information on these features for these species on

the island is not available at this time. Therefore, we are not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Cenchrus agrimonioides*, *Ctenitis squamigera*, *Hedyotis cookiana*, *Mariscus pennatiformis*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, and *Plantago princeps* on the island of Hawaii.

All areas proposed as critical habitat are within the historical range of one or more of the 47 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

#### D. Criteria Used to Identify Critical Habitat

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (e.g., population viability analysis) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used the best available information, including expert scientific opinion to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 47 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes the following components: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology ((Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennials, 300 mature individuals per population for short-lived perennials, and 500 mature individuals per population for annuals. There are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to have occurred historically as one, large, scattered population (see discussion below on *Argyroxiphium kauense*), and the proposed critical habitat designations reflect this exception for these species. To be considered recovered each population of a species endemic to the island of Hawaii should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is defined as a unit containing 100, 300, or 500 mature individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual, in which the individuals could be regularly cross-pollinated and are influenced by the same small-scale events (such as landslides).

For *Argyroxiphium kauense*, the recovery objective is more than 100,000 individuals spread over the historic range of the species because the best available information indicates this number of individuals is necessary to preserve the majority of the existing genetic diversity and to protect against extinction due to catastrophic events, especially lava flows (Service 1996c). *Argyroxiphium kauense* is monocarpic (only flowering once before dying), requires years to decades to mature, and must be cross-pollinated from a genetically different plant to produce viable seeds (Powell 1992, Carr *et al.* 1986). All of these characteristics indicate the need for more individuals in order to maintain a genetically diverse, viable population (Falk *et al.* 1996).

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes or tsunamis, that could destroy a large percentage of the species at any one time may be reduced (Menges 1990, Podolsky 2001). These recovery objectives were initially

developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1997; Podolsky 2001; Menges 1990; Murphy *et al.* 1990; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik (1996), require from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals, since much less research has been done on endangered plants. Many aspects of species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of the aforementioned characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a

general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 mature individuals per population for short-lived perennial species, and 500 mature individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach nevertheless employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the whole listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1997; Podolsky 2000; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1997). This basic conservation principle of redundancy applies to Hawaiian plants. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to 10 viable populations on one or more island(s) within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by

normal or random adverse events, such as hurricanes, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat will help give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. For *Agyroxiphium kauense*, however, the recovery goal is more than 100,000 individuals spread over the historical range of the species. Some of the habitat is currently not known to be occupied by these 47 species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes; fire; and non-native species introductions, such as the predation of *Argyroxiphium kauense* by mouflon sheep) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994; Joan Canfield, pers. comm. 1992).

In this proposal, we have defined the primary constituent elements on the basis of the habitat features of the areas in which the plant species are reported from such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 47 plant species.

We used the following considerations in delineating proposed critical habitat units. We:

1. Focused on designating units representative of the known current and historical geographic and elevational range of each species;
2. Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and
3. Delineated critical habitat boundaries in such a way that areas with overlapping occupied or potentially suitable unoccupied habitat

could be depicted clearly (multi-species units).

We began by creating rough units for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto a digital map of the island's elevation contours and vegetation types (initially described in Jacobi (1989)).

The resulting shape files (delineating historic elevational range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. For multi-island species multiple populations of each taxon were identified on islands where they now occur or occurred historically. Because of the need to propose critical habitat on an island-by-island basis for multi-island species we evaluated the historical distribution of each multi-island species throughout Hawaii, based on the best available information available to us at this time. We expect to refine proposed areas for these multi-island species once all the proposed rules for the Hawaiian Islands are published. This refinement will be based on an evaluation on what is essential to the species on these islands throughout its historical distribution. Of the areas identified as potentially suitable habitat, only those areas within the least disturbed suitable habitat and that were determined as essential to the species were proposed as critical habitat.

A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to

assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; M.H. Schierup and F.B. Christiansen 1996).

Using the above criteria we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data we then eliminated areas that did not contain the appropriate vegetation, associated native plant species, or features such as cultivated agriculture fields, housing developments or other areas that are unlikely to contribute to the conservation of one or more of the 47 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit, were used as unit area boundaries. We also used watershed delineations to dissect very large proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Section 7 consultation is necessary and adverse modification generally could occur only if the primary constituent elements are affected within the critical habitat boundaries. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 47 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing man-made features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, for the Hawaii Island species we utilized the approved

recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the habitat necessary on the island of Hawaii to provide for the conservation of these 47 species.

#### E. Managed Lands

Currently occupied or historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 47 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on Hawaii island with a known occurrence of one of the 47 species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at three locations (Captain Cook, Waimea, and Hilo) on the island of Hawaii on August 1, 2, and 3, 2000, respectively. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on Hawaii island under State of Hawaii jurisdiction, we met with staff from the island of Hawaii's DOFAW office to discuss their current management for the plants on their lands.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections." Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides

assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985, Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1999; Vitousek 1992; Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999; Loope 1998). The degradation and destruction of habitat, and consumption of listed plants by wildfire has also played a direct role in the decline of over half of these species. Logging and clearing are still threats to the habitats that support these species, but to a much lesser degree than prior to listing.

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including cattle, goats, sheep, and pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit and flower eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport affected by non-native insects,

pathogens and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates vectoring weeds and disturbing vegetation and soils thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Cuddihy and Stone 1999; Mack 1992; Scott *et al.* 1986; Howarth 1985, Smith 1985; D'Antonio and Vitousek 1992, Tunison *et al.* 1992; Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999, Bruegmann *et al.* 2001).

(2) The recommendations from the HPPRCC in their 1998 report to the Service ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes.

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 47 species (Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999), in the 1998 HPPRCC report to us (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1999; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1994, 1995a, 1996a, 1996b, 1996c, 1997a, 1998a, 1998b, 1998c, 1999). It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a

particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants: Feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access.

As shown in Table 3, the proposed critical habitat designations for 47 species of plants are found on Federal, State, and private lands on the island of Hawaii. Information received in response to our public notices, letters to landowners, open houses, and meetings, and information in our files indicated that on-going conservation management action for these plants is variable, see below. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on various activities such as fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and/or planting of native plants. Without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

## Federal Lands

### *Pohakuloa Training Area*

The Sikes Act Improvements Act of 1997 (Sikes Act) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs 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. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

The Pohakuloa Training Area is on State-owned land that is leased and administered by the United States Army Garrison, Hawaii (Army) for live-fire training. Ten plant species (*Asplenium fragile* var. *insulare*, *Hedyotis coriacea*, *Neraudia ovata*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*) are reported from Pohakuloa Training Area (RCUH 1997; HINHP Database 2000). The Army has written an INRMP, an Ecosystem Management Plan, an Endangered Species Management Plan, a Fire Management Plan, and annual reports on the natural resources management projects performed under the Ecosystems Management Program at Pohakuloa Training Area (Tamimi 1998; Evans 1998; Evans 1999; Schnell 1998; Schnell 1999; Sherry 1999; RCUH 1997; RCUH 1998; USAG-HI 2000). These documents and records of telephone conversations with Pohakuloa Training Area environmental staff indicate that some of the management actions identified in these plans have been implemented and have proven beneficial to populations of some species (Lena Schnell, and Scott Henderson, Pohakuloa Training Area, pers. comms. 2001). However, current management is not sufficient to address many of the factors inhibiting the long-term conservation of any of these ten species and thus provide conservation benefits to the species. In addition, there is no guarantee of long-term funding for

on-going or future management actions. The U.S. Army is currently engaged in discussions with the Service to identify training-related impacts to the ten listed species at Pohakuloa Training Area and develop measures that avoid, minimize and offset those impacts. However, a more comprehensive management document has not been completed at this time. Therefore, we can not at this time find that management on this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat.

#### Hawaii Volcanoes National Park

Nineteen species (*Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Clermontia pyricularia*, *Cyrtandra giffardii*, *Hibiscadelphus giffardianus*, *Ischaemum byrone*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoestrum breviflorum*, *Phyllostegia racemosa*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Spermolepis hawaiiensis*, and *Zanthoxylum hawaiiense*) are reported from Hawaii Volcanoes National Park (GDSI 2000; HINHP Database 2000).

Hawaii Volcanoes National Park (HVNP) was established by Congress in 1916 as the Hawaii Volcanoes Section of Hawaii National Park. In 1961, an Act of Congress established Hawaii Volcanoes as an independent unit of the National Park System to preserve for visitor enjoyment and scientific study the HVNP's outstanding scenic, geological, and biological resources. Hawaii Volcanoes National Park encompasses diverse environments that range from sea level to the summit of Mauna Loa at 4,169 m (13,677 ft) and includes the active Kilauea volcano (National Park Service 2001).

Management programs, objectives, and their progress are documented in the 1974 Natural Resources Management Plan final environmental statement (National Park Service 1974) and Draft 2000 Resource Management Plan (National Park Service 2000) for HVNP. Although HVNP's 1974 plan outlines the management issues and strategies used to protect, restore, and enhance the rare and native plants and their habitats within the park, it does not adequately address the conservation needs of the 19 plant species reported from the Park. We are aware that specific units within the HVNP are managed for feral ungulate control. Some units are currently free of, or at sufficiently low numbers of, feral ungulates that no additional special management of these units is necessary

for several of the 19 plant species for which browsing, rooting and digging by feral ungulates have been identified as the primary threats. However, sufficient information regarding species status is not available. Therefore, we have retained this area within the critical habitat proposal.

#### Hakalau Forest National Wildlife Refuge, Hakalau Unit

Five species (*Clermontia lindseyana*, *Clermontia peleana*, *Cyanea shipmanii*, *Phyllostegia racemosa*, and *Phyllostegia velutina*) are reported from the U.S. Fish and Wildlife Service's Hakalau Unit of Hakalau Forest National Wildlife Refuge (GDSI 2000; HINHP Database 2000; Service 2000b).

Hakalau Forest National Wildlife Refuge was established in 1985 for the conservation of endangered forest birds and their rainforest habitat. Refuge management efforts are focused on fencing out and removing feral cattle and pigs, controlling weeds such as *Passiflora mollissima*, *Rubus argutus* (prickly Florida blackberry), and *Ulex europaeus* (gorse), and planting native plant species to restore native habitat. Endangered and common Hawaiian native plants are propagated and outplanted within fenced areas. Plant and animal populations are monitored and non-native plants controlled. Volunteers play an important role by planting trees and removing weeds. Management programs, objectives, and progress are documented in the Refuge's Management Plan (Service 1989). This plan details the management issues and strategies used to protect, restore, and enhance the rare and native plants and their habitats within Refuge boundaries (Service 1989). Specific proposed actions to control feral cattle and pigs include: Fencing, one-way gates, cattle driving, public hunting, staff hunting with dogs, aerial hunting, contract hunting with dogs, and trapping. Some monitoring actions to determine the status and distribution of ungulates, measure the effectiveness of management and control techniques, and evaluate recovery of the native biota have been implemented (Service 1996d).

Specific actions for control of non-native plants are outlined in the Draft Hakalau Forest National Wildlife Refuge Alien Species Management Plan (Service 2000a). Objectives include: Fencing and removal of ungulates from Hakalau Forest National Wildlife Refuge to stimulate recovery of native vegetation and slow or prevent the establishment of non-native plants; preventing or reducing the introduction and spread of non-native plants by staff,

visitors, or other persons working or visiting Hakalau Forest National Wildlife Refuge; developing a monitoring program to identify new introductions of non-native plant species; mapping distributions of established invasive non-native plant species and developing a prioritized list of species for control; controlling targeted species of non-native plants using herbicide or manual methods; monitoring non-native plant control efforts to determine their effectiveness and monitoring response of vegetation to non-native plant control efforts; and controlling non-native birds that disperse invasive plants (Service 2000a).

Specific actions for threatened and endangered plant recovery include: Collecting seed and tissue material for propagation, reforestation, and outplanting. The number and location of outplanted common, threatened and endangered plant species is detailed in the Hakalau Forest National Wildlife Refuge Greenhouse FY 2000 annual report (Service 2000b). Actions outlined in the 1995 reforestation management plan include: Reforesting heavily grazed areas by planting seedlings of canopy tree species such as *Acacia koa*, *Metrosideros polymorpha*, and *Sophora chrysophylla*; reforesting heavily grazed areas and more lightly impacted areas with native understory plant species including rare and endangered species; and facilitating natural regeneration within areas less impacted by grazing using techniques such as soil scarification and herbicide treatments (Service 1995b).

Specific actions for wildland fire management are outlined in the 1997 Wildland Fire Management Strategy. These actions include: Providing an initial attack fire suppression capability; conducting prescribed fire activities in support of refuge habitat management programs; establishing appropriate fire related agreements/contracts; monitoring results of wild land and prescribed fires; updating fire management and associated plans, call-out lists, and mobilization guidelines; continuing to develop a cadre of "red-carded" firefighters for wild land fire, trained and equipped to accomplish the fire management program; and maintaining the refuge fire cache and fire equipment in a ready state (Service 1997b).

The plans listed above and the actions that have been implemented to manage endangered species habitats demonstrate the long-term commitment of the Refuge to ecosystem management within designated management units. Specifically, some factors causing the decline of *Clermontia lindseyana*,

*Cyanea shipmanii*, *Phyllostegia racemosa*, and *Phyllostegia velutina* have been controlled within the following feral ungulate management units: Middle Honohina unit, Shipman unit, Upper Malua Unit, Upper Honohina unit, Middle Papaikou unit, and Pua Akala unit. However, we have not excluded the Refuge lands from this proposed designation.

#### *Hakalau Forest National Wildlife Refuge, Kona Forest Unit*

Two species (*Clermontia lindseyana* and *Nothoctrum breviflorum*) are reported from the U.S. Fish and Wildlife Service's Kona Forest Unit of Hakalau Forest National Wildlife Refuge (GDSI 2000; HINHP Database 2000).

The Kona Forest Unit of Hakalau Forest National Wildlife Refuge was established in 1997 to protect endangered forest birds and their habitat. Although the Service conducts some conservation management actions on this land, we have not yet begun implementing many of the actions outlined in our Conceptual Management Plan (Service 1997c) or in our Wildland Fire Management Plan (Service 2000c). Therefore, we have not proposed to exclude the Refuge from the designation.

#### **State of Hawaii Lands**

The State lands on the island of Hawaii include ceded and leased lands, and those that are administered by the Department of Hawaiian Home Lands (DHHL), the Department of Public Safety (DPS), and the Department of Land and Natural Resources (DLNR). Forty-two plants are reported from State lands (*Adenophorus periens*, *Achyranthes mutica*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonania menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyrularia*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoctrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Spermolepis hawaiiensis*,

*Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*). DLNR lands are made up of Forest Reserves, Wildlife Sanctuaries, Natural Area Reserves, State Recreation Areas, and a Research Reserve. Within DLNR the Division of Forestry and Wildlife administers all of these lands. State Recreation Areas are administered by the Division of State Parks. DLNR also manages the DHHL lands on the island of Hawaii. The Department of Public Safety lands are at Kulani Correctional Facility and are managed by that facility in cooperation with the Olaa-Kilauea Management Partnership. The State conducts some conservation management actions on these lands and provides access to others who are conducting such activities.

Many of DLNR's programs provide beneficial effects to endangered species and their habitat. Hawaii DOFAW management actions include fences that have been built to exclude feral ungulates from several one-acre rare plant sites, propagation and dissemination of native tree species that help restore native plant assemblages around the island, participation in a cooperative ecosystem management partnership with other Federal and State agencies and a private landowner, and administration of programs that either directly or indirectly benefit endangered species and their habitats. Twelve one-acre rare dry forest plant management units were established during the 1980s to protect dry forest plants from browsing and wildfire. These units were fenced to exclude feral ungulates and maintained in a fuel-free condition that has kept frequent wildfires from consuming the enclosed rare plants. These sites have provided a seed source for endangered species restoration efforts elsewhere on the island (Vickie Caraway, DOFAW, pers. comm. 2001).

The Division of Forestry and Wildlife's Natural Area Reserves System (NARS) was established in 1970 with the intent to preserve and maintain unique Hawaiian ecosystems and geological features. The island of Hawaii has eight NARS that encompass a total of 33,407 ha (82,550 ac). Six of these NARS harbor endangered species and are managed primarily to maintain the native ecosystems that support these species. Some management actions that have occurred in many of the NARS include construction of feral ungulate enclosure fences around particularly unique plant communities, such as within older kipuka (vegetated area surrounded by bare lava flows), and other habitats that support populations of endangered species; treatment of endangered tree species for invasive

non-native insects; physical and chemical control of non-native plant populations; rat baiting; and, feral cat trapping. Such sites include the Lama and Olopuia units in Manuka NAR which support *Pleomele hawaiiensis* and *Colubrina oppositifolia*, and *Flueggea neowawaraea* and *Gouania vitifolia*, respectively; the Aku unit in the Puu Makaala NAR that supports *Sicyos alba*; Laupahoehoe NAR that supports *Cyrtandra tintinnabula*, and the Puu o Umi NAR that supports a habitat ranked by the Hawaii Natural Heritage Program as a globally imperiled ecosystem, and other rare species (HINHP Database 2000; Hawaii DLNR 1982; Hawaii DLNR 1989a; Hawaii DLNR 1989b; Hawaii Heritage Program 1989).

Numerous efforts by the State of Hawaii on the island of Hawaii contribute to the conservation of listed plant species, including their rare plant management activities, administration of the NARS and Hawaii Forest Stewardship Program (FSP) programs. However these programs do not adequately address the ongoing threats to these listed plant species on their lands. In addition, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands; no updated detailed reports on management actions conducted, and no assurances that management actions will be implemented in the long term or that long term funding is secure. Therefore, we cannot, at this time, find that management on these State lands is adequate to preclude a proposed designation of critical habitat.

#### Partnership (Federal-State-Private) Lands

##### *Olaa Kilauea Management Area*

Nine species (*Asplenium fragile* var. *insulare*, *Clermontia lindseyana*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Plantago hawaiiensis*, and *Sicyos alba*) are reported from the *Olaa Kilauea* Partnership lands owned by State, private and Federal entities on Hawaii island (GDSI 2000; HINHP Database 2000; Hawaii DLNR *et al.* 1999).

In an effort to protect native biological resources, landowners and other interested parties established a partnership to cooperatively manage the *Olaa-Kilauea* Management Area. This 12,950 ha (32,000 ac) management area includes lands owned or controlled by the Hawaii Department of Public Safety (Kulani Correctional Facility), the Hawaii Department of Land and Natural

Resource (Puu Makaala Natural Area Reserve), the National Park Service (*Olaa* tract of Hawaii Volcanoes National Park), and privately owned lands in Kilauea Forest. The partnership cooperative agreement signed in 1994 includes the commitment to jointly develop a natural resources management plan that includes, but is not limited to, feral animal and non-native plant control measures, collaborative research projects, and habitat protection and restoration. A group of landowners and managers of these project lands as well as representatives from the Service, USGS-BRD and the U.S. Forest Service (USFS) developed a five year management plan (Hawaii DLNR *et al.* 1999).

The overall objective of management in the project area is the protection and recovery of native ecosystems to the point that they are self-sustaining, native-dominated communities with secure populations of native plant, invertebrate, and forest bird species. Management efforts are aimed at controlling feral pigs and non-native plants. As objectives for feral pig and non-native plant control are achieved and large, pig-free areas become available for more intensive management control for other predators, (*i.e.* black rats (which eat the fruit and/or seeds of some plants species)) restoration of rare plant species will be implemented (Hawaii DLNR *et al.* 1999).

Specific management actions to address feral ungulates include the construction of fences surrounding management units; staff hunting, trapping and snaring; and monitoring transects to detect ingress and determine efficiency of the feral animal control program within the management areas (Hawaii DLNR *et al.* 1999).

Specific management actions to address non-native plants include mapping the distribution of priority non-native plants; development of a control strategy; herbicide or manual control; follow-up monitoring to determine the effectiveness of control efforts; and, long-term monitoring of non-native plants within and outside fenced areas (Hawaii DLNR *et al.* 1999).

Specific management for rare plant inventory, monitoring and recovery actions include additional surveys and mapping the distribution of individual plants and populations; intensive monitoring to assess potential threats; evaluation of forest stand structure and reproduction; and, monitoring following management actions such as fencing and pig control. Propagation and outplanting programs are being considered for some rare plant species

that appear to be inadequately reproducing in the wild or for those with inadequate genetic representation in the wild (*i.e.*, few individuals). As rare plants are located, representative genetic material is collected and maintained at the Volcano Mid-Elevation Rare Plant Facility. In some instances spot fencing is erected for interim protection from ungulates (Hawaii DLNR *et al.* 1999).

However these actions do not adequately address the ongoing threats to the listed plant species on this land. In addition, there is no legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long term maintenance of the species. Therefore, we cannot, at this time, find that management on these lands is adequate to preclude a proposed designation of critical habitat.

#### Private Lands

##### *Kaupulehu mauka (toward the mountain, inland)*

This 2 ha (5 ac) parcel in the District of North Kona is owned by the National Tropical Botanical Garden and is managed expressly for the benefit of endangered plants and their habitat. Currently, there are three endangered plant species that naturally occur within this parcel, *Colubrina oppositifolia*, *Nothoecstrum breviflorum*, and *Pleomele hawaiiensis*. The primary factors inhibiting the recovery of these species in this area was limited seedling growth of these dry forest trees due to altered microclimate conditions by the non-native plant *Pennisetum setaceum* (fountain grass), wildfire, seed predation by rats and mice, and occasional browsing of seedlings and saplings by feral sheep and goats. A cattle fence was erected in 1950 and the cattle removed, however there are local accounts of feral sheep and goats using this area off-and-on until the fence was improved with hogwire and barbed wire in 1996. In 1996 the North Kona Dry Forest Working Group was organized to address recovery of dry forest ecosystems in the region and the group focused on this 2 ha (5 ac) parcel as its pilot project. The group has since removed all of the *Pennisetum setaceum* and thus reduced the wildfire hazard to this area. Rodent populations have also been controlled within this unit and numerous native understory species have been planted. The North Kona Dry Forest Working Group is committed to long-term management of this parcel for the benefit of Hawaiian dry forest ecosystems. However, no legally operative plan has been prepared for the



site. In addition, this group operates with year-to-year funding and there is no assurance that funding will be available for long-term maintenance of the on-going management activities. Therefore, we cannot at this time, find that management on this land is adequate to preclude a proposed designation of critical habitat (Hawaii Forest Association, *in litt.* 1998; M. Brueggemann, pers. comm. 1999).

*Kaupulehu makai (toward the ocean)*

This 28 ha (70 ac) management unit in the District of North Kona is part of a larger parcel owned by the Kamehameha Schools Bishop Estate. Four endangered plant species naturally occur within this dry forest management unit, *Bonamia menziesii*, *Colubrina oppositifolia*, *Nothoecstrum breviflorum*, and *Pleomele hawaiiensis*. The primary factors inhibiting the recovery of these species in this area was the limited seedling growth of these dry forest trees due to altered microclimate conditions by non-native *Pennisetum setaceum*, wildfire, seed predation by rats and mice, and occasional browsing of seedlings and saplings by feral sheep and goats. A sheep and goat fence was erected in 1999 by the North Kona Dry Forest Working as part of an effort to expand dry forest restoration efforts to larger areas within the region. The group is in the process of removing *Pennisetum setaceum* from this site to eliminate the wildfire hazard to this area and enhance forest restoration efforts. Rodent populations are also being controlled within this unit and numerous native understory species have been planted. The North Kona Dry Forest Working Group is committed to long-term management of this parcel for the benefit of Hawaiian dry forest ecosystems and no management activities beyond those planned and currently occurring at the site appear to be needed to provide for the conservation of the four listed plant species. However, no legally operative

plan has been prepared for the site. In addition, this group operates with year-to-year funding and there is no assurance that funding will be available for long-term maintenance of the on-going management activities. Therefore, we cannot at this time, find that management of this land is adequate to preclude a proposed designation of critical habitat (Hawaii Forest Industry Association *in litt.* 1998).

If we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of the 47 listed species at issue in this proposed designation, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, the Service can consider this information when making a final determination of critical habitat.

In addition, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Hawaii. We support these efforts and provide technical assistance whenever possible. We are soliciting comments on whether future development and approval of conservation measures (*e.g.*, Habitat Conservation Plans, Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands and, if so, by what mechanism.

The proposed critical habitat units described below constitute our best assessment of the physical and biological features needed for the conservation of the 47 plant species (*Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Clermontia drepanomorpha*, *Clermontia*

*lindseyana*, *Clermontia peleana*, *Clermontia pyrularia*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoecstrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*) and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court order requires us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 5.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, HAWAII COUNTY, HAWAII.<sup>1</sup>

Unit name	State/Local	Private	Federal	Total
Hawaii A1 .....	518 ha (1,280 ac) .....	202 ha (498 ac) .....	.....	719 ha <sup>1</sup> (1,777 ac)
Hawaii A2 .....	1,779 ha (4,395 ac) ...	907 ha (2,240 ac) .....	.....	2,685 ha <sup>1</sup> (6,635 ac)
Hawaii B .....	5,738 ha (14,178 ac)	2,462 ha (6,084 ac) ...	.....	8,200 ha (20,263 ac) <sup>1</sup>
Hawaii C .....	38 ha (94 ac) .....	<1 ha (<1 ac) .....	.....	38 ha (94 ac)
Hawaii D1 .....	.....	55 ha (136 ac) .....	.....	55 ha (136 ac)
Hawaii D2 .....	.....	43 ha (107 ac) .....	.....	43 ha (107 ac)
Hawaii D3 .....	.....	257 ha (636 ac) .....	.....	257 ha (636 ac)
Hawaii D4 .....	.....	14 ha (34 ac) .....	.....	14 ha (34 ac)
Hawaii D5 .....	.....	1 ha (4ac) .....	.....	1 ha (4 ac)
Hawaii D6 .....	.....	36 ha (89 ac) .....	.....	36 ha (89 ac)

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, HAWAII COUNTY, HAWAII.<sup>1</sup>—Continued

Unit name	State/Local	Private	Federal	Total
Hawaii D7		112 ha (278 ac)		112 ha (278 ac)
Hawaii D8		8 ha (21 ac)		8 ha (21 ac)
Hawaii E	1,565 ha (3,866 ac)	52 ha (128 ac)	1,375 ha (3,399 ac)	2,992 ha (7,393 ac)
Hawaii F	4,639 ha (11,464 ac)	946 ha (2,338 ac)	8,321 ha (20,561 ac)	13,906 ha (34,363 ac)
Hawaii G	22,274 ha (55,040 ac)	6,378 ha (15,760 ac)	3,634 ha (8,980 ac)	32,286 ha (79,781 ac) <sup>1</sup>
Hawaii H	46 ha (113 ac)	1,406 ha (3,476 ac)	3,870 ha (9,563 ac)	5,322 ha (13,151 ac) <sup>1</sup>
Hawaii I		8 ha (20 ac)	514 ha (1,269 ac)	522 ha (1,290 ac) <sup>1</sup>
Hawaii J	4,304 ha (10,636 ac)	499 ha (1,233 ac)	262 ha (647 ac)	5,065 ha (12,516 ac)
Hawaii K	8,742 ha (21,601 ac)	6,552 ha (16,191 ac)		15,294 ha (37,792 ac)
Hawaii L	<1 ha (<1 ac)		38,504 ha (95,145 ac)	38,505 ha (95,148 ac) <sup>1</sup>
Hawaii M1	19 ha (46 ac)			19 ha (46 ac)
Hawaii M2	133 ha (328 ac)			133 ha (328 ac)
Hawaii M3	112 ha (277 ac)	29 ha (72 ac)		141 ha (349 ac)
Hawaii M4	141 ha (347 ac)			141 ha (347 ac)
Hawaii M5			533 ha (1,316 ac)	533 ha (1,316 ac)
Hawaii N1	35 ha (87 ac)			35 ha (87 ac)
Hawaii N2	439 ha (1,084 ac)		2 ha (6 ac)	441 ha (1,091 ac) <sup>1</sup>
Hawaii O	179 ha (441 ac)	36 ha (90 ac)		215 ha (531 ac)
Hawaii P	12 ha (31 ac)	534 ha (1,320 ac)		547 ha <sup>1</sup> (1,351 ac)
Hawaii Q	3,148 ha (7,778 ac)	401 ha (992 ac)		3,549 ha (8,770 ac)
Hawaii R	336 ha (830 ac)	51 ha (126 ac)		387 ha (955 ac) <sup>1</sup>
Hawaii S	351 ha (868 ac)	32 ha (79 ac)		383 ha (947 ac)
Hawaii T	1,094 ha (2,704 ac)	395 ha (977 ac)		1,489 ha (3,681 ac)
Hawaii U			615 ha (1,520 ac)	615 ha (1,520 ac)
Hawaii V		951 ha (2,351 ac)		951 ha (2,351 ac)
Hawaii W		1,479 ha (3,654 ac)		1,479 ha (3,654 ac)
Hawaii X	138 ha (340 ac)			138 ha (340 ac)
Hawaii Y1	4 ha (11 ac)	208 ha (513 ac)		212 ha (524 ac)
Hawaii Y2	195 ha (482 ac)	139 ha (344 ac)		334 ha (826 ac)
Hawaii Z	8,317 ha (20,552 ac)	2,421 ha (5,983 ac)		10,738 ha (26,535 ac)
Hawaii AA	26,198 ha (64,736 ac)	2,107 ha (5,206 ac)	79 ha (196 ac)	28,384 ha (70,138 ac)
Hawaii BB	43 ha (106 ac)			43 ha (106 ac)
Total	90,534 ha (223,715 ac)	28,725 ha (70,980 ac)	57,709 ha (142,601 ac)	176,968 ha (437,285 ac)

<sup>1</sup> Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or differences due to rounding.

Proposed critical habitat for 47 species includes lands under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including lands managed by the Department of Defense, U.S. Fish and Wildlife Service, Government Services Administration, and the National Park Service. Lands proposed as critical habitat have been divided into 28 units (Hawaii A1 through Hawaii BB) on the island of Hawaii. A brief description of each unit is presented below.

**Descriptions of Critical Habitat Units**

**Hawaii A**

The proposed unit Hawaii A (subunits A1 and A2) provides occupied habitat for two species: *Nothoestrum breviflorum* and *Pleomele hawaiiensis*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for

each species and 100 mature individuals per population for *Nothoestrum breviflorum* and *Pleomele hawaiiensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Hawaii A).

This unit cluster contains a total of 3,404 ha (8,412 ac) on State and private lands. Unit A1 is in the Pololu and Honokane Nui watersheds and unit A2 is bordered on the west by the Honokane Iki watershed and on the east by the Waimanu watershed and contains portions of the Honokea, Honopue, Kailikaula, Kaimu, Kalele, Kolealiili, Kukui, Nakooko, Ohiahuea, Pae, Paopao South, Punalulu, Waiaalala, Waiapuka, Waikalua, Waimaile, and Waipahi watersheds. It contains a portion of the Kohala forest Reserve. The natural features found in this unit are: Unit A1, Kupaenu summit and Pololu Stream; unit A2, Kamoloumi

Stream, Kolealiili Stream, Ohiahuea Stream, Oniu Stream, Paohia Gulch, Waipani Stream, and Waiapuka Stream.

*Key to Table for Hawaii A–BB*

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self-perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.
2. Island endemic.
3. Multi-island species with current locations on other islands.
4. Multi-island species with no current locations on other islands.
5. Current locations do not necessarily represent viable populations with the required number of mature individuals.
6. Several current locations may be affected by one naturally occurring, catastrophic event.
7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.

8. Not all currently occupied habitat was determined to be essential to the recovery of the species.

9. Life history, long-lived perennial—100 mature, reproducing individuals needed per population.

10. Life history, short-lived perennial—300 mature, reproducing individuals needed per population.

11. Life history, annual—500 mature, reproducing individuals needed per population.

12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.

13. Species has extremely restricted, specific habitat requirements.

14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

‡ Not all suitable habitat is designated, only those areas essential for the conservation of the species.

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Notes	*Species is wide ranging.†	*Species is wide ranging.†
14. Hybridization is possible.		
13. Restricted habitat requirements.		
12. Narrow endemic.		
11. Annual–500/pop.		
10. Short-lived perennial–300/pop.		
9. Long-lived perennial–100/pop.	X	X
8. Not all occupied habitat needed.	X	
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction.	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		
2. Island endemic.	X	X
1. 8–10 pop. guidelines.	X*	X*
Species	<u>Nothocestrum breviflorum</u>	<u>Pleomele hawaiiensis</u>

Table for Hawaii A

**Hawaii B**

The proposed unit Hawaii B provides occupied habitat for three species:

*Achyranthes mutica*, *Clermontia drepanomorpha*, and *Phyllostegia warshaueri*. It is proposed for designation because it contains the

physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or

more of the 8 to 10 populations for each species and 300 mature individuals per population for *Achyranthes mutica*, *Clermontia drepanomorpha*, and *Phyllostegia warshaueri*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Hawaii B).

This unit contains a total of 8,200 ha (20,263 ac) on State and privately owned lands. It is in portions of the Haloa, Honokane Nui, Honopue, Kaimu, Kawaihae, Lamimaumau, Nakooko, Ohiahuea, Waikaloa, Waikoloa/Waiulaula, Wailoa/Waipio, and Waimanu watersheds. It contains a portion of the Kohala Forest Reserve. Natural features found in this unit are Eke (summit), Kaholopoohina (summit),

Kaiholena (summit), Kaunu o Kaleioohie (summit), Kilohana Gulch, Kohala Mountains (summit), Makalii (summit), Momoualoe Gulch, Opaoloe (summit), Puu Ahia, Puu Iki, Puu Kamo, Puu Kawaiwai, Puu Laelae, Puu Lanikepu, Puu Loa (summit), Puu Makela, Puu Mala, Puu Ohu, Puu Palailai, Puu Pohoulaula, Puu o Umi, and Waiaka Gulch.

Notes	*Not enough suitable habitat for 8 to 10 pops		
14. Hybridization is possible.			
13. Restricted habitat requirements.			
12. Narrow endemic.			
11. Annual-500/pop.			
10. Short-lived perennial-300/pop.	X	X	X
9. Long-lived perennial-100/pop.			
8. Not all occupied habitat needed.			
7. Species with variable habitats.	X	X	X
6. Several occ. vulnerable to destruction.	X	X	X
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.	X		
3. Multi-island/current other islands.			
2. Island endemic.		X	X
1. 8-10 pop. guidelines.	X*	X	X
Species	<u>Achyranthes mutica</u>	<u>Clermontia drepanomorpha</u>	<u>Phyllostegia warshaueri</u>

Table for Hawaii B

**Hawaii C**

The proposed unit Hawaii C provides occupied habitat for one species: *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides

habitat to support 1 or more of the 8 to 10 populations for each species and 300 mature individuals per population throughout its known historical range considered by the recovery plans to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Hawaii C).

This unit contains a total of 38 ha (94 ac) on State and privately owned lands. The unit is in the Pohakuloa watershed and contains a portion of the Hapuna Beach State Recreation Area. This unit is north of Wailaea Bay and south of Hapuna Bay and adjacent to Kanekakapa Point.

Table for Hawaii C

Notes	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	X
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines.	X*
Species	<u>Sesbania tomentosa</u>



**Hawaii D**

The proposed unit Hawaii D (subunits D1 through D8) provides occupied habitat for three species: *Isodendron hosakae*, *Portulaca sclerocarpa*, and *Vigna o-wahuensis*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for each species and 300 mature individuals per population for all three species, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species.

This unit also provides unoccupied habitat for the above three species: *Isodendron hosakae*, *Portulaca sclerocarpa*, and *Vigna o-wahuensis*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 300 mature individuals per population for *Isodendron hosakae*, *Portulaca sclerocarpa*, and *Vigna o-wahuensis*, throughout their known historical range (see the discussion of conservation

requirements in Section D, and in the table for Hawaii D).

This unit cluster contains a total of 526 ha (1,305 ac) on privately owned land. The units consist of puu (hills, summits, cinder cones) in the areas between the Kamakahala watershed in the west and Waipunahoe watershed in the east (with portions of Waikoloa/Waiulaula and Waiulili). Natural features for this unit are: Unit D1 contains Puu Pa; unit D2 contains Holoholoku summit; unit D3 contains Puu Io, Puu Kaliali, Puu Kekuakahea, and Puu Makahalau; unit D4 contains Heihei summit; unit D5 contains Nohona o Haeiki summit; unit D6 contains Nohona o Hae summit; unit D7 contains two unnamed puu; and unit D8 contains Puu Papapa.

Species

Notes			
		*Cinder cones.	*Species is wide ranging, each island was probably one large, population.
			*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.			
13. Restricted habitat requirements.	X*		
12. Narrow endemic.	X		
11. Annual-500/pop.			
10. Short-lived perennial-300/pop.	X	X	X
9. Long-lived perennial-100/pop.			
8. Not all occupied habitat needed.			
7. Species with variable habitats.		X	X
6. Several occ. vulnerable to destruction.		X	X
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.		X	X
2. Island endemic.	X		
1. 8-10 pop. guidelines.	X	X*	X*
	<u>Isodendron hosakae</u>	<u>Portulaca sclerocarpa</u>	<u>Vigna o-wahuensis</u>

Table for Hawaii D

**Hawaii E**

The proposed unit Hawaii E provides occupied habitat for three species: *Clermontia lindseyana*, *Clermontia pyrularia*, and *Phyllostegia racemosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support

1 or more of the 8 to 10 populations for each species and 300 mature individuals per population for *Clermontia lindseyana*, *Clermontia pyrularia*, and *Phyllostegia racemosa*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Hawaii E).

This unit contains a total of 2,992 ha (7,393 ac) on State, Federal, and private lands. It is bounded on the north by Kaawali watershed and on the south by Umauma watershed and contains portions of the Haakoa, Kaiwilahilahi, and Waikaumalu watersheds. This unit contains portions of the Hakalau Forest NWR and the Hilo Forest Reserve. Natural features found in this unit are Nauhi Gulch and Puu Lahohinu.

Species	Notes				*Epiphytic.
	14. Hybridization is possible.				
	13. Restricted habitat requirements.				X*
	12. Narrow endemic.				
	11. Annual-500/pop.				
	10. Short-lived perennial-300/pop.	X	X	X	
	9. Long-lived perennial-100/pop.				
	8. Not all occupied habitat needed.	X			
	7. Species with variable habitats.	X	X		
	6. Several occ. vulnerable to destruction.	X	X	X	
	5. Non-viable populations.	X	X	X	
	4. Multi-island/no current other islands.				
	3. Multi-island/current other islands.	X			
	2. Island endemic.		X	X	
	1. 8-10 pop. guidelines.	X	X	X	
<u>Clermontia lindseyana</u>					
<u>Clermontia pyrularia</u>					
<u>Phyllostegia racemosa</u>					

Table for Hawaii E

**Hawaii F**

The proposed unit Hawaii F provides occupied habitat for six species: *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Phyllostegia racemosa*, *Phyllostegia warshaueri*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for this species and 300 mature individuals per population of *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Phyllostegia racemosa*, *Phyllostegia warshaueri*, throughout their known historical range considered

by the recovery plans to be necessary for the conservation of these species.

This unit also provides unoccupied habitat for one species: *Clermontia peleana*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more additional populations necessary to meet the recovery objectives of 8 to 10 populations and 100 mature individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Hawaii F).

This unit contains a total of 13,906 ha (34,363 ac) on State, Federal, and

private lands. This unit contains portions of the Haakoa, Hakalau, Honolii, Kaawalii, Kaiwiki, Kaiwilahilahi, Kapue, Kaula, Kawainui, Kilau, Kolekole, Laupahoehoe, Manoloa, Manowaiopae, Maulua, Nanue, Ninole, Pahale, Pahoehoe, Pohakupuka, Umauma, Waiaama, Waikaumalo, Wailuku, and Waipunalei watersheds. Unit F contains portions of the Hakalau Forest National Wildlife Refuge, Hilo Forest Reserve, Laupahoehoe Natural Area Reserve and Manowaiopae Forest Reserve. The natural features include Haakoa Stream, Kaawalii Stream, Kaiwilahilahi Stream, Kaloaloo (summit), Kaula Stream, Magnetic Hill, Pahale Stream, Painiu Stream, and Waikaumalo Stream.

Notes	*Historical on Hawaii						
14. Hybridization is possible.							
13. Restricted habitat requirements.						X *	
12. Narrow endemic.							
11. Annual-500/pop.							
10. Short-lived perennial-300/pop.	X	X	X	X	X	X	X
9. Long-lived perennial-100/pop.							
8. Not all occupied habitat needed.		X		X	X		
7. Species with variable habitats.	X	X	X	X	X		X
6. Several occ. vulnerable to destruction.		X	X	X	X	X	X
5. Non-viable populations.		X	X	X	X	X	X
4. Multi-island/no current other islands.	X*						
3. Multi-island/current other islands.							
2. Island endemic.		X	X		X	X	X
1. 8-10 pop. guidelines.	X	X	X	X	X	X	X
Species	<u>Clermontia peleana</u>	<u>Cyanea platyphylla</u>	<u>Cyanea shipmanii</u>	<u>Cyrtandra giffardii</u>	<u>Cyrtandra tintinnabula</u>	<u>Phyllostegia racemosa</u>	<u>Phyllostegia warshaueri</u>

Table for Hawaii F

**Hawaii G**

The proposed unit Hawaii F provides occupied habitat for 11 species:

*Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Clermontia lindseyana*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Plantago hawaiiense*, and *Sicyos alba*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for each species and 300 mature individuals per population for *Asplenium fragile* var. *insulare*, *Clermontia lindseyana*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea*

*stictophylla*, *Cyrtandra giffardii*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Plantago hawaiiense*, and *Sicyos alba*, or greater than 100,000 total individuals for *Argyroxiphium kauense*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of these species.

This unit also provides unoccupied habitat for one species: *Clermontia peleana*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more additional populations necessary to meet the recovery objectives of 8 to 10 populations and 300 mature individuals per population, throughout its known

historical range (see the discussion of conservation requirements in Section D, and in the table for Hawaii G).

This unit contains a total of 32,286 ha (79,781 ac) on State, Federal, and privately owned lands. It is in portions of Kaahakini, Wailoa, and Wailuku watersheds. It contains portions of the Hawaii Volcanoes National Park, Mauna Loa Forest Reserve, Hilo Forest Reserve, Olaa Forest Reserve, Puu Makaala Natural Area Reserve, Upper Waiakea Forest Reserve, and Waiakea 1942 Lava Flow Natural Area Reserve. The natural features of this unit include Kulani (summit), Lava Flow Of 1852, Lava Flow Of 1855, Lava Flow Of 1881, Puu Kipu, Puu Lalaau, Puu Lau, Puu Makaala, Solomons Waterhole, Waipahoehoe Gulch, and Waterhole Spring.

Table for Hawaii G

Notes	100,000 individuals needed for recovery according to recovery plan.	*Species is wide ranging, each island was probably one large, population. ** Big, moist lava tubes (from 3.05 m to 4.57 m (10 to 15 ft) in diameter), pits, deep cracks, and lava tree molds, with at least a moderate soil or ash accumulation	
14. Hybridization is possible.			
13. Restricted habitat requirements.		X**	
12. Narrow endemic.			
11. Annual-500/pop.			
10. Short-lived perennial-300/pop.		X	X
9. Long-lived perennial-100/pop.	X		
8. Not all occupied habitat needed.	X	X	X
7. Species with variable habitats.	X		X
6. Several occ. vulnerable to destruction.	X	X	X
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.		X	X
2. Island endemic.	X		
1. 8-10 pop. guidelines.		X*	X
Species	<u>Argyroxiphium kauense</u>	<u>Asplenium fragile var. insulare</u>	<u>Clermontia lindseyana</u>





**Hawaii H**

The proposed unit Hawaii H provides occupied habitat for four species: *Argyroxiphium kauense*, *Phyllostegia racemosa*, *Plantago hawaiiensis*, and *Silene hawaiiensis*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or

more of the 8 to 10 populations of *Phyllostegia racemosa*, *Plantago hawaiiensis*, and *Silene hawaiiensis* and 300 mature individuals per population for *Phyllostegia racemosa*, *Plantago hawaiiensis*, and *Silene hawaiiensis*, or greater than 100,000 total individuals for *Argyroxiphium kauense*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the

discussion of conservation requirements in Section D, and in the table for Hawaii H).

This unit contains a total of 5,322 ha (13,151 ac) on State, Federal and privately owned lands. This unit is in the Kapapala watershed and contains a portion of Hawaii Volcanoes National Park. The natural features of this unit include the Keamoku Lava Flows, Kipuka Kulalilo, and Kipuka Maunaiu.

Notes	* > 100,000 individuals needed for recovery according to recovery plan.	* Epiphytically.	* Species is wide ranging, each island was probably one large, population.	* Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.				
13. Restricted habitat requirements.		X*		
12. Narrow endemic.				
11. Annual-500/pop.				
10. Short-lived perennial-300/pop.		X	X	X
9. Long-lived perennial-100/pop.	X			
8. Not all occupied habitat needed.	X			
7. Species with variable habitats.	X		X	X
6. Several occ. vulnerable to destruction.	X	X	X	X
5. Non-viable populations.	X	X	X	X
4. Multi-island/no current other islands.				
3. Multi-island/current other islands.				
2. Island endemic.	X	X	X	X
1. 8-10 pop. guidelines.	0	X	X*	X*
Species	<u>Argyroxiphium kauense</u>	<u>Phyllostegia racemosa</u>	<u>Plantago hawaiiensis</u>	<u>Silene hawaiiensis</u>

Table for Hawaii H

**Hawaii I**

The proposed unit Hawaii I provides occupied habitat for two species: *Hibiscadelphus giffardianus* and *Melicope zahlbruckneri*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii,

and provides habitat to support 1 or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Hibiscadelphus giffardianus* and *Melicope zahlbruckneri*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements

in Section D, and in the table for Hawaii I).

This unit contains a total of 522 ha (1,290 ac) on Federal and privately owned lands. It lies in the Kapapala watershed and in the Hawaii Volcanoes National Park. This unit contains the natural features Kipuka Ki and Kipuka Puaulu.

Notes	*Not enough suitable habitat exists for 8 to 10 populations at this time.	*Species is wide ranging.
14. Hybridization is possible.	X	
13. Restricted habitat requirements.		
12. Narrow endemic.	X	
11. Annual–500/pop.		
10. Short-lived perennial–300/pop.		
9. Long-lived perennial–100/pop.	X	X
8. Not all occupied habitat needed.		X
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction.	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		
2. Island endemic.	X	X
1. 8–10 pop. guidelines.	X*	X*
Species	<u>Hibiscadelphus giffardianus</u>	<u>Melicope zahnbruckneri</u>

Table for Hawaii I

**Hawaii J**

The proposed unit Hawaii J provides occupied habitat for one species: *Adenophorus periens*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to

10 populations and 300 mature individuals per population for *A. periens*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Hawaii J).

This unit contains a total of 5,065 ha (12,516 ac) on State, Federal, and

privately owned lands. This unit lies in the Kaahakini watershed in the north and the Kilauea watershed in the south. This unit contains a portion of the Hawaii Volcanoes National Park and Kahaulea Natural Area Reserve. The natural features of this unit include the Lava Flows of 1969, 1970, and 1972.

Notes	*Species is wide ranging, each island was probably one large, population. **Epiphytic.
14. Hybridization is possible.	
13. Restricted habitat requirements.	X**
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	X
7. Species with variable habitats.	
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines.	X*
Species	<u>Adenophorus periens</u>

Table for Hawaii J

**Hawaii K**

The proposed unit Hawaii J provides occupied habitat for five species: *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Clermontia lindseyana*, *Cyanea stictophylla*, and *Phyllostegia velutina*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for each species and 300 mature individuals per population for *Phyllostegia racemosa*, *Plantago hawaiiensis*, and *Silene*

*hawaiiensis*, or greater than 100,000 total individuals for *Argyroxiphium kauense*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for one species: *Melicope zahlbruckneri*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more additional populations necessary to meet the recovery objectives of 8 to 10 populations and 100 mature

individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Hawaii K).

This unit contains a total of 15,294 ha (37,792 ac) on State and privately owned lands. This unit lies mostly in the Pahala watershed but has a small portion in the Kapapala watershed in the northeast and the Hilea watershed in the southwest. It contains a portion of the Kau Forest Reserve and the Kapapala Forest Reserve. The natural features of this unit include Maunaanu Waterhole and Puu Kinikini.



Table for Hawaii K

Notes	* > 100,000 individuals needed for recovery according to recovery plan.	* Species is wide ranging, each island was probably one large, population. ** Big, moist lava tubes (from 3.05 m to 4.57 m (10 to 15 ft) in diameter), pits, deep cracks, and lava tree molds, with at least a moderate soil or ash accumulation				
14. Hybridization is possible.						
13. Restricted habitat requirements.		X**				
12. Narrow endemic.						
11. Annual-500/pop.						
10. Short-lived perennial-300/pop.		X		X	X	X
9. Long-lived perennial-100/pop.	X					X
8. Not all occupied habitat needed.	X	X		X	X	X
7. Species with variable habitats.	X			X	X	X
6. Several occ. vulnerable to destruction.	X	X		X	X	X
5. Non-viable populations.	X	X		X	X	X
4. Multi-island/no current other islands.						
3. Multi-island/current other islands.		X		X		
2. Island endemic.	X				X	X
1. 8-10 pop. guidelines.	0	X*		X	X	X
Species						
<u>Argyroxiphium kauense</u>						
<u>Asplenium fragile var. insulare</u>						
<u>Clermontia lindseyana</u>						
<u>Cyanea stictophylla</u>						
<u>Melicope zahlbruckneri</u>						
<u>Phyllostegia velutina</u>						

**Hawaii L**

The proposed unit Hawaii L provides occupied habitat for three species: *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, and *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Pleomele hawaiiensis*, or 300 mature individuals per population for *Portulaca sclerocarpa* and *Sesbania tomentosa*, throughout their known historical range considered by the recovery plans to be necessary for

the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Hawaii L).

This unit contains a total of 38,505 ha (95,148 ac) on Federal and State lands. This unit is mainly in the Kapapala watershed and has a portion in the Kilauea watershed in the east and the Pahala watershed in the west. This unit lies completely in the Hawaii Volcanoes National Park. Natural features of this unit include Alae Crater, Aloi Crater, Byron Ledge, Chain Of Craters, Cinder Cone (summit), Devils Throat (crater), Halape (cape), Halemaoli (summit), Halemaumau (crater), Hiiaka Crater, Hilina Pali (pali = cliff), Holei Pali, Kahue Point, Kalanaokuaiki Pali,

Kamakaia Hills, Kamakaia Lava Flow, Kamakaiauka (summit), Kamakaiawaena (summit), Kamooalii Lava Flow, Kau Desert, Keana Bihopa (summit), Keanakakoi Crater, Kilauea Crater, Kilauea Iki Crater, Kipuka Keana Bihopa (lava flow), Kipuka Pepeiau, Kokoolau Crater, Kukalauula Pali, Lava Flow Of 1919, Lava Flow Of 1920, Lava Flow Of 1921, Lava Flow Of 1954, Lava Flow Of 1961, Lava Flow of 1959, Lava Flow of 1961, Lele o Kalihipaa (cliff), Lua Manu Crater, Makahanu Pali, Pauahi Crater, Poliokeawe Pali, Puhimau Crater, Puu Huluhulu, Puu Kaone, Puu Kapukapu, Puu Koea, Puu Puai, Puueo Pali, Spatter Cone, Steaming Bluff, Uwekahuna Bluff, Waiwelawela Point, and Waldron Ledge.

Species

Notes	*Species is wide ranging. †	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.			
13. Restricted habitat requirements.			
12. Narrow endemic.			
11. Annual-500/pop.			
10. Short-lived perennial-300/pop.		X	X
9. Long-lived perennial-100/pop.	X		
8. Not all occupied habitat needed.			X
7. Species with variable habitats.	X	X	X
6. Several occ. vulnerable to destruction.	X	X	X
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.		X	X
2. Island endemic.	X		
1. 8-10 pop. guidelines.	X*	X*	X*
<u>Pleomele hawaiiensis</u>			
<u>Portulaca sclerocarpa</u>			
<u>Sesbania tomentosa</u>			

Table for Hawaii L

**Hawaii M**

The proposed unit Hawaii M (subunits M1 through M5) provides occupied habitat for one species: *Ischaemum byrone*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for this species and 300 mature individuals per population

throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Hawaii M).

This unit cluster contains a total of 967 ha (2,386 ac) on State, Federal, and private lands. M1 and M2 lie in the Kaahakini watershed along the coast and M3, M4, and M5 lie in the Kilauea watershed along the coast. M3 contains

the MacKenzie State Recreation Area and a portion of the Malama-Ki Forest Reserve and M5 lies completely in Hawaii Volcanoes National Park. The natural features of this unit cluster include: M1, no named features but the unit lies just south of Leleiwi Point; M2, no named features but the unit lies adjacent to Opihi Rock, an off-shore islet; M3, Kaakepa (summit) and Lililoa (cape); M4, Waipuku Point; and M5, Puu Manawalea.

Notes	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	X
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines.	X*
Species	<u>Ischaemum byrone</u>

Table for Hawaii M

**Hawaii N**

The proposed unit Hawaii N (N1 and N2) provides occupied habitat for one species: *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations and 300

mature individuals per population for this species, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Hawaii N).

This unit cluster contains a total of 476 ha (1,178 ac) on State and Federal

lands. This unit is in the South Point watershed along the coast. The natural features of this unit include: N1, Keoneokanuku Bay and N2, Kaalo (bay), Kahawai Kolono (stream), Kahukupoko (cape), Kaulani (cape), Kipuka Hanalua, Kipuka Kaahue, Lua (creek), Makalei, Lua o Palahemo (lake), Luakeananolo (bay), Pali Haukeuke, and Puu o Mahana.

Notes	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	X
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines.	X*
Species	<i>Sesbania tomentosa</i>

Table for Hawaii N

**Hawaii O**

The proposed unit Hawaii O provides occupied habitat for one species: *Mariscus fauriei*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides

habitat to support 1 or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Hawaii O).

This unit contains a total of 215 ha (531 ac) on State and private lands. This unit lies in the South Point Watershed. This unit has no named natural features but lies between Kipuka Puu Kou in the east and the Kamaoa Homesteads in the west.



Table for Hawaii O

Notes	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines.	X*
Species	<u>Mariscus fauriei</u>

**Hawaii P**

The proposed unit Hawaii P provides occupied habitat for one species: *Pleomele hawaiiensis*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides

habitat to support 1 or more of the 8 to 10 populations and 100 mature individuals per population for *Pleomele hawaiiensis* throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements

in Section D, and in the table for Hawaii P).

This unit contains a total of 547 ha (1,351 ac) on State and privately owned lands. This unit lies completely in the Kauna watershed. Natural features of this unit include Kipuka Kapulehu, Kipuka Mamane, and the Lava Flow of 1887.

Table for Hawaii P

Notes	*Species is wide ranging.
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	
9. Long-lived perennial-100/pop.	X
8. Not all occupied habitat needed.	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	
2. Island endemic.	X
1. 8-10 pop. guidelines.	X*
Species	<u>Pleomele hawaiiensis</u>

**Hawaii Q**

The proposed unit Hawaii Q provides occupied habitat for five species: *Colubrina oppositifolia*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, and *Neraudia ovata*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support

1 or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Colubrina oppositifolia* and *Flueggea neowawraea*, or 300 mature individuals per population for *Diellia erecta*, *Gouania vitifolia*, and *Neraudia ovata*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of

conservation requirements in Section D, and in the table for Hawaii Q).

This unit contains a total of 3,549 ha (8,770 ac) on State and privately owned lands. This unit lies mostly in the Kauna watershed with a portion in the Kiilae in the southwest. A large portion of this unit lies in the Manuka Natural Area Reserve. The natural features in this unit include unnamed lava flows and tubes.

Table for Hawaii Q

Notes	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	
14. Hybridization is possible.					
13. Restricted habitat requirements.					
12. Narrow endemic.					
11. Annual-500/pop.					
10. Short-lived perennial-300/pop.		X		X	X
9. Long-lived perennial-100/pop.	X		X		
8. Not all occupied habitat needed.	X		X		X
7. Species with variable habitats.	X	X	X	X	X
6. Several occ. vulnerable to destruction.	X	X	X	X	X
5. Non-viable populations.	X	X	X	X	X
4. Multi-island/no current other islands.					
3. Multi-island/current other islands.	X	X	X	X	
2. Island endemic.					X
1. 8-10 pop. guidelines.	X*	X*	X*	X*	X
Species	<u>Colubrina oppositifolia</u>	<u>Diellia erecta</u>	<u>Flueggea neowawraea</u>	<u>Gouania vitifolia</u>	<u>Neraudia ovata</u>

**Hawaii R**

The proposed unit Hawaii R provides occupied habitat for two species: *Diellia erecta* and *Flueggea neowawraea*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of

Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Flueggea neowawraea*, or 300 mature individuals per population for *Diellia erecta*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each

species (see the discussion of conservation requirements in Section D, and in the table for Hawaii R).

This unit contains a total of 387 ha (955 ac) on State and privately owned lands. This unit lies in the Kiilae watershed and lies mostly in the South Kona Forest Reserve. There are no named natural features in this unit.

Table for Hawaii R

Notes	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.		
13. Restricted habitat requirements.		
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	
9. Long-lived perennial-100/pop.		X
8. Not all occupied habitat needed.		X
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction.	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines.	X*	X*
Species	<u>Diellia erecta</u>	<u>Flueggea neowawraea</u>

**Hawaii S**

The proposed unit Hawaii S provides occupied habitat for two species: *Cyanea hamatiflora* ssp. *carlsonii* and *Cyanea stictophylla*. It is proposed for designation because it contains the physical and biological features that are considered essential for their

conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for each species and 300 mature individuals per population throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements

in Section D, and in the table for Hawaii S).

This unit contains a total of 383 ha (947 ac) on State and privately owned lands. This unit is in the Kiilae watershed. This unit contains a portion of the Kipahoehoe Natural Area Reserve. The natural feature of this unit includes a portion of the Lava Flow of 1919.



Species	Notes		
	14. Hybridization is possible.		
	13. Restricted habitat requirements.		
	12. Narrow endemic.		
	11. Annual-500/pop.		
	10. Short-lived perennial-300/pop.	X	X
	9. Long-lived perennial-100/pop.		
	8. Not all occupied habitat needed.		
	7. Species with variable habitats.	X	X
	6. Several occ. vulnerable to destruction.	X	
	5. Non-viable populations.	X	X
	4. Multi-island/no current other islands.		
	3. Multi-island/current other islands.		
	2. Island endemic.	X	X
	1. 8-10 pop. guidelines.	X	X
	<u>Cyanea hamatiflora</u> ssp. <u>carlsonii</u>	<u>Cyanea stictophylla</u>	

Table for Hawaii S

**Hawaii T**

The proposed unit Hawaii T provides occupied habitat for one species: *Cyanea stictophylla*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations and 300 mature individuals per population for this species throughout its known historical range considered by the recovery plan to

be necessary for the conservation of this species.

This unit also provides unoccupied habitat for one species: *Cyanea hamatiflora* ssp. *carlsonii*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more additional populations necessary to meet the recovery objective of 8 to 10

populations and 300 mature individuals per population for this species throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Hawaii T).

This unit contains a total of 1,489 ha (3,681 ac) on State and privately owned lands. This unit is in the Kiilae watershed contains a portions of the South Kona Forest Reserve. Natural features of this unit include portions of the Lava Flow of 1950.

Table for Hawaii T

Notes		
14. Hybridization is possible.		
13. Restricted habitat requirements.		
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed.		
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction.	X	
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		
2. Island endemic.	X	X
1. 8-10 pop. guidelines.	X	X
Species	<u>Cyanea hamatiflora</u> ssp. <u>carlsonii</u>	<u>Cyanea stictophylla</u>

**Hawaii U**

The proposed unit Hawaii U provides occupied habitat for one species: *Cyanea hamatiflora* ssp. *carlsonii*. It is proposed for designation because it contains the physical and biological features that are considered essential for the conservation of *Cyanea hamatiflora*

ssp. *carlsonii* on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for this species and 300 mature individuals per population throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements

in Section D, and in the table for Hawaii U).

This unit contains a total of 615 ha (1,520 ac) on Federal land. This unit is in the Kiilae watershed and lies in a portion of the Hakalau Forest National Wildlife Refuge, Kona Unit. There are no named natural features of this unit.

Notes	
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	
2. Island endemic.	X
1. 8-10 pop. guidelines.	X
Species	<u>Cyanea hamatiflora</u> ssp. <u>carlsonii</u>

Table for Hawaii U

**Hawaii V**

The proposed unit Hawaii V provides occupied habitat for one species: *Nothocestrum breviflorum*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii,

and provides habitat to support 1 or more of the 8 to 10 populations and 100 mature individuals per population for *Nothocestrum breviflorum* throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements

in Section D, and in the table for Hawaii V).

This unit contains a total of 951 ha (2,351 ac) on privately owned land. This unit is in the Kiilae watershed in the south and Kealakekua watershed in the north. this unit has no named natural features.

Notes	
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	
9. Long-lived perennial-100/pop.	X
8. Not all occupied habitat needed.	X
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	
2. Island endemic.	X
1. 8-10 pop. guidelines.	X
Species	<u>Nothoestrum breviporum</u>

Table for Hawaii V

**Hawaii W**

The proposed unit Hawaii W provides occupied habitat for one species: *Delissea undulata*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations and 300 mature individuals per population for *Delissea undulata* throughout its known

historical range considered by the recovery plan to be necessary for the conservation of this species.

This unit also provides unoccupied habitat for one species: *Solanum incompletum*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii, and provides habitat to support 1 or more additional populations necessary to meet the

recovery objectives of 8 to 10 populations and 300 mature individuals per population for *Solanum incompletum* throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Hawaii W).

This unit contains a total of 1,479 ha (3,654 ac) on private land. This unit lies in the Waiaha watershed. The natural area of this unit includes Puu Lehua and a portion of Kipuka Paluli.



Notes		
14. Hybridization is possible.		
13. Restricted habitat requirements.	X*	
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-lived perennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed.		
7. Species with variable habitats.		X
6. Several occ. vulnerable to destruction.	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		X
3. Multi-island/current other islands.	X	
2. Island endemic.		
1. 8-10 pop. guidelines.	X	X*
Species	<u>Delissea undulata</u>	
	<u>Solanum incompletum</u>	

Table for Hawaii W

\*Dry cinder cones  
 \*Not enough suitable habitat for 8 - 10 (unable to identify suitable habitat on other islands in historical range).

**Hawaii X**

The proposed unit Hawaii X provides occupied habitat for one species: *Cyanea hamatiflora* ssp. *carlsonii*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii,

and provides habitat to support 1 or more of the 8 to 10 populations and 300 mature individuals per population for *Cyanea hamatiflora* ssp. *carlsonii* throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of

conservation requirements in Section D, and in the table for Hawaii X).

This unit contains a total of 138 ha (340 ac) on State owned lands. This unit is in the Waiaha watershed and contains a portion of the Honuaula Forest Reserve. There are no named natural features in this unit, though it lies southwest of Puu Laalaa.

Notes	
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	
2. Island endemic.	X
1. 8-10 pop. guidelines.	X
Species	<u>Cyanea hamatiflora</u> ssp. <u>carlsonii</u>

Table for Hawaii X

**Hawaii Y**

The proposed unit Hawaii Y (subunits Y1 and Y2) provides occupied habitat for two species: *Isodendrion pyrifolium* and *Neraudia ovata*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or

more of the 8 to 10 populations for each species and 300 mature individuals per population throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Hawaii Y).

This unit cluster contains a total of 546 ha (1,350 ac) on State and privately

owned lands. This unit is in the Keahole watershed in the north and the Waiaha watershed in the south and contains a portion of the Honokohau watershed. There are no named natural features in this unit but it lies between the Queen Kaahumanu Highway (in the west) and Palani Road (in the east). It is inland and east of Honokohau Bay and inland and north of Kalani Bay.

Species	Notes		
	14. Hybridization is possible.		
	13. Restricted habitat requirements.		
	12. Narrow endemic.		
	11. Annual-500/pop.		
	10. Short-lived perennial-300/pop.	X	X
	9. Long-lived perennial-100/pop.		
	8. Not all occupied habitat needed.		X
	7. Species with variable habitats.	X	X
	6. Several occ. vulnerable to destruction.	X	X
	5. Non-viable populations.	X	X
	4. Multi-island/no current other islands.	X	
	3. Multi-island/current other islands.		
	2. Island endemic.		X
	1. 8-10 pop. guidelines.	X	X
	<u>Isodendrion pyriformium</u>	<u>Neraudia ovata</u>	

Table for Hawaii Y

**Hawaii Z**

The proposed unit Hawaii Z provides occupied habitat for 12 species:

*Bonamia menziesii*, *Colubrina oppositifolia*, *Cyanea stictophylla*, *Delissea undulata*, *Flueggea neowawraea*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Nothocestrum breviflorum*, *Phyllostegia velutina*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of

Hawaii, and provides habitat to support 1 or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Colubrina oppositifolia*, *Flueggea neowawraea*, *Hibiscadelphus hualalaiensis*, *Nothocestrum breviflorum*, *Pleomele hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum*, or 300 mature individuals per population for *Bonamia menziesii*, *Cyanea stictophylla*, *Delissea undulata*, *Hibiscus brackenridgei*, *Phyllostegia velutina*, and *Plantago hawaiiensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each

species (see the discussion of conservation requirements in Section D, and in the table for Hawaii Z).

This unit contains a total of 10,738 ha (26,535 ac) on State and privately owned lands. This unit is predominately in the Kiholo watershed in the north with portions in the Honokohau, Keahole, and Waiaha in the southwest. This unit also contains most of the Puu Waawaa Wildilfe Sanctuary. The natural features of this unit include Hinakapoula (summit), Kalulu (summit), Kaupulehu Crater, Kileo (summit), Poohohoo (summit), Puu Huluhulu, Puu Iki, Puu Paha, and Puu Waawaa.

Table for Hawaii Z

Notes				
	*Species is wide ranging, each island was probably one large, population (may have been a couple of meta-populations on each island).	*Species is wide ranging, each island was probably one large, population.		*Dry cinder cones
14. Hybridization is possible.				
13. Restricted habitat requirements.				X*
12. Narrow endemic.				
11. Annual-500/pop.				
10. Short-lived perennial-300/pop.	X		X	X
9. Long-lived perennial-100/pop.		X		
8. Not all occupied habitat needed.		X		
7. Species with variable habitats.	X	X	X	
6. Several occ. vulnerable to destruction.	X	X		X
5. Non-viable populations.	X	X	X	X
4. Multi-island/no current other islands.				
3. Multi-island/current other islands.	X	X		X
2. Island endemic.			X	
1. 8-10 pop. guidelines.	X*	X*	X	X
Species	<u>Bonamia menziesii</u>	<u>Colubrina oppositifolia</u>	<u>Cyanea stictophylla</u>	<u>Delissea undulata</u>

<u>Flueggea neowawraea</u>	X*		X												X							*Species is wide ranging, each island was probably one large, population.	
<u>Hibiscadelphus hualalaiensis</u>	X*	X														X	X**	X					*Not enough suitable habitat exists for 8 to 10 populations at this time. **Rocky substrate in deep soils.
<u>Hibiscus brackenridgei</u>	X*		X																				*Species is wide ranging, each island was probably one large, population.
<u>Nothoestrum breviflorum</u>	X*	X																					*Species is wide ranging. †
<u>Phyllostegia velutina</u>	X	X																					
<u>Plantago hawaiiensis</u>	X*	X																					*Species is wide ranging. †
<u>Pleomele hawaiiensis</u>	X*	X																					*Species is wide ranging.
<u>Zanthoxylum dipetalum</u> ssp. <u>tomentosum</u>	X*	X																					*Species is wide ranging.



**Hawaii AA**

The proposed unit Hawaii AA provides occupied habitat for 10 species: *Asplenium fragile* var *insulare*, *Hedyotis coriacea*, *Neraudia ovata*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on the island of Hawaii, and provides habitat to support 1 or

more of the 8 to 10 populations for each species and 100 mature individuals per population for *Zanthoxylum hawaiiense*, or 300 mature individuals per population for *Asplenium fragile* var *insulare*, *Hedyotis coriacea*, *Neraudia ovata*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, and *Tetramolopium arenarium*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Hawaii AA).

This unit contains a total of 28,384 ha (70,138 ac) on State, Federal, and privately owned lands and land under Federal jurisdiction. This unit lies predominately in the Pohakuloa watershed with the western edge in the Kiholo watershed. This unit also contains a small portion of the Mauna Loa Forest Reserve and the Mauna Loa Forest Reserve and portions of the Pohakuloa Training Area. The natural features of this unit include Kipuka Alala, Kipuka Kalawamauna, Lava Flow of 1843, Naohueleelua (summit), Puu Ka Pele, Puu Kea, Puu Keekee, Puuahi, and Waikahalulu Gulch.

Table for Hawaii AA

Notes	*Species is wide ranging † ** Big, moist lava tubes (from 3.05 m to 4.57 m (10 to 15 ft) in diameter), pits, deep cracks, and lava tree molds, with at least a moderate soil or ash accumulation	*Geologically young (<3,000 years old) Mauna Loa pahoehoe lava.		*Species is wide ranging †
14. Hybridization is possible.				
13. Restricted habitat requirements.	X**	X*		
12. Narrow endemic.				
11. Annual–500/pop.				
10. Short-lived perennial–300/pop.	X	X	X	X
9. Long-lived perennial–100/pop.				
8. Not all occupied habitat needed.	X		X	
7. Species with variable habitats.			X	X
6. Several occ. vulnerable to destruction.	X	X	X	X
5. Non-viable populations.	X	X	X	X
4. Multi-island/no current other islands.				
3. Multi-island/current other islands.	X	X		X
2. Island endemic.			X	
1. 8–10 pop. guidelines.	X*	X	X	X*
Species	<u>Asplenium fragile</u> var. <u>insulare</u>	<u>Hedyotis coriacea</u>	<u>Neraudia ovata</u>	<u>Portulaca sclerocarpa</u>

<u>Silene hawaiiensis</u>	X*	X								X										*Species is wide ranging. ‡		
<u>Silene lanceolata</u>	X		X							X												
<u>Solanum incompletum</u>	X*			X						X											*Not enough suitable habitat for 8 - 10 (unable to identify suitable habitat on other islands in historical range).	
<u>Spermolepis hawaiiensis</u>	X*		X							X										X	*Species is wide ranging. ‡	
<u>Tetramolopium arenarium</u>	X*			X						X										X	*Not enough suitable habitat for 8 to 10 pops	
<u>Zanthoxylum hawaiiense</u>	X*		X							X												*Species is wide ranging, each island was probably one large, population.

**Hawaii BB**

The proposed unit Hawaii BB provides occupied habitat for one species: *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on the island of Hawaii,

and provides habitat to support 1 or more of the 8 to 10 populations and 300 mature individuals per population for *Sesbania tomentosa* throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements

in Section D, and in the table for Hawaii BB).

This unit contains a total of 43 ha (106 ac) on State owned land. This unit lies in the Keahole watershed along the coast and contains a portion of Kekaha State Park. There are no named natural features in this unit but it lies between Mahaiula Bay and Makolea Point.

Table for Hawaii BB

Notes	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed.	X
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines.	X*
Species	<u>Sesbania tomentosa</u>

## Effects of Critical Habitat Designation

### Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into formal consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse

modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstance, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect critical habitat of one or more of the 47 plant species will require Section 7 consultation. 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 (Corps) 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 some other Federal action, including funding (e.g. from the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA)), permits from the Department of Housing and Urban Development (HUD), activities funded by the U.S. Environmental Protection Agency (EPA), Department of Energy (DOE), or any other Federal agency; regulation of airport improvement activities by FAA; and construction of communication sites licensed by the Federal Communication Commission (FCC) will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or

permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including but not limited to: overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire.

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values.

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems where a permit under section 404 of the Clean Water Act would be required by the Corps.

(4) Recreational activities that appreciably degrade vegetation.

(5) Mining of cinder or sand or other minerals.

(6) Introducing or encouraging the spread of non-native plant species.

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the primary constituent elements of designated critical habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES**

section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, OR 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

#### **Relationship to Habitat Conservation Plans and Other Planning Efforts**

Currently, there are no HCPs that include any of the plant species discussed in this proposal as covered species. In the event that future HCPs covering any of the discussed plant species are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential to the conservation of the species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular areas by these plant species.

#### **Economic and Other Relevant Impacts**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. However, we cannot exclude such areas from critical habitat if the exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat in light of this proposal and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n v. U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits of the critical habitat designation regardless of whether the costs are coextensive with listing, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with critical habitat designation. When completed, we will

announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and re-open the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and any public hearings, if requested, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

#### **Public Comments Solicited**

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threat to these listed species.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Hawaii. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical

habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (e.g., HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) specific information on the amount, distribution, and quality of habitat for the 47 species and what habitat is essential to the conservation of the species and why;

(4) land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (e.g., hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs);

(7) the methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(8) the effects of critical habitat designation on military lands, and how it would affect military activities, particularly military activities at the Pohakuloa Training Area lands on the island of Hawaii. Whether there will be a significant impact on military readiness or national security if we designate critical habitat on these facilities. Whether these facilities should be excluded from the designation under section 4(b)(2) of the Act.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which

we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section).

If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods: You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850-0001. You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address above. You may send comments by electronic mail (e-mail) to: *FW1PIE\_Hawaii\_Island\_Crithab* @r1.fws.gov. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AH02" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541-3441.

The comment period closes on July 29, 2002. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. For additional information on public hearings see the **DATES** section.

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions

of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

#### Taxonomic Changes

At the time we listed *Delissea undulata*, *Hibiscus brackenridgei*, *Mariscus fauriei*, *Mariscus pennatiflorus*, and *Phyllostegia parviflora* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii*. Subsequent to the final listing we became aware of new taxonomic treatments of these species. Due to the court-ordered deadlines we are required to publish this proposal to designate critical

habitat on the island of Hawaii before we can prepare and publish a notice of taxonomic changes for these five species. We propose to publish a taxonomic change notice for these five species after we have published the final critical habitat designations on the island of Hawaii.

#### Required Determinations

##### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing an economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

a. While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 47 plant species were listed as threatened or endangered can be found in Table 4(b). Consequently, and as needed, we conduct formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 6).



TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 47 PLANTS FROM THE ISLAND OF HAWAII

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation <sup>1</sup>
Federal Activities Potentially Affected <sup>2</sup> .	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of Interior activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected <sup>3</sup> .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

<sup>1</sup> This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

<sup>2</sup> Activities initiated by a Federal agency.

<sup>3</sup> Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as “jeopardy” under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in areas currently unoccupied by the listed species), may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section

of this rule). Non-Federal persons who do not have a Federal nexus with their actions are not restricted by the designation of critical habitat.

b. We do not believe this rule will create inconsistencies with other agencies’ actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 47 plant species since their listing between 1991 and 1996. For the reasons discussed above, the prohibition against adverse modification of critical habitat would be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

c. We do not expect this proposed rule, if made final, would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have

any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

d. OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

#### Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In

today's rule, we are certifying that the rule will not have a significant effect on a substantial number of small entities. However, should our economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species are present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*,

*Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyralia*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron pyriforme*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoestrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, *Zanthoxylum dipetalum* ssp. *tomentosum*, and *Zanthoxylum hawaiiense*. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species are present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat likely would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinstate consultation for ongoing Federal activities. However, since these 47 species were listed (between 1991 and 1996), on the island of Hawaii we have conducted only two formal and 20 informal consultations, 11 of which concerned the Army's Pohakuloa Training Area (PTA), in addition to consultations on Federal grants to State wildlife programs, which do not affect small entities.

One of the two formal consultations involving the 47 species was conducted with the Army regarding the addition of two firing lanes to Range 8 at PTA. *Silene hawaiiensis*, one of the 47 species, was the only listed species addressed in the biological opinion, which concluded that with

implementation of the preferred alternative and accompanying mitigation procedures, the project was not likely to jeopardize the continued existence of the species. The other formal consultation was with the Federal Highways Administration (FHWA) on realignment of and improvements to Saddle Road. *Silene hawaiiensis* and the palila (or honeycreeper, *Loxioides bailleui*), a listed bird, were the two species addressed in the biological opinion, which concluded that with the conservation and mitigation measures built into the project by FHWA, the project was not likely to jeopardize the continued existence of the two species and was not likely to adversely modify critical habitat for the palila. Neither of the two formal consultations directly affected or concerned small entities. In both consultations, we concluded that the preferred alternative for the project, with accompanying conservation and mitigation procedures, was not likely to jeopardize the continued existence of the species. The only ongoing project is the Saddle Road realignment, which does not directly affect small entities. Neither of these formal consultations directly affected or concerned small entities, nor does the ongoing project directly affect small entities. As a result, the requirement to reinstate consultation for ongoing projects will not affect a substantial number of small entities on the island of Hawaii.

Three of the 20 informal consultations that have been conducted on the island of Hawaii concern the National Park Service's Hawaii Volcanoes National Park: one on fence construction to exclude ungulates regarding three of the 47 species (*Asplenium fragile* var. *insulare*, *Plantago hawaiiensis*, and *Silene hawaiiensis*) as well as one listed bird and two listed plants not included in the 47 species in today's rule; one on use of the Marsokhod planetary rover at Kilauea Volcano's summit regarding *Silene hawaiiensis*; and one on outplanting food plants for the endangered Hawaiian nene goose regarding *Sesbania tomentosa* and two listed birds. Four informal consultations were conducted with the Army Corps of Engineers (ACOE): one for the Defense Environmental Restoration Program on removal of unexploded ordnance from the former Waikoloa Maneuver Area regarding *Portulaca sclerocarpa*; one on the Alenaio Stream flood control project in Hilo regarding *Asplenium fragile* var. *insulare* as well as several listed birds and a listed plant not included in today's rule; one for the Multi-Purpose Range Complex at PTA regarding

*Asplenium fragile* var. *insulare*, *Hedyotis coriacea*, *Silene hawaiiensis*, *Silene lanceolata*, and one listed plant not in today's rule; and one consultation for the Endangered Species Management Plan for PTA regarding eight of the 47 species (*Asplenium fragile* var. *insulare*, *Hedyotis coriacea*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*) and three listed plants not in today's rule. Eleven informal consultations were conducted with the Army concerning PTA: three on archery hunts regarding *Silene hawaiiensis* and three listed plants not in today's rule; one on a grenade machine gun range regarding *Asplenium fragile* var. *insulare* and *Silene hawaiiensis*; one on a quarry rock crusher regarding *Silene hawaiiensis* and a listed plant not in today's rule; one on the proposed acquisition of a Parker Ranch parcel regarding *Silene lanceolata* and a listed plant not in today's rule; one on military training regarding *Hedyotis coriacea*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*; two on threats to rare plants from feral ungulates regarding eight of the 47 species (*Asplenium fragile* var. *insulare*, *Hedyotis coriacea*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*) as well as three listed plants not in today's rule; one on the Ecosystem Management Plan regarding nine of the 47 species (*Asplenium fragile* var. *insulare*, *Hedyotis coriacea*, *Neraudia ovata*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense*) as well as the listed Hawaiian hoary bat and two listed plants not in today's rule; and one consultation concerning PTA's Ecosystem Management Plan, Endangered Species Management Plan, and Fire Management Plan regarding the same nine species, bat, and two listed plants referred to just above. Two informal consultations were conducted with the Federal Highways Administration on Kealakehe Parkway construction regarding four of the 47 species (*Isodendron pyriformum*, *Mariscus fauriei*, *Nothoecstrum breviflorum*, and *Pleomele hawaiiensis*) as well as one listed plant not included in the 47 species in today's rule and *Pritchardia affinis*, for which we determine that the designation of

critical habitat is not prudent in today's rule.

None of these informal consultations directly affected or concerned small entities. In all 20 informal consultations, we concurred with each agency's determination that the project, as proposed or modified, was not likely to adversely affect listed species. The only ongoing projects are Kealakehe Parkway and those concerning military training and management plans at PTA, which do not directly affect small entities. None of these consultations directly affected or concerned small entities, and none of the ongoing projects directly affect small entities. Only a small percentage of the small entities would be affected indirectly. As a result, the requirement to reinstate consultation for ongoing projects will not affect a substantial number of small entities on the island of Hawaii.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act that would otherwise not be required. Other than on military lands, notably the Army's PTA, Hawaii Volcanoes National Park, and construction for Saddle Road and Kealakehe Parkway, we are aware of few activities in the proposed critical habitat areas for these 47 plants that have Federal involvement, and thus, would require consultation or reinitiation of already completed consultations for ongoing projects. As mentioned above, we have conducted only two formal and 20 informal consultations under section 7 involving any of the species, most of them concerning PTA. As a result, other than for PTA, Hawaii Volcanoes National Park, Saddle Road, and Kealakehe, we cannot easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that, with those exceptions, future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On the island of Hawaii, approximately 33 percent of the designations are on Federal lands, 51 percent are on State lands, and 16 percent are on private lands. Most of the land within the critical habitat units will have limited suitability for development, land uses, and activities because of the rather remote locations, limited access, and rugged terrain of these lands. Also, most of this land (84 percent) is within the State

Conservation District where State land-use controls severely limit development and most activities. Approximately 16 percent of this land is within the State Agricultural District where only activities such as crops, livestock, grazing, and accessory structures and farmhouses are allowed. The majority of this land is under State ownership or large estates that do not qualify as small entities. Less than 1 percent of this land is within the State Urban District where land use and development (commercial, industrial, residential, etc.) are subject to the county community plans, zoning, building code regulations, and land-use regulations. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. Activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in State parks and communications and tracking facilities; road improvements; recreational use such as hiking, camping, picnicking, game hunting, fishing; and ranching, and crop farming. With the exception of communications and tracking facilities improvements by the Federal Aviation Administration or the Federal Communications Commission and road improvements by FHWA, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Army Corps of Engineers (ACOE), and watershed management and restoration projects sponsored by NRCS. However, the NRCS restoration projects typically are voluntary, and irrigation ditch system projects within lands that are in agricultural production are rare, and may affect only a small percentage of the small entities within these proposed critical habitat designations.

Lands that are within the State Urban District are located almost exclusively within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the ACOE or Federal Emergency Management Agency, housing or resort development that may require permits from the Department of Housing and Urban Development, and activities funded or authorized by the Environmental Protection Agency. However, we are not aware of a significant number of future activities that would require federal funds,

permits, or authorizations in these coastal areas. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

Even if a substantial number of small entities were affected by the consultation requirements of the Act, which we believe would be highly unlikely based on the past consultation history for these 47 species, and based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation (see 50 CFR 404.2, definition of reasonable and prudent alternatives). Therefore, such measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Approximately 51 percent of the lands proposed as critical habitat are on State of Hawaii lands. The State of Hawaii is not a small entity. Approximately 16 percent of the lands proposed as critical habitat are on private lands, the majority owned by large estates that do not qualify as small entities. Many of the private parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. Most of the private and State parcels within the proposed designation are currently being used for recreational and agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, section 7 application, the only trigger for economic regulatory impact under this rule, would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on military training activities, federally

funded highway construction, federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations would likely occur on only a subset of the total number of parcels and therefore would not likely affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the following species: *Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonania menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyralaria*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoecstrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, *Zanthoxylum dipetalum* ssp. *tomentosum*, and *Zanthoxylum hawaiiense* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, we will revisit this determination.

#### Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations

that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) We believe this rule, as proposed, will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they have any programs requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector 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.

#### Takings

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for the 47 species from the island of Hawaii in a preliminary takings implications assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

**Federalism**

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 47 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because all but one unit and four subunits of the proposed critical habitat areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

**Civil Justice Reform**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 47 plant species.

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)**

This rule does not contain any new collections of information that require

approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**National Environmental Policy Act**

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

**Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) Executive Order 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 47 plant species. Therefore, designation of critical habitat for these 47 species has not been proposed on Tribal lands.

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

**Authors**

The primary authors of this notice are Gregory Koob, Christa Russell, Michelle Stephens, and Marigold Zoll (see **ADDRESSES** section).

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

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

**Proposed Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

2. In § 17.12(h) revise the entries for "*Achyranthes mutica*, *Argyroxiphium kauense*, *Bonamia menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyrularia*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothoecetrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*" under "FLOWERING PLANTS" and "*Adenophorus periens*, *Asplenium fragile* var. *insulare*, and *Diellia erecta*" under "FERNS AND ALLIES" to read as follows:

**§ 17.12 Endangered and threatened plants.**  
 \* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						

Flowering Plants.

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Achyranthes mutica</i>	None	U.S.A. (HI)	Amaranthaceae	E	592	17.96A(a)	NA
<i>Argyroxiphium kauense</i>	Mauna Loa silversword.	U.S.A. (HI)	Asteraceae	E	497	17.96A(a)	NA
<i>Bonamia menziesii</i>	None	U.S.A. (HI)	Convolvulaceae	E	559	17.96A(a)	NA
<i>Clermontia drepanomorpha</i>	Oha wai	U.S.A. (HI)	Campanulaceae	E	595	17.96A(a)	NA
<i>Clermontia lindseyana</i>	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.96A(a)	NA
<i>Clermontia peleana</i>	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.96A(a)	NA
<i>Clermontia pyrularia</i>	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.96A(a)	NA
<i>Colubrina oppositifolia</i>	Kauila	U.S.A. (HI)	Rhamnaceae	E	532	17.96A(a)	NA
<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i>	Haha	U.S.A. (HI)	Campanulaceae	E	532	17.96A(a)	NA
<i>Cyanea platyphylla</i>	Haha	U.S.A. (HI)	Campanulaceae	E	595	17.96A(a)	NA
<i>Cyanea shipmanii</i>	Haha	U.S.A. (HI)	Campanulaceae	E	532	17.96A(a)	NA
<i>Cyanea stictophylla</i>	Haha	U.S.A. (HI)	Campanulaceae	E	532	17.96A(a)	NA
<i>Cyrtandra giffardii</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	532	17.96A(a)	NA
<i>Cyrtandra tintinnabula</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	532	17.96A(a)	NA
<i>Delissea undulata</i>	None	U.S.A. (HI)	Campanulaceae	E	593	17.96A(a)	NA
<i>Flueggea neowawraea</i>	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.96A(a)	NA
<i>Gouania vitifolia</i>	None	U.S.A. (HI)	Rhamnaceae	E	541	17.96A(a)	NA
<i>Hedyotis coriacea</i>	Kioele	U.S.A. (HI)	Rubiaceae	E	467	17.96A(a)	NA
<i>Hibiscadelphus giffardianus</i>	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E	595	17.96A(a)	NA
<i>Hibiscadelphus hualalaiensis</i>	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E	595	17.96A(a)	NA
<i>Hibiscus brackenridgei</i>	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.96A(a)	NA
<i>Ischaemum byrone</i>	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	17.96A(a)	NA
<i>Isodendron hosakae</i>	Aupaka	U.S.A. (HI)	Violaceae	E	414	17.96A(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Isodendron pyrifolium</i> .	Wahine noho kula ..	U.S.A. (HI) .....	Violaceae .....	E	532	17.96A(a)	NA
<i>Mariscus fauriei</i> .....	None .....	U.S.A. (HI) .....	Cyperaceae .....	E	532	17.96A(a)	NA
<i>Melicope zahlbruckneri</i> .	Alani .....	U.S.A. (HI) .....	Rutaceae .....	E	595	17.96A(a)	NA
<i>Neraudia ovata</i> .....	None .....	U.S.A. (HI) .....	Urticaceae .....	E	595	17.96A(a)	NA
<i>Nothoecstrum brevilorum</i> .	Aiea .....	U.S.A. (HI) .....	Solanaceae .....	E	532	17.96A(a)	NA
<i>Phyllostegia racemosa</i> .	Kiponapona .....	U.S.A. (HI) .....	Lamiaceae .....	E	595	17.96A(a)	NA
<i>Phyllostegia velutina</i>	None .....	U.S.A. (HI) .....	Lamiaceae .....	E	595	17.96A(a)	NA
<i>Phyllostegia warshaueri</i> .	None .....	U.S.A. (HI) .....	Lamiaceae .....	E	595	17.96A(a)	NA
<i>Plantago hawaiiensis</i>	Laukahi kuahiwi .....	U.S.A. (HI) .....	Plantaginaceae .....	E	532	17.96A(a)	NA
<i>Pleomele hawaiiensis</i> .	Halapepe .....	U.S.A. (HI) .....	Liliaceae .....	E	595	17.96A(a)	NA
<i>Portulaca sclerocarpa</i> .	Poe .....	U.S.A. (HI) .....	Portulacaceae .....	E	532	17.96A(a)	NA
<i>Sesbania tomentosa</i>	Ohai .....	U.S.A. (HI) .....	Fabaceae .....	E	559	17.96A(a)	NA
<i>Sicyos alba</i> .....	Anunu .....	U.S.A. (HI) .....	Cucurbitaceae .....	E	595	17.96A(a)	NA
<i>Silene hawaiiensis</i> ...	None .....	U.S.A. (HI) .....	Caryophyllaceae .....	T	532	17.96A(a)	NA
<i>Silene lanceolata</i> .....	None .....	U.S.A. (HI) .....	Caryophyllaceae .....	E	480	17.96A(a)	NA
<i>Solanum incompletum</i> .	Popolo ku mai .....	U.S.A. (HI) .....	Solanaceae .....	E	559	17.96A(a)	NA
<i>Spermolepis hawaiiensis</i> .	None .....	U.S.A. (HI) .....	Apiaceae .....	E	559	17.96A(a)	NA
<i>Tetramolopium arenarium</i> .	None .....	U.S.A. (HI) .....	Asteraceae .....	E	532	17.96A(a)	NA
<i>Vigna o-wahuensis</i> ..	None .....	U.S.A. (HI) .....	Fabaceae .....	E	559	17.96A(a)	NA
<i>Zanthoxylum dipetalum</i> var. <i>tomentosum</i> .	Ae .....	U.S.A. (HI) .....	Rutaceae .....	E	595	17.96A(a)	NA
<i>Zanthoxylum hawaiiense</i> .	Ae .....	U.S.A. (HI) .....	Rutaceae .....	E	532	17.96A(a)	NA
Ferns and Allies.							

Species		Historic range	Family name	Status	When listed	Critical habi- tat	Special rules
Scientific name	Common name						
<i>Adenophorus periens</i>	Pendant kahi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.96A(a)	NA
*	*	*	*	*	*		*
<i>Asplenium fragile</i> var. <i>insulare</i> .	None	U.S.A. (HI)	Aspleniaceae	E	553	17.96A(a)	NA
*	*	*	*	*	*		*
<i>Diellia erecta</i>	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.96A(a)	NA
*	*	*	*	*	*		*

3. Section 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), 67 FR 4072 (January 28, 2002), 67 FR 9806 (March 4, 2002), 67 FR 15856 (April 3, 2002), 67 FR 16492 (April 5, 2002), and 67 FR 34522 (May 14, 2002) is proposed to be further amended as follows:

- a. Add paragraph (a)(1)(i)(H); and
- b. Amend paragraph (a)(1)(ii) by adding the entries set forth below.

**§ 17.96 Critical habitat-plants.**

(a) \* \* \*

(1) \* \* \*

(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunication equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraphs

(a)(1)(ii)(A) and (a)(1)(ii)(B) of this section and are not included in the critical habitat designation.

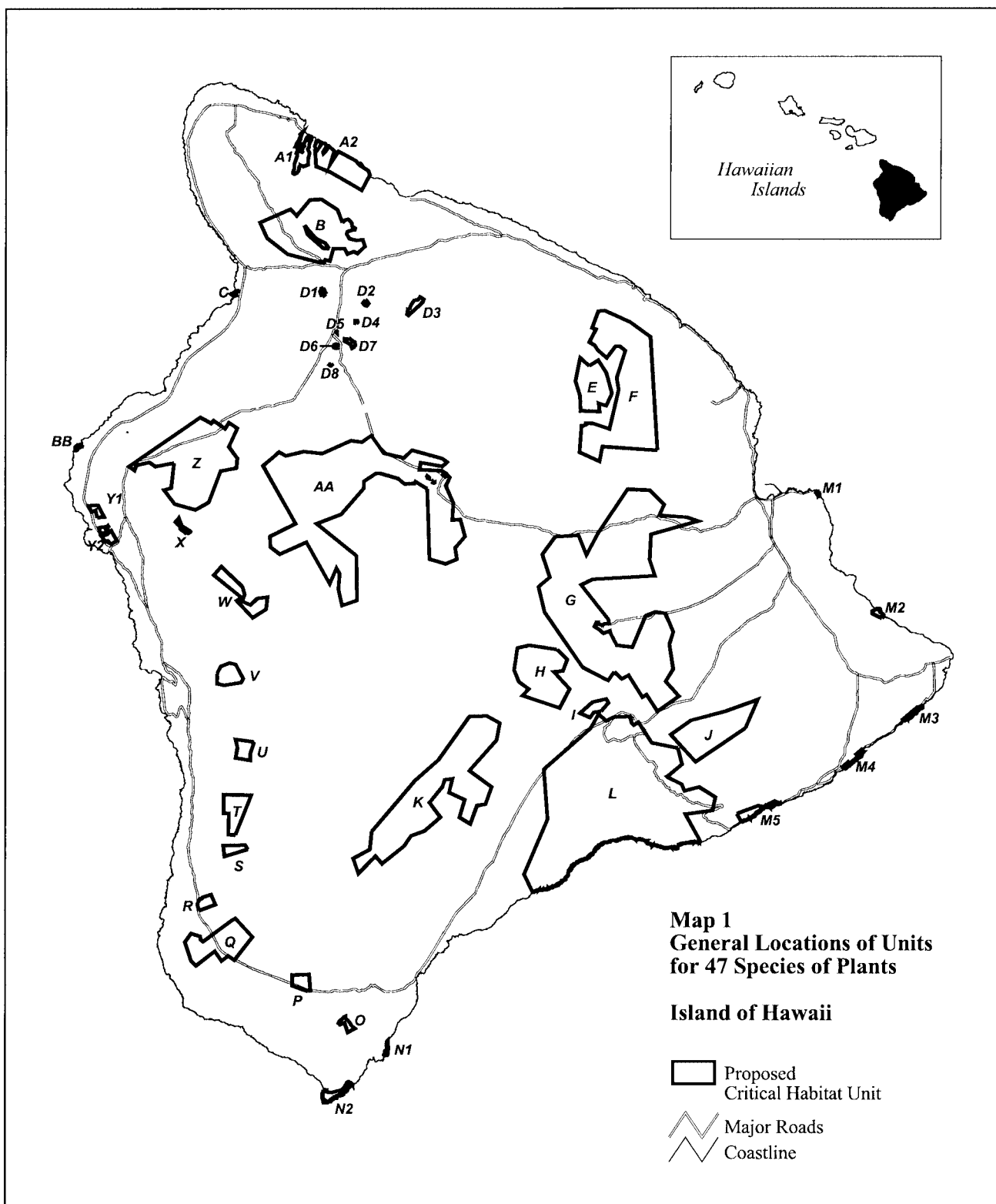
\* \* \* \* \*

(H) *Hawaii.* Critical habitat units are described below. Coordinates are in UTM Zone 5 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 28 critical habitat units designated on the island of Hawaii.

(1) **Note:** Map 1—Index map follows:

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(2) Hawaii A1 (719 ha; 1,777 ac).

(i) Unit consists of the following 56 boundary points: 213645, 2235127; 213646, 2235128; 213870, 2235881; 213849, 2236039; 214231, 2236397; 214073, 2236118; 213966, 2236053; 214027, 2235922; 213874, 2235537; 213912, 2235356; 213779, 2235023; 213495, 2234674; 213594, 2234495; 213903, 2234581; 213784, 2233612; 214109, 2233345; 214171, 2233459; 214131, 2233716; 214311, 2234221; 214471, 2234336; 214374, 2234583; 214789, 2235600; 214978, 2235699; 215036, 2235455; 215183, 2235821; 215492, 2235685; 215490, 2235180; 215280, 2234884; 215136, 2234466;

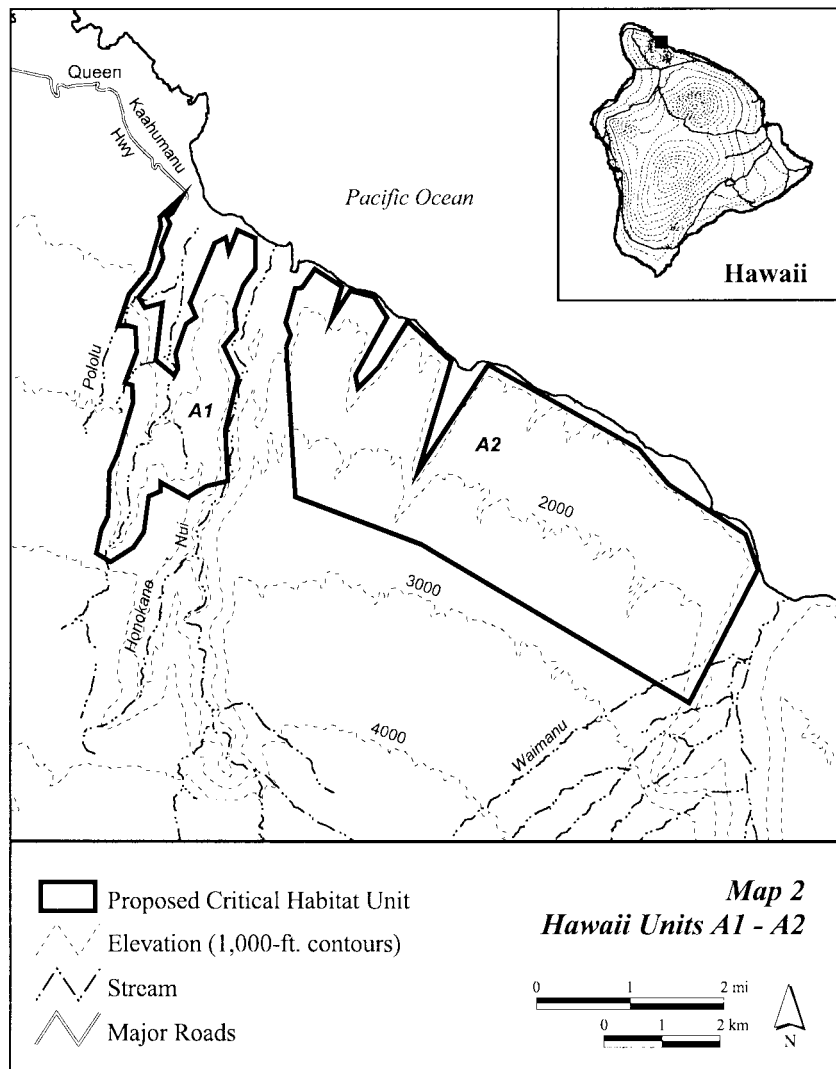
215169, 2234127; 214956, 2233845; 215193, 2233323; 214983, 2232423; 215030, 2231525; 214643, 2231424; 214338, 2231240; 213870, 2231505; 213870, 2231342; 213666, 2231261; 213585, 2230650; 213402, 2230385; 213015, 2230141; 212772, 2230287; 212852, 2230691; 212976, 2230917; 212994, 2231684; 213137, 2232014; 213401, 2232866; 213381, 2233174; 213259, 2233215; 213454, 2233742; 213434, 2234160; 213320, 2234192; 213137, 2234192; 213320, 2234721; 213645, 2235127.

(ii) Note: See Map 2.

(3) Hawaii A2 (2,685 ha; 6,635 ac).

(i) Unit consists of the following 26 boundary points: 216018, 2233828; 216096, 2234031; 216010, 2234247; 216164, 2234825; 216281, 2234837; 216511, 2235154; 216975, 2234861; 216801, 2234306; 217114, 2234782; 217527, 2234678; 217743, 2234334; 217207, 2233347; 217252, 2233124; 217620, 2233502; 218094, 2234265; 218843, 2233587; 218286, 2231694; 219486, 2233520; 222066, 2232085; 222577, 2231460; 223900, 2230601; 224117, 2230006; 222945, 2227734; 218340, 2230439; 216174, 2231252; 216018, 2233828.

(ii) Note: Map 2 follows:



(3) Hawaii B (8,200 ha; 20,263 ac).

(i) Unit consists of the following 34 boundary points: 220056, 2222994; 220386, 2223366; 220886, 2223462; 221152, 2223319; 221480, 2222888; 221459, 2222499; 221971, 2222131; 221869, 2221906; 221398, 2221865;

220845, 2221639; 220702, 2221271; 221132, 2220595; 222094, 2220390; 223077, 2220452; 223466, 2219489; 222340, 2218424; 221746, 2218711; 220845, 2218342; 220436, 2219154; 218738, 2219136; 218273, 2217335; 217531, 2217496; 217361, 2217075;

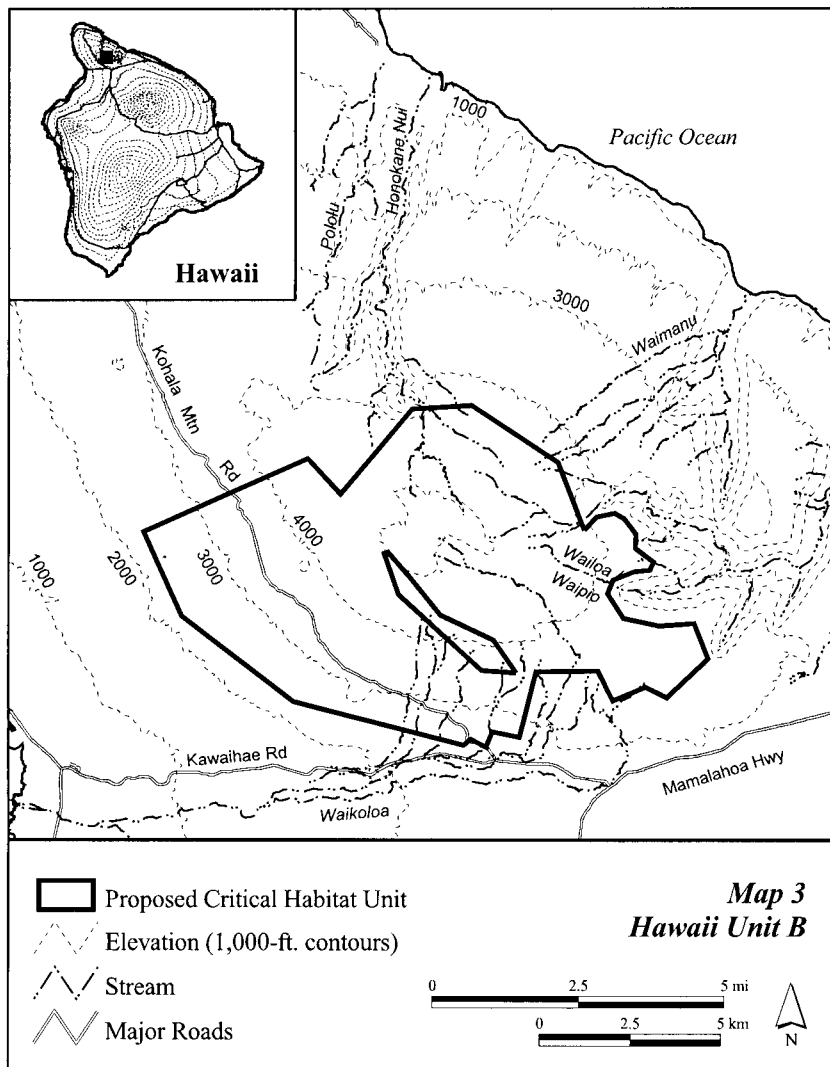
216932, 2217289; 216745, 2217118; 212055, 2218324; 208993, 2220657; 207937, 2222955; 212449, 2224975; 213349, 2223996; 215306, 2226356; 216953, 2226452; 219330, 2224881; 220056, 2222994.

(ii) Excluding the area bounded by the following 9 boundary points (233 ha, 577 ac): 218184, 2219101; 217244,

2219173; 214943, 2221244; 214556, 2222362; 214657, 2222404; 215168,

2221804; 216111, 2220679; 217554, 2220006; 218184, 2219101.

(iii) Note: Map 3 follows:

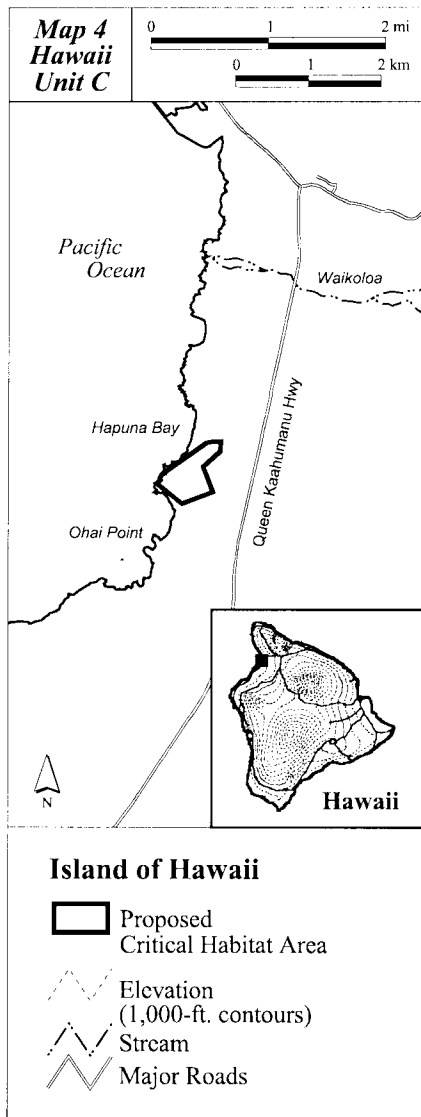


**Map 3  
Hawaii Unit B**

(4) Hawaii C (38 ha; 94 ac).

(i) Unit consists of the following nine boundary points: 204444, 2212965; 204625, 2212973; 204622, 2212839; 204381, 2212624; 204522, 2212274; 204092, 2212117; 203750, 2212397; 203856, 2212544; 204444, 2212965.

(ii) Note: Map 4 follows:



(5) Hawaii D1 (55 ha; 136 ac).

(i) Unit consists of the following 12 boundary points: 217658, 2212443; 217347, 2212191; 217122, 2212425; 216974, 2212346; 216772, 2212797; 216930, 2213059; 216918, 2213235; 217016, 2213305; 217161, 2212966; 217379, 2213113; 217624, 2212704; 217658, 2212443.

(ii) **Note:** See Map 5.

(6) Hawaii D2 (43 ha; 107 ac).

(i) Unit consists of the following seven boundary points: 223515, 2211644; 223742, 2211502; 223965, 2211046; 223748, 2210727; 223464, 2210758; 223186, 2211148; 223515, 2211644.

(ii) **Note:** See Map 5.

(7) Hawaii D3 (257 ha; 636 ac).

(i) Unit consists of the following 11 boundary points: 229819, 2210481; 230122, 2210409; 230226, 2210890; 230744, 2211568; 231267, 2211631; 231537, 2212023; 232139, 2211722; 231979, 2211293; 229919, 2209314; 229676, 2209450; 229819, 2210481.

(ii) **Note:** See Map 5.

(8) Hawaii D4 (14 ha; 34 ac).

(i) Unit consists of the following six boundary points: 222195, 2208132; 221960, 2208175; 221965, 2208568; 222290, 2208522; 222369, 2208305; 222195, 2208132.

(ii) **Note:** See Map 5.

(9) Hawaii D5 (1 ha; 4 ac).

(i) Unit consists of the following eight boundary points: 219313, 2206792; 219277, 2206743; 219217, 2206755; 219211, 2206878; 219245, 2206912; 219279, 2206913; 219313, 2206868; 219313, 2206792.

(ii) **Note:** See Map 5.

(10) Hawaii D6 (36 ha; 89 ac).

(i) Unit consists of the following eight boundary points: 219524, 2204639; 219285, 2204460; 218903, 2204552; 218798, 2204662; 218872, 2205006; 219122, 2205138; 219438, 2205062; 219524, 2204639.

(ii) **Note:** See Map 5.

(11) Hawaii D7 (112 ha; 278 ac).

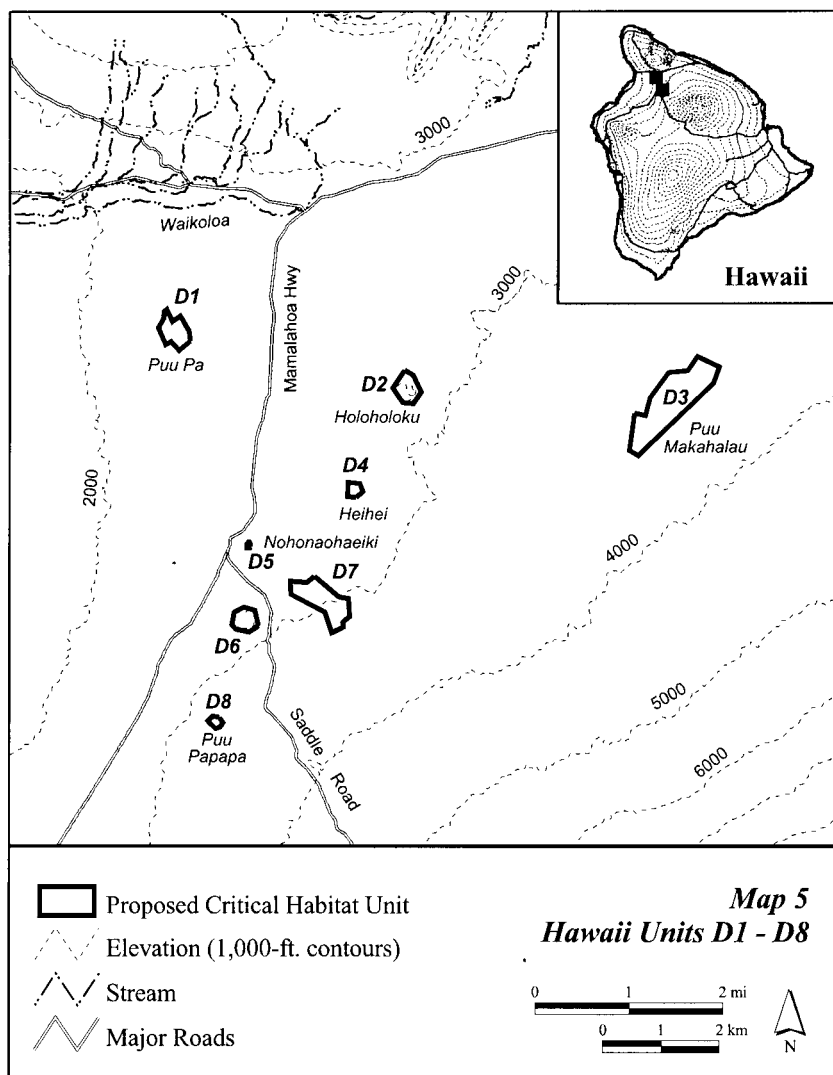
(i) Unit consists of the following 12 boundary points: 221058, 2205989; 221716, 2205427; 221986, 2205377; 222020, 2204891; 221830, 2204740; 221852, 2204603; 221531, 2204445; 221346, 2205006; 220421, 2205505; 220400, 2205861; 220861, 2205816; 221058, 2205989.

(ii) **Note:** See Map 5.

(12) Hawaii D8 (8 ha; 21 ac).

(i) Unit consists of the following seven boundary points: 218460, 2202141; 218559, 2201989; 218475, 2201865; 218371, 2201844; 218139, 2202042; 218291, 2202179; 218460, 2202141.

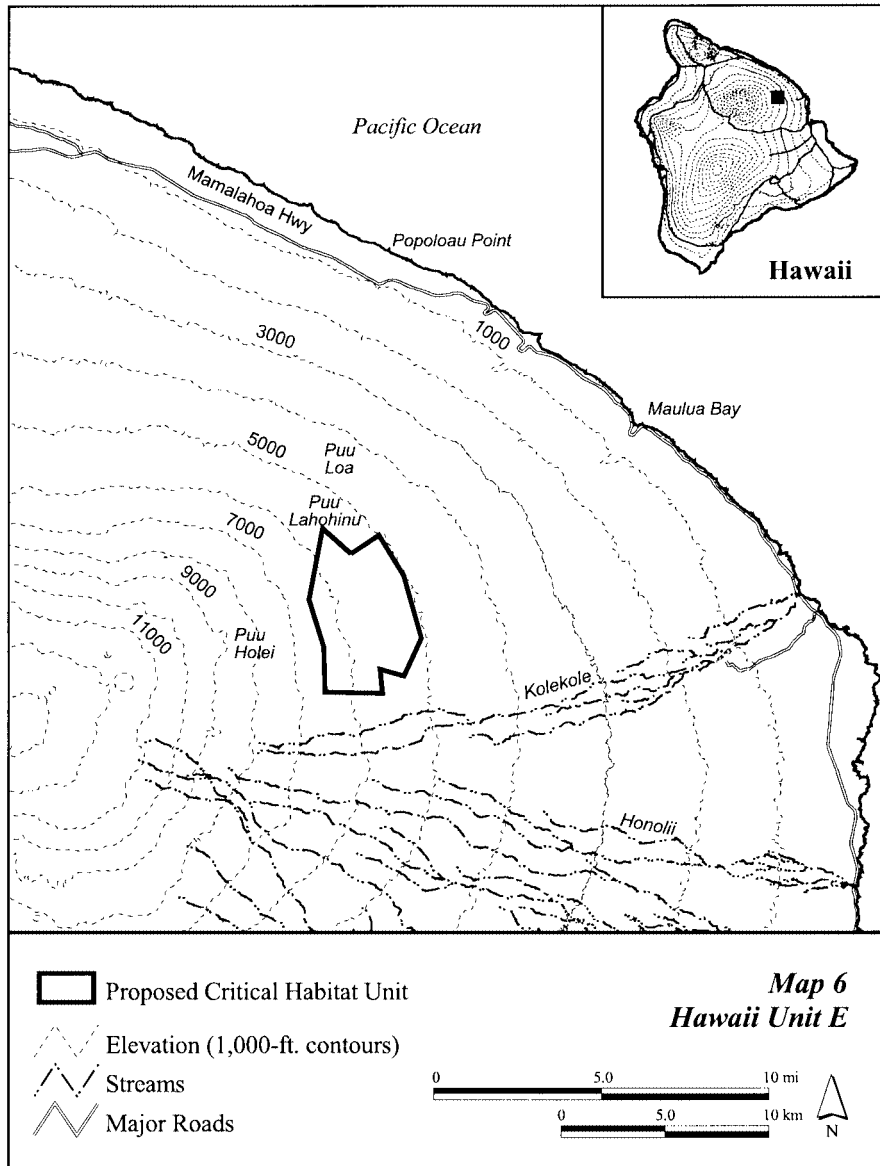
(ii) **Note:** Map 5 follows:



(13) Hawaii E (2,992 ha; 7,393 ac)

(i) Unit consists of the following 12 boundary points: 256602, 2201844; 257942, 2202750; 259136, 2200808; 259973, 2197792; 259164, 2195977; 257990, 2196313; 258115, 2195161; 255348, 2195206; 255294, 2197390; 254588, 2199653; 255244, 2203058; 256602, 2201844.

(ii) **Note:** Map 6 follows:

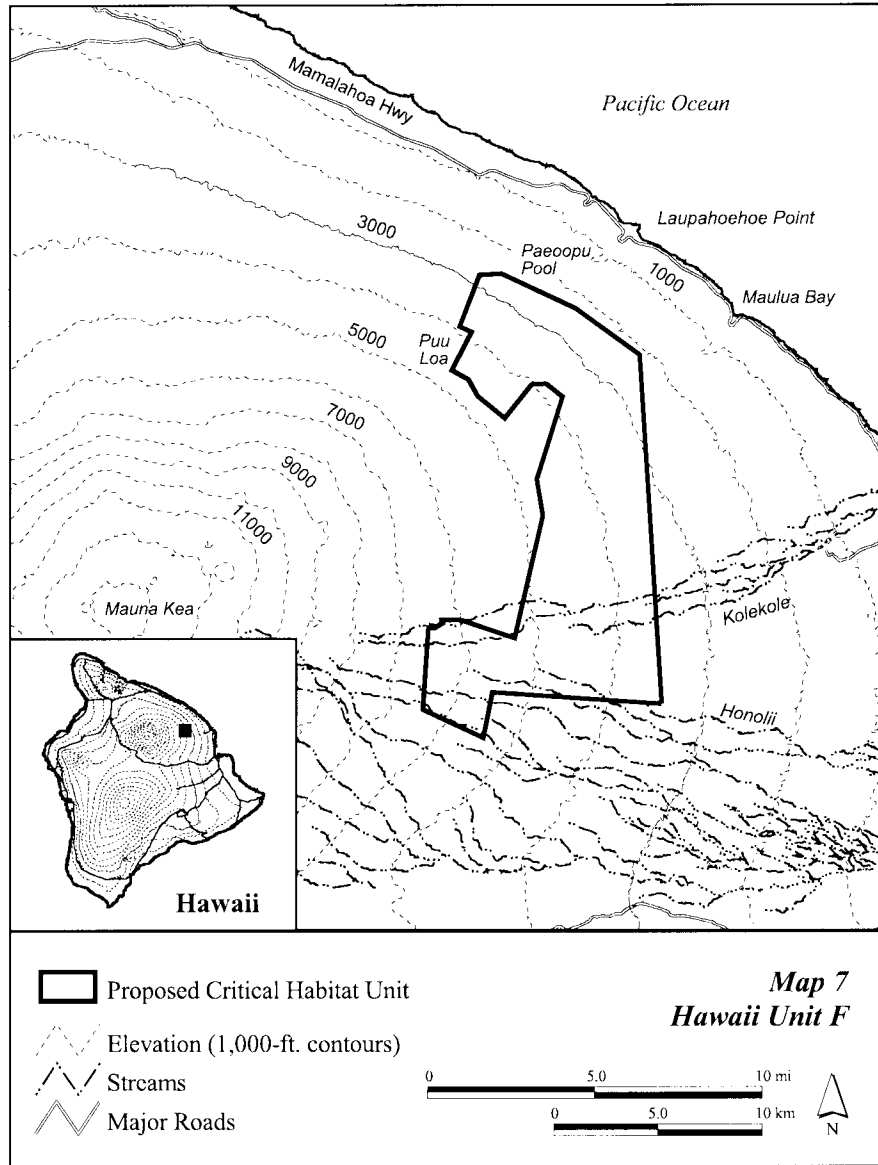


((14) Hawaii F (13,906 ha; 34,363 ac).  
(i) Unit consists of the following 26  
boundary points: 266711, 2189400;  
258582, 2189967; 258122, 2187775;  
255211, 2189128; 255480, 2193046;  
255783, 2193024; 256116, 2193190;

256121, 2193417; 257062, 2193396;  
259634, 2192559; 260989, 2198401;  
260703, 2200148; 261944, 2204127;  
261158, 2204766; 260467, 2204723;  
259168, 2203086; 257856, 2204159;  
257404, 2204963; 256622, 2205405;

257561, 2207252; 257006, 2207522;  
257933, 2209976; 258996, 2210030;  
262583, 2208378; 265651, 2206158;  
266711, 2189400.

(ii) **Note:** Map 7 follows:

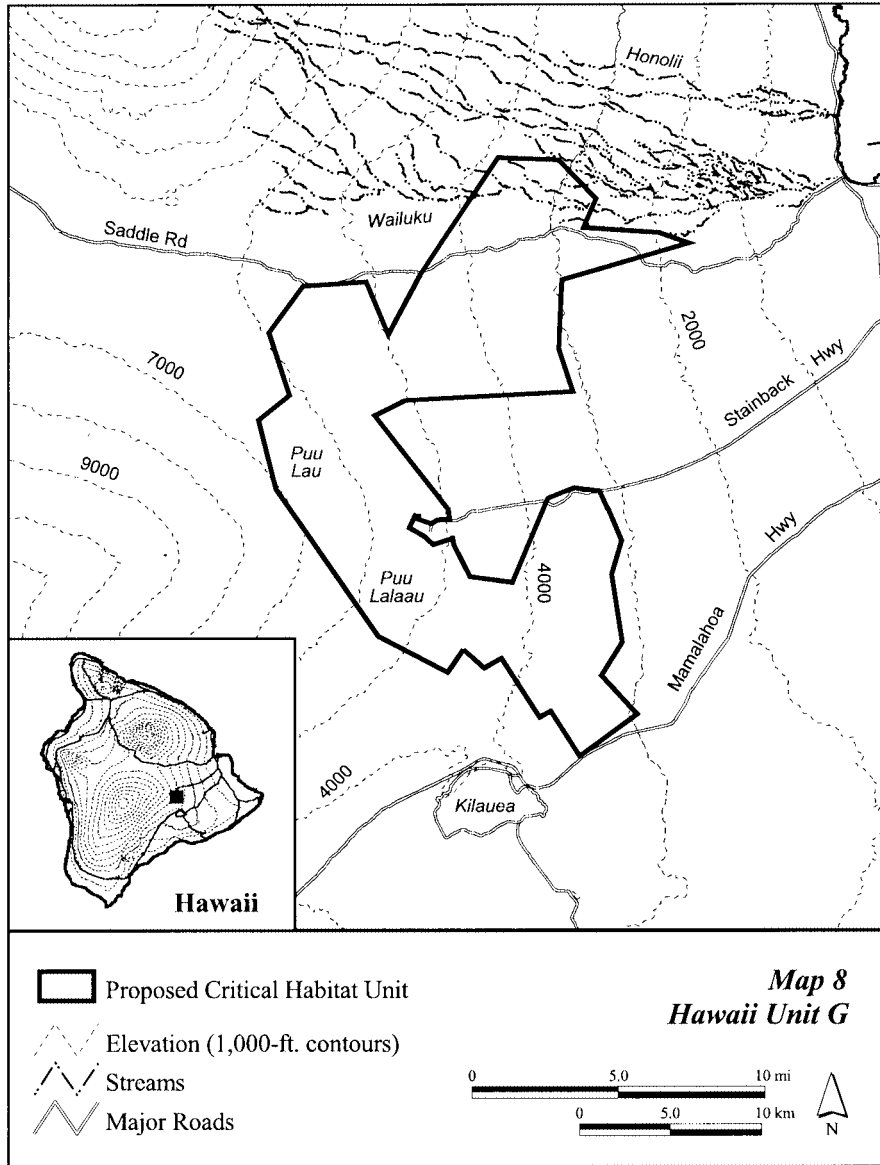


(15) Hawaii G (32,286 ha; 79,781 ac).  
 (i) Unit consists of the following 52 boundary points: 260368, 2156706; 259509, 2155445; 255714, 2157400; 250084, 2165481; 249140, 2169300; 250847, 2170639; 249738, 2174070; 251601, 2176619; 255032, 2176864; 256265, 2173968; 258036, 2177250; 262267, 2183657; 265594, 2183524; 267656, 2181395; 266981, 2179799;

271100, 2179533; 272746, 2178964; 265775, 2176949; 265615, 2173174; 266388, 2170855; 257222, 2170390; 255508, 2169531; 259558, 2164351; 259625, 2163807; 258983, 2163775; 258608, 2163559; 257889, 2163809; 257937, 2163979; 257725, 2164003; 257418, 2163342; 258185, 2162891; 258752, 2162422; 259789, 2162776; 259848, 2162373; 260734, 2160659;

263088, 2160361; 265004, 2164964; 266409, 2165548; 267862, 2165369; 268296, 2164387; 268316, 2164392; 269082, 2162635; 268527, 2160814; 269085, 2157102; 267952, 2155276; 269920, 2153164; 266755, 2150858; 265179, 2153340; 264559, 2152994; 262477, 2156217; 261502, 2155677; 260368, 2156706.

(ii) Note: Map 8 follows.



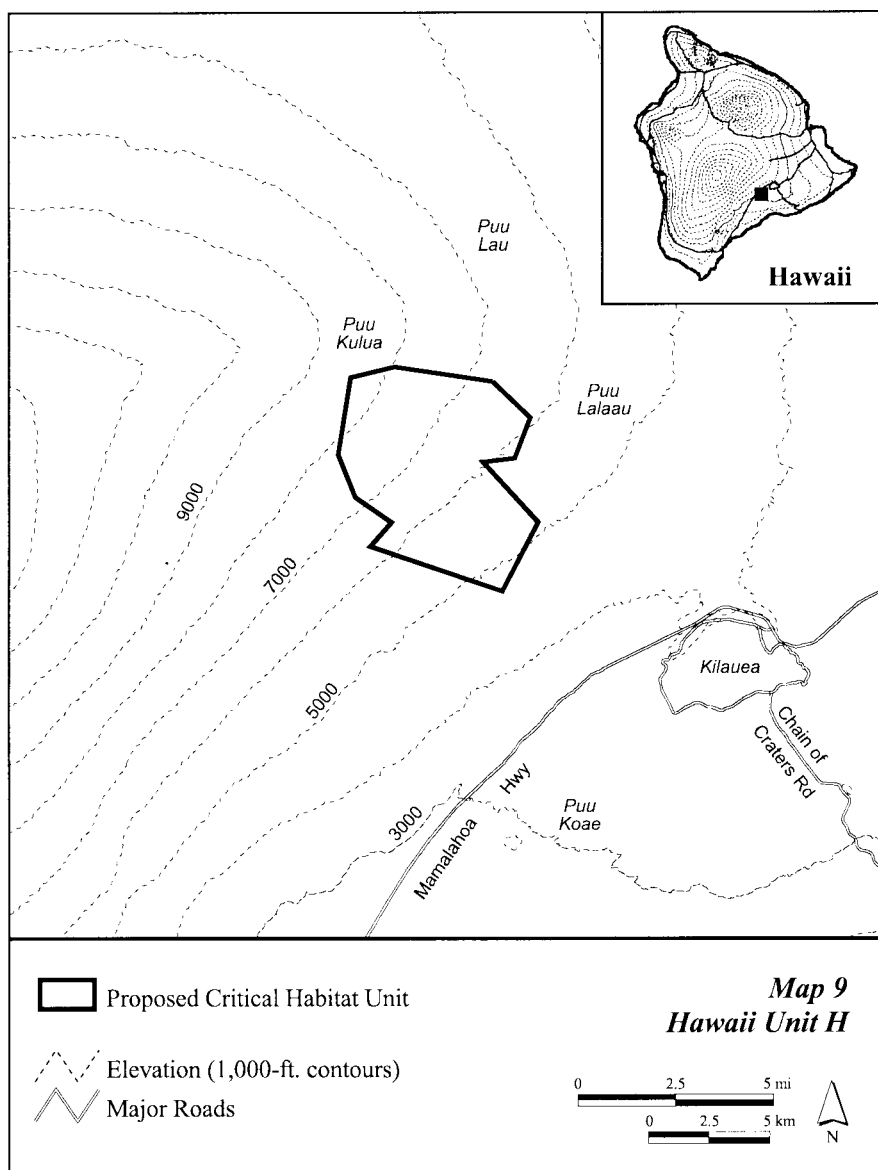
(16) Hawaii H (5,322 ha; 13,151 ac).  
 (i) Unit consists of the following 13  
 boundary points: 251923, 2160023;

253460, 2158526; 252820, 2156844;  
 251512, 2156703; 253803, 2154201;  
 252314, 2151377; 246870, 2153207;

247755, 2154211; 246280, 2155218;  
 245573, 2156986; 246070, 2160207;  
 247871, 2160627; 251923, 2160023.

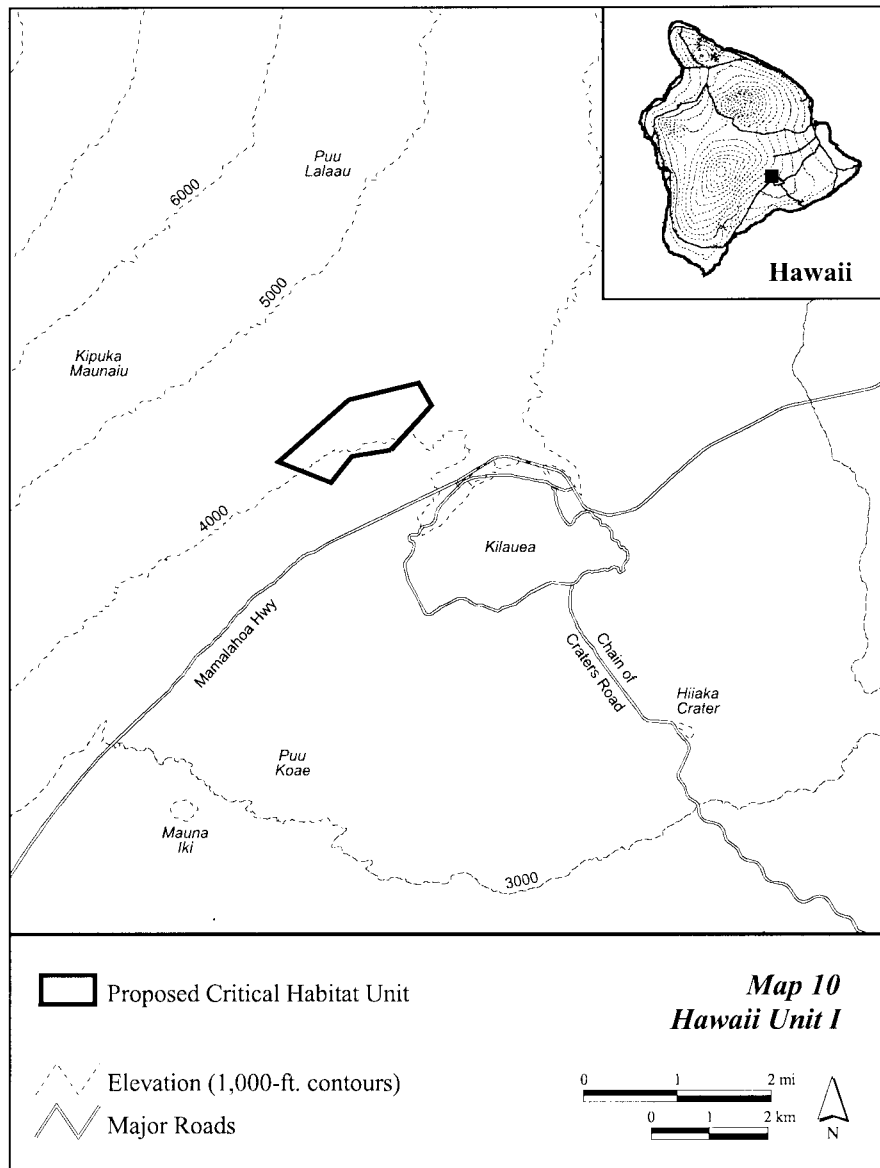
(ii) **Note:**Map 9 follows.





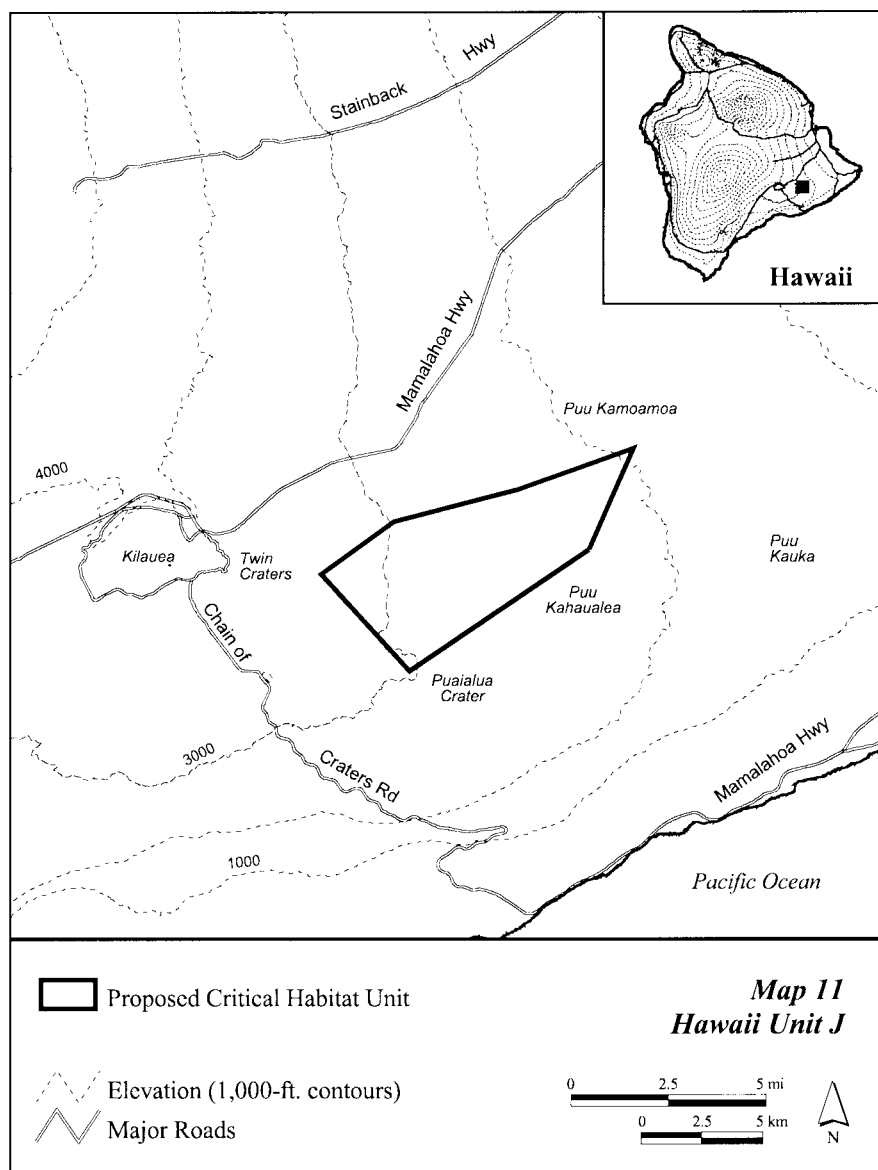
(17) Hawaii I (522 ha; 1,290 ac). 257351, 2150734; 256786, 2149999; 259182, 2152731; 259540, 2152124;  
 (i) Unit consists of the following eight 255343, 2150577; 257268, 2152271; 258433, 2150898.  
 boundary points: 258433, 2150898;

(ii) Note: Map 10 follows.

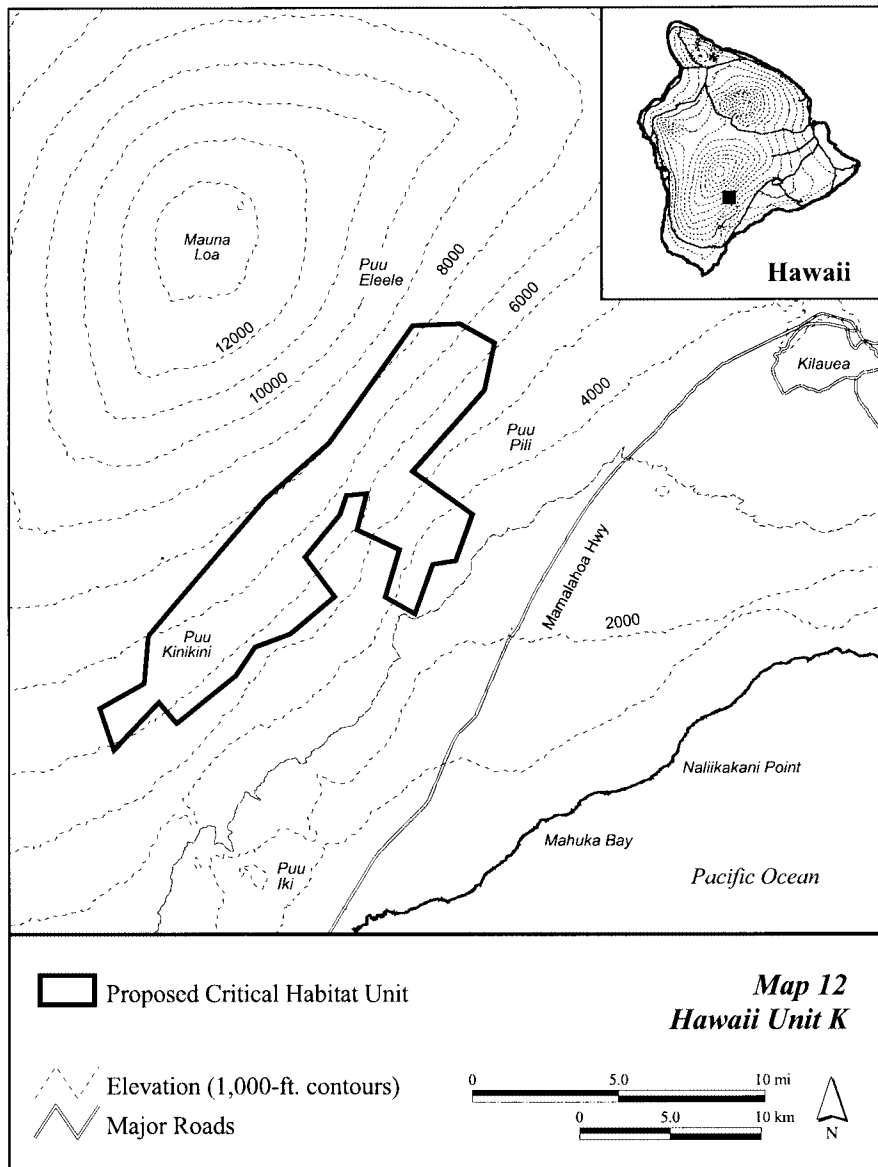


(18) Hawaii J (5,065 ha; 12,516 ac). 272371, 2143454; 268751, 2147441;  
 (i) Unit consists of the following seven boundary points: 279757, 2148468; 271710, 2149593; 276749, 2150890; 281591, 2152626; 279757, 2148468.

(ii) Note: Map 11 follows:



(19) Hawaii K (15,294 ha; 37,792 ac).  
 (i) Unit consists of the following 29 boundary points: 224527, 2133134; 230903, 2140619; 234438, 2143729; 238998, 2150111; 241626, 2150220; 243506, 2149158; 242986, 2146643; 238998, 2142139; 242286, 2139770; 241367, 2137225; 240125, 2137019; 239140, 2134291; 237510, 2135220; 238298, 2137823; 235958, 2138922; 236512, 2140899; 235380, 2140822; 235020, 2139742; 233111, 2137411; 234739, 2135265; 232310, 2133217; 230373, 2132524; 229332, 2130965; 226078, 2128345; 225106, 2129484; 222624, 2126875; 221850, 2129146; 224293, 2130509; 224527, 2133134.  
 (ii) Note: Map 12 follows:



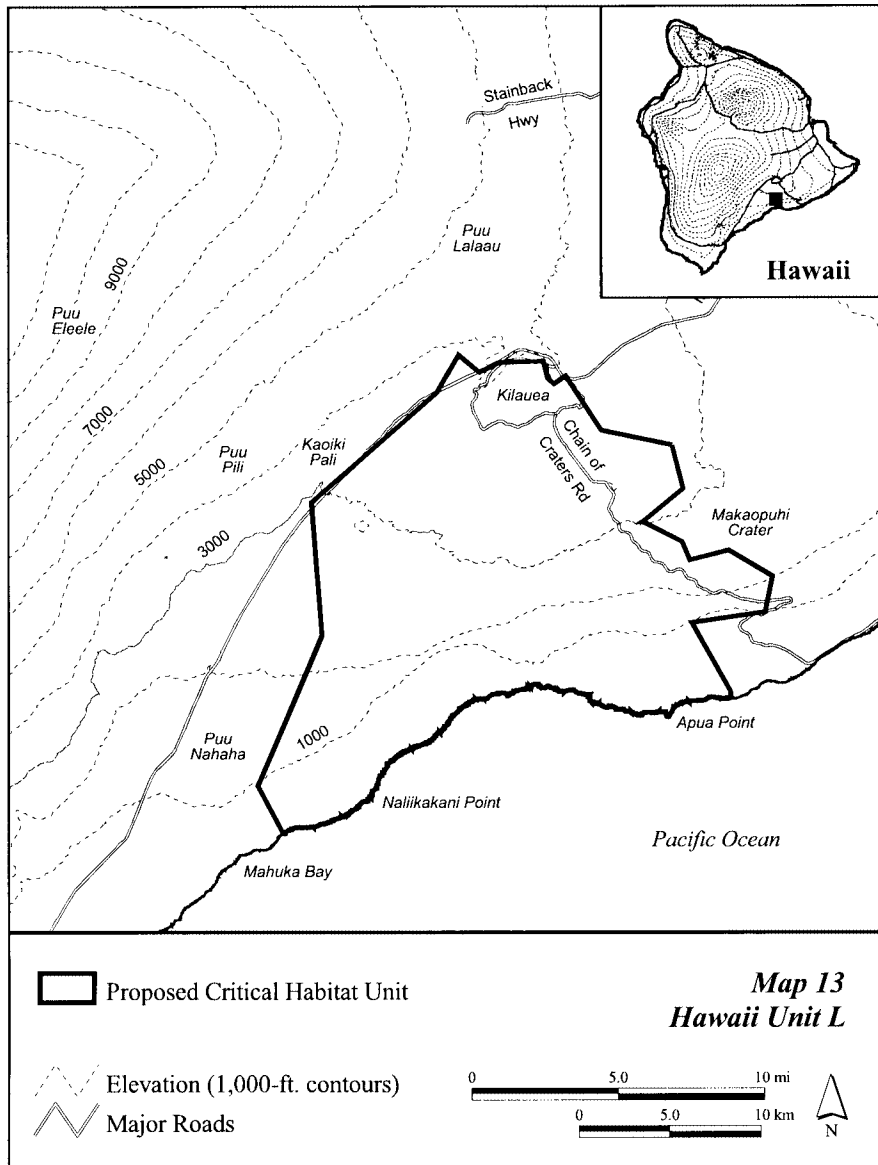
(20) Hawaii L (38,505 ha; 95,148 ac).

(i) Unit consists of the following 27 boundary points and the intermediate coastline: 269799, 2145483; 270429, 2143104; 268294, 2141333; 268202, 2141259; 268224, 2141247; 270343,

2140162; 270786, 2139161; 272920, 2139709; 275334, 2138290; 274935, 2136330; 270882, 2135751; 273045, 2131980; 273073, 2131644; 248432, 2124173; 247059, 2126847; 250585, 2135021; 249994, 2142352; 256883,

2148361; 258069, 2150441; 259217, 2149492; 260325, 2150029; 262724, 2150106; 262978, 2149151; 263296, 2148846; 263963, 2149299; 265911, 2146297; 269799, 2145483.

(ii) Note: Map 13 follows:



(21) Hawaii M1 (19 ha, 46 ac).

(i) Unit consists of the following six boundary points and the intermediate coastline: 290436, 2182514; 290346, 2182746; 290037, 2183187; 290191, 2183379; 290648, 2182628; 290436, 2182514.

(ii) **Note:** See Map 14:

(22) Hawaii M2 (133 ha, 328 ac).

(i) Unit consists of the following seven boundary points and the intermediate coastline: 299860, 2164658; 298430, 2165311; 298418, 2165662; 298918, 2165882; 299164, 2166128; 300166, 2164994; 299860, 2164658.

(ii) **Note:** See Map 14:

(23) Hawaii M3 (141 ha, 349 ac).

(i) Unit consists of the following eight boundary points and the intermediate coastline: 302785, 2149537; 305121, 2151610; 305379, 2151558; 305688, 2151734; 305768, 2151825; 305926, 2151657; 302998, 2149399; 302785, 2149537.

(ii) **Note:** See Map 14:

(24) Hawaii M4 (141 ha, 348 ac).

(i) Unit consists of the following 10 boundary points and the intermediate coastline: 294327, 2142439; 294091, 2142729; 294897, 2143498; 295092,

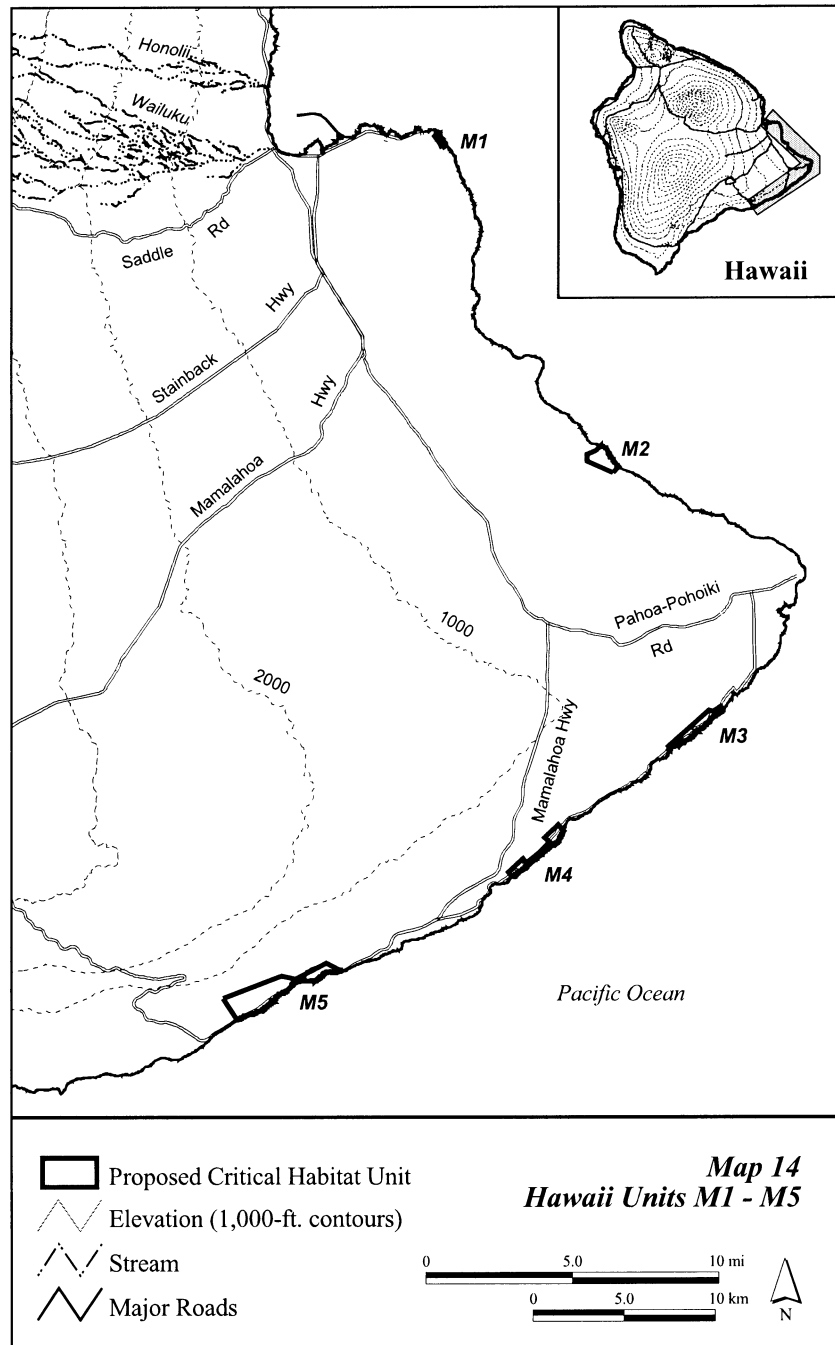
2143256; 295740, 2143796; 296348, 2144415; 296086, 2144633; 296853, 2145365; 297150, 2145025; 294327, 2142439.

(ii) **Note:** See Map 14:

(25) Hawaii M5 (533 ha, 1,316 ac).

(i) Unit consists of the following 10 boundary points and the intermediate coastline: 278462, 2135799; 281674, 2137029; 282395, 2136841; 284108, 2137718; 284803, 2137355; 284850, 2137360; 284874, 2137349; 284893, 2137276; 279221, 2134615; 278462, 2135799.

(ii) **Note:** Map 14 follows:



**Map 14**  
**Hawaii Units M1 - M5**

(26) Hawaii N1 (35 ha; 88 ac).  
(i) Unit consists of the following 12 boundary points and the intermediate coastline: 226741, 2101686; 226790, 2101953; 226781, 2102176; 226908, 2102299; 226917, 2102261; 226379, 2099994; 226353, 2100102; 226476, 2100184; 226781, 2100602; 226831,

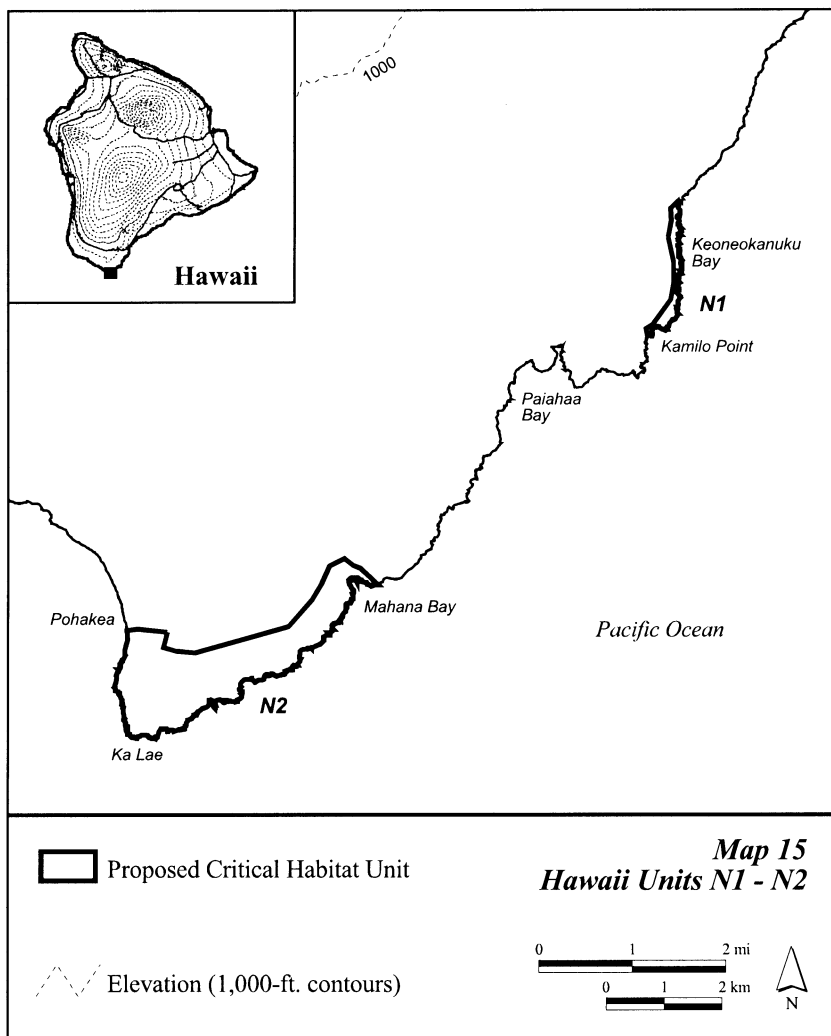
2100880; 226831, 2101257; 226741, 2101686.

(ii) **Note:** See Map 15:

(27) Hawaii N2 (441 ha; 1,091 ac).  
(i) Unit consists of the following 17 boundary points and the intermediate coastline: 218146, 2094919; 218077, 2094656; 218291, 2094588; 218623,

2094561; 220226, 2095017; 220630, 2095479; 220789, 2095748; 220926, 2096057; 221185, 2096180; 221326, 2096062; 221462, 2096012; 221594, 2095880; 221763, 2095728; 217452, 2094960; 217481, 2094950; 217632, 2094974; 218146, 2094919.

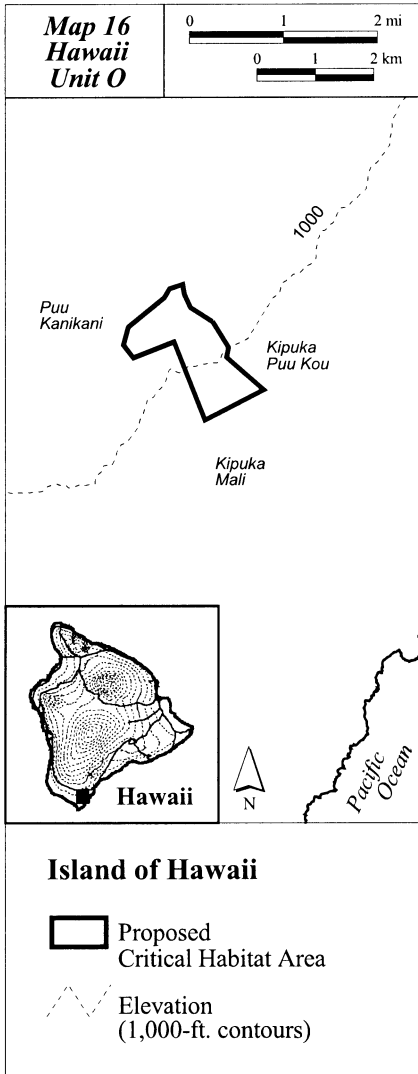
(ii) **Note:** Map 15 follows:



(28) Hawaii O (215 ha; 531 ac).

(i) Unit consists of the following 15 boundary points: 221200, 2105198; 221467, 2104758; 221444, 2104588; 222078, 2104024; 221064, 2103509; 220535, 2104849; 219841, 2104574; 219669, 2104802; 219758, 2105103; 220370, 2105598; 220464, 2105761; 220683, 2105838; 220715, 2105654; 220821, 2105428; 221200, 2105198.

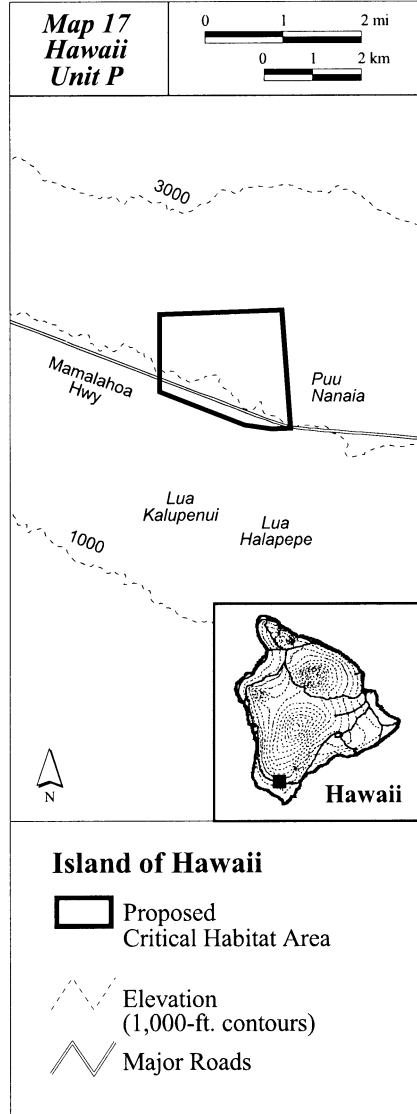
(ii) Note: Map 16 follows:



(29) Hawaii P (547 ha; 1,351 ac).

(i) Unit consists of the following seven boundary points: 215125, 2109609; 214584, 2109691; 212813, 2110371; 212813, 2111962; 215328, 2112049; 215501, 2109621; 215125, 2109609.

(ii) Note: Map 17 follows:

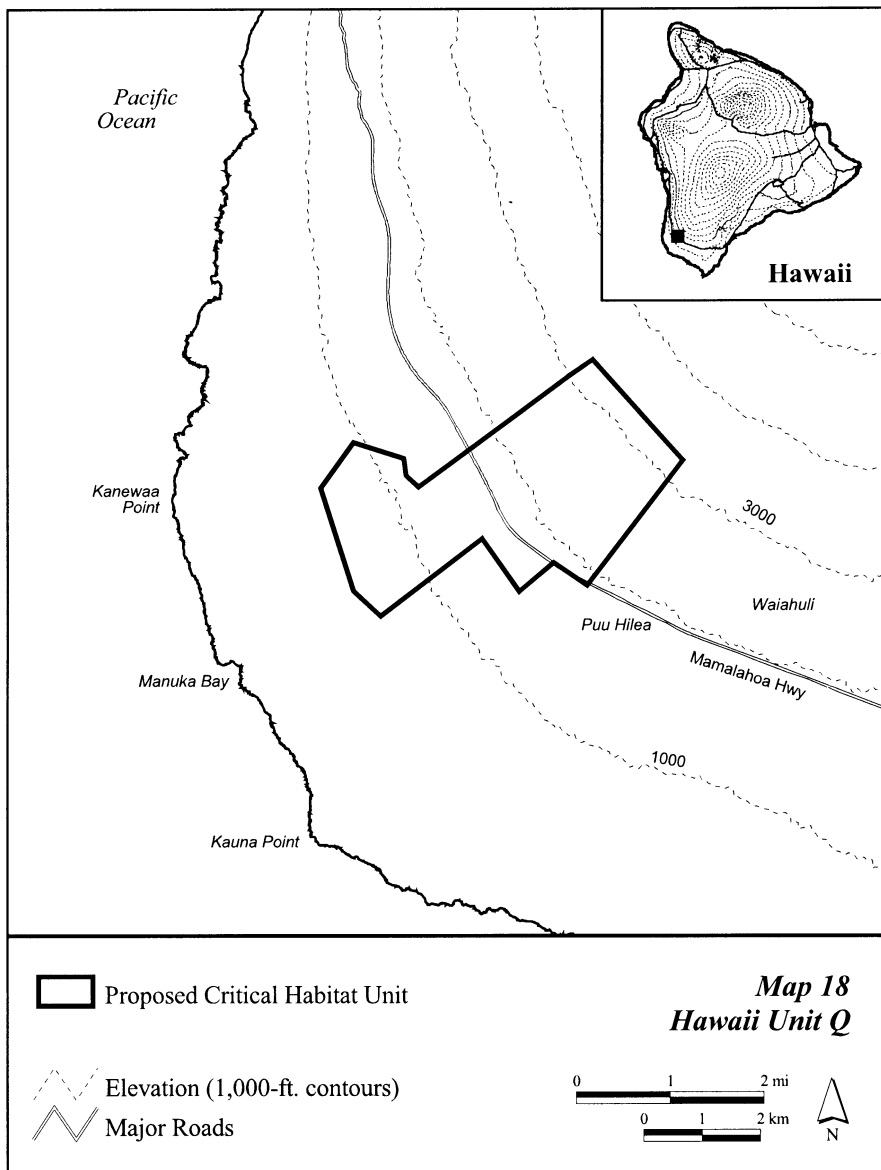


(i) Unit consists of the following 15 boundary points: 203744, 2119863; 204434, 2120339; 206918, 2117598; 204288, 2114159; 203379, 2114793; 202419, 2113989; 201403, 2115445; 198635, 2113306; 197884, 2114011; 196992, 2116831; 197884, 2118084; 199261, 2117650; 199326, 2117178; 199670, 2116873; 203744, 2119863.

(ii) Note: Map 18 follows:

(30) Hawaii Q (3,549 ha; 8,770 ac).

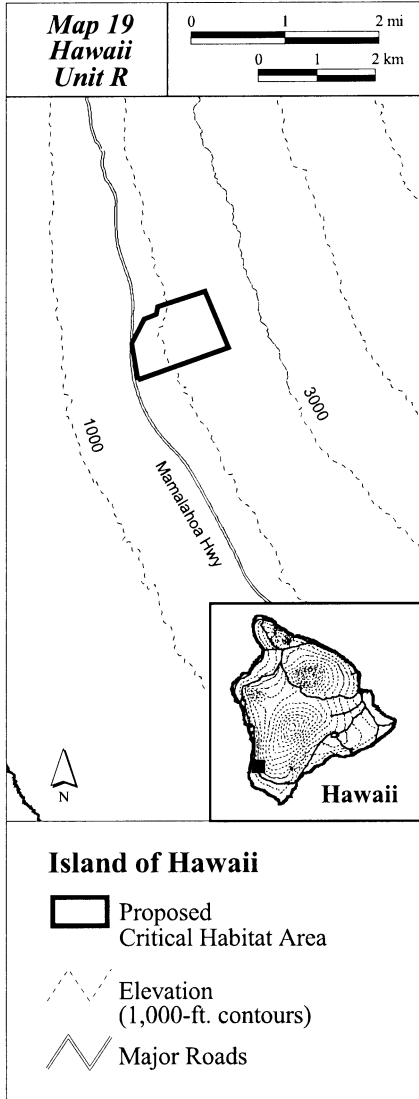




(31) Hawaii R (387 ha; 387 ac).

(i) Unit consists of the following eight boundary points: 199019, 2121433; 198840, 2122426; 199183, 2123093; 199523, 2123234; 199557, 2123431; 200864, 2123853; 201509, 2122322; 199019, 2121433.

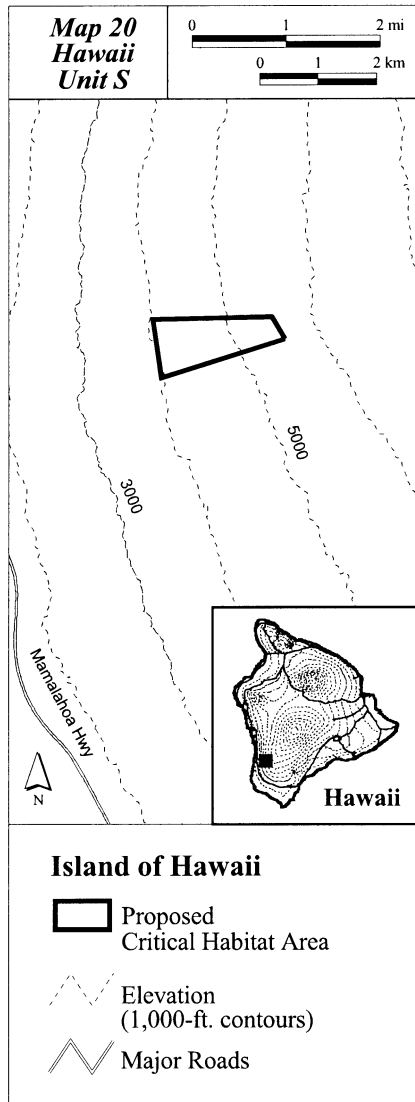
(ii) Note: Map 19 follows:



(32) Hawaii S (383 ha; 947 ac).

(i) Unit consists of the following five boundary points: 206224, 2130517; 202842, 2129444; 202613, 2131045; 205877, 2131123; 206224, 2130517.

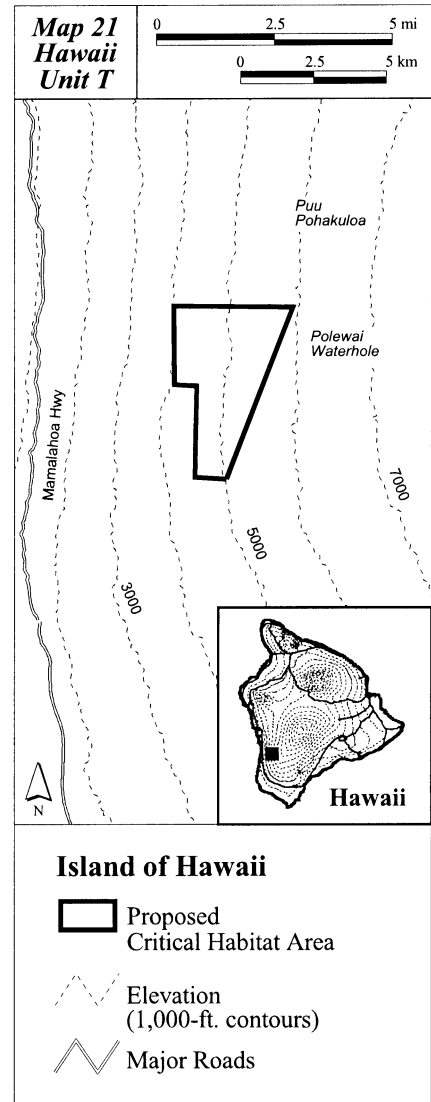
(ii) Note: Map 20 follows:



(33) Hawaii T (1,489 ha; 3,681 ac).

(i) Unit consists of the following seven boundary points: 204443, 2132607; 203375, 2132666; 203443, 2135792; 202673, 2135845; 202654, 2138543; 206732, 2138501; 204443, 2132607.

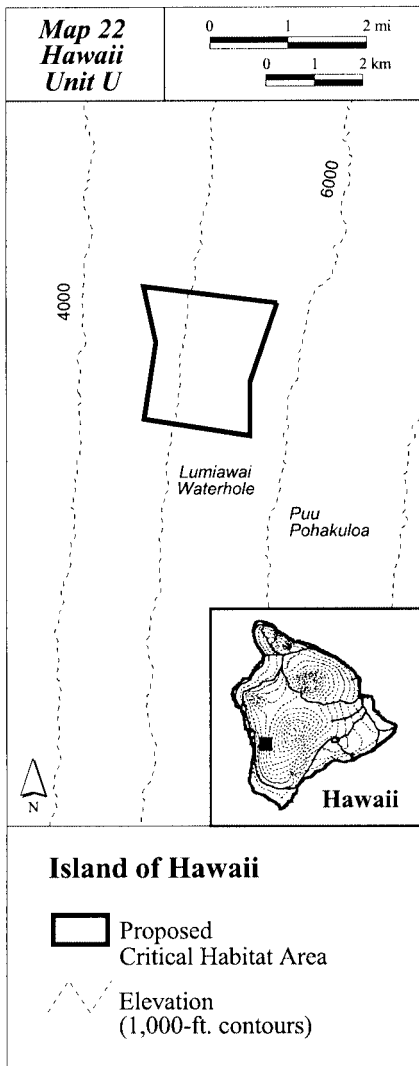
(ii) Note: Map 21 follows:



(34) Hawaii U (615 ha; 1,520 ac).

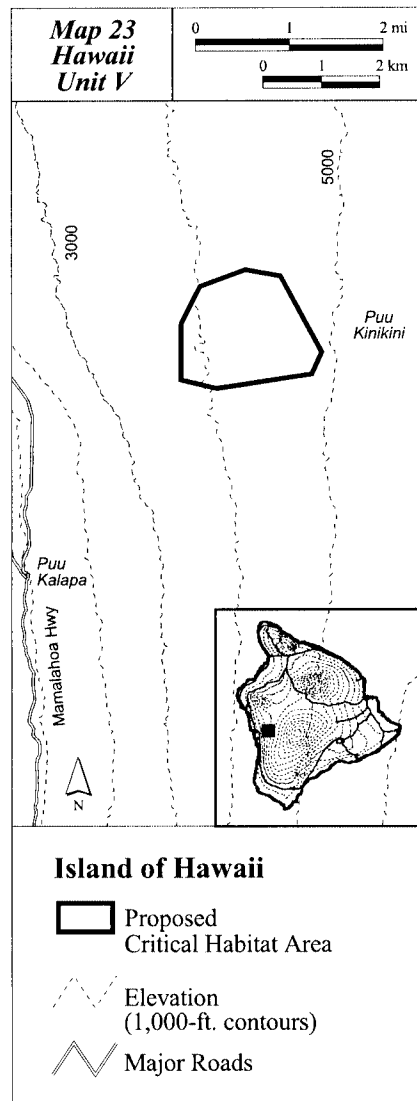
(i) Unit consists of the following seven boundary points: 207156, 2146304; 206598, 2144681; 206598, 2143570; 204428, 2143915; 204674, 2145490; 204421, 2146650; 207156, 2146304.

(ii) Note: Map 22 follows:



(35) Hawaii V (951 ha; 951 ac).  
 (i) Unit consists of the following nine boundary points: 201716, 2156441; 202236, 2157481; 203493, 2157946; 204443, 2157768; 205570, 2155691; 205302, 2155071; 202715, 2154681; 201716, 2154917; 201716, 2156441.

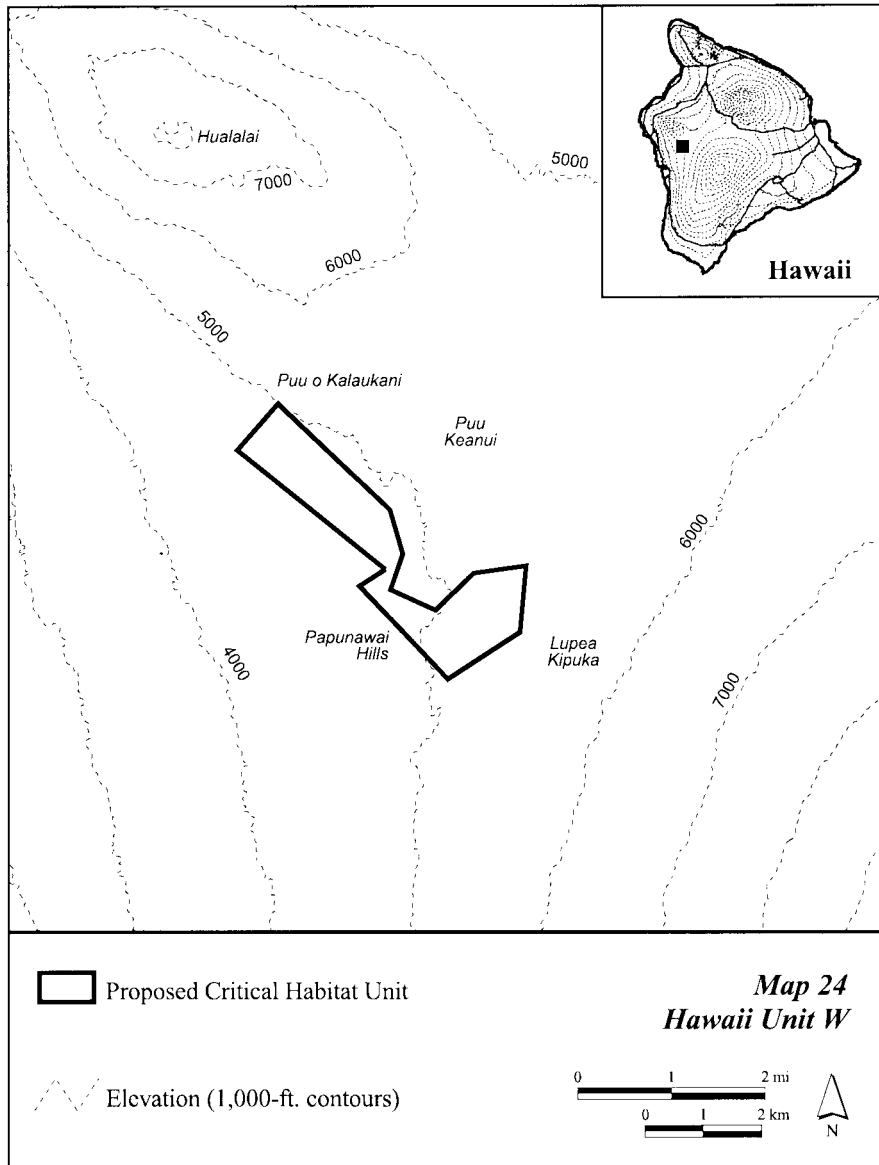
(ii) Note: Map 23 follows:



(36) Hawaii W (1,479 ha; 3,654 ac).

(i) Unit consists of the following 13 boundary points: 205252, 2167635; 201198, 2170923; 202321, 2172189; 205378, 2169282; 205734, 2168071; 205395, 2167074; 206630, 2166529; 207676, 2167534; 209126, 2167741; 208948, 2165908; 206971, 2164632; 204555, 2167184; 205252, 2167635.

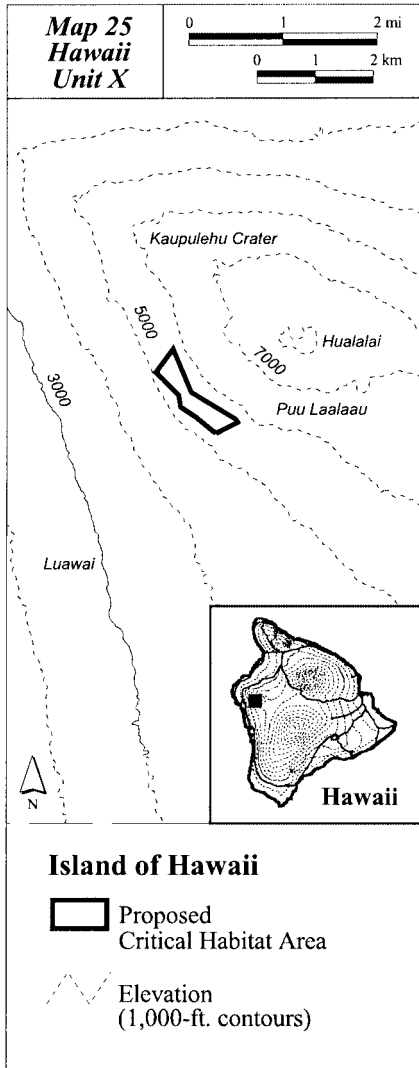
(ii) Note: Map 24 follows:



(37) Hawaii X (138 ha; 340 ac).

(i) Unit consists of the following nine boundary points: 197194, 2177013; 196714, 2177434; 196239, 2177751; 196187, 2178067; 195553, 2178701; 196028, 2179334; 196530, 2178147; 197744, 2177408; 197793, 2177330.

(ii) Note: Map 25 follows:



(38) Hawaii Y1 (212 ha; 524 ac).

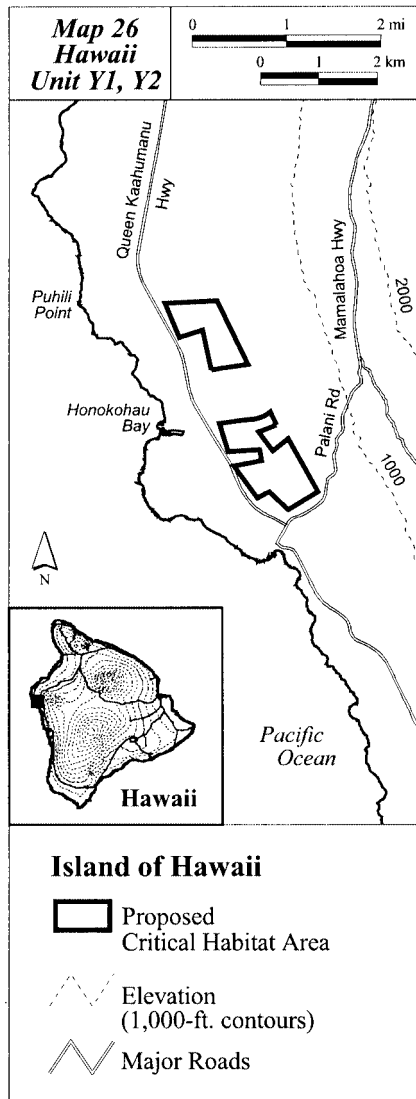
(i) Unit consists of the following seven boundary points: 183972, 2179379; 183738, 2180484; 183094, 2180286; 182697, 2181215; 184122, 2181277; 184966, 2179538; 184138, 2179420.

(ii) Note: Map 26 follows:

(39) Hawaii Y2 (334 ha; 826 ac).

(i) Unit consists of the following 18 boundary points: 185749, 2177865; 185261, 2177684; 185647, 2177155; 186075, 2177494; 186885, 2176018; 186069, 2175532; 185540, 2176019; 185232, 2175842; 184584, 2176731; 185340, 2176888; 185300, 2177182; 184431, 2177142; 184190, 2177908; 184571, 2177971; 184963, 2178008; 185173, 2178026; 185406, 2178122; 185576, 2178230.

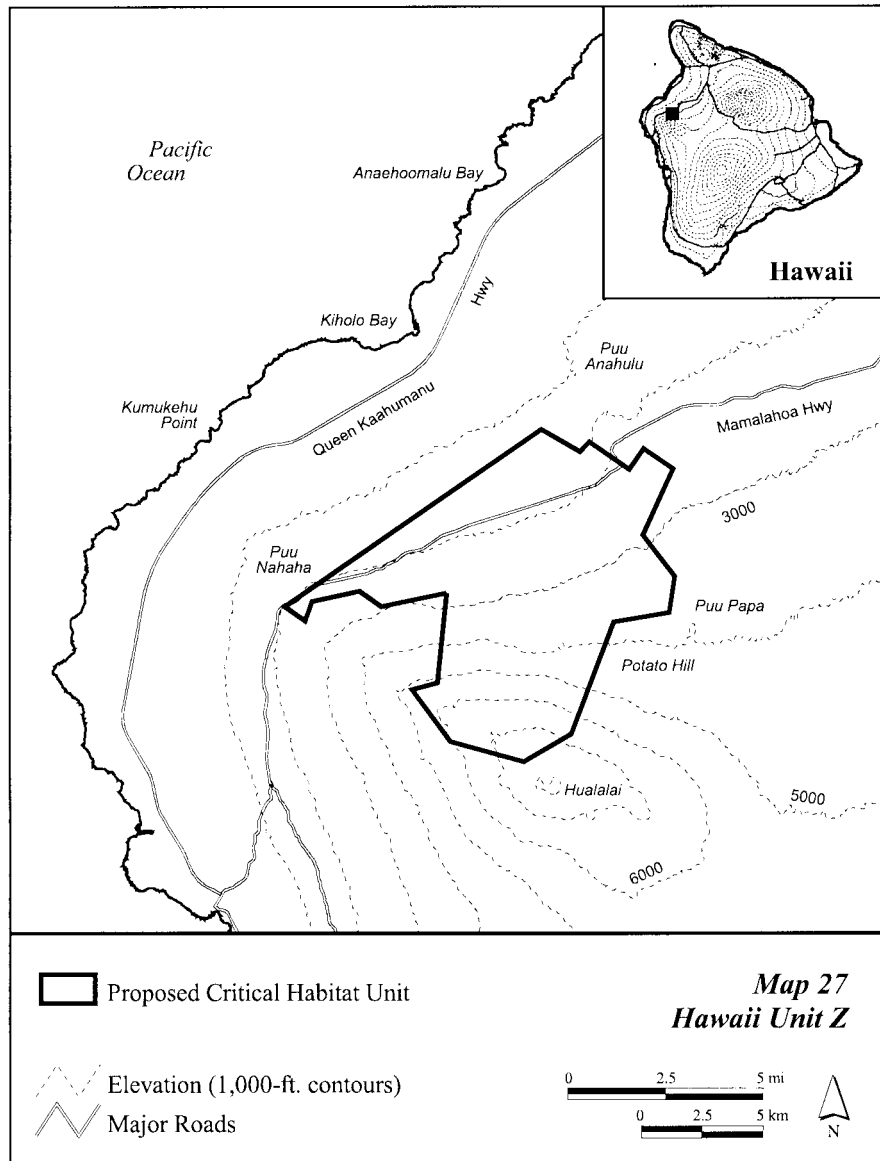
(ii) Note: Map 26 follows:



(40) Hawaii Z (10,738 ha; 26,535 ac).

(i) Unit consists of the following 22 boundary points: 195290, 2187514; 192592, 2186941; 191694, 2187574; 189745, 2187154; 189472, 2186376; 188637, 2186944; 199157, 2194227; 200761, 2193290; 201154, 2193708; 202794, 2192559; 203397, 2193436; 204610, 2192598; 203353, 2189881; 204671, 2188173; 204462, 2186704; 202154, 2186315; 200408, 2181683; 198449, 2180555; 195423, 2181386; 193852, 2183527; 194901, 2183797; 195290, 2187514.

(ii) Note: Map 27 follows:



**Map 27**  
**Hawaii Unit Z**

(41) Hawaii AA (28,384 ha; 70,138 ac).

(i) Unit consists of the following 67 boundary points: 232723, 2183705; 230919, 2184740; 230815, 2184516; 229320, 2184420; 228423, 2185167; 225733, 2185964; 225124, 2185943; 223293, 2184769; 223290, 2183683; 220000, 2179930; 219994, 2179923; 219987, 2179918; 219981, 2179913; 219977, 2179911; 219973, 2179909; 219965, 2179906; 216370, 2178543; 222247, 2173811; 222322, 2167265; 222322, 2167257; 222335, 2167257; 220155, 2166489; 219579, 2168927; 219762, 2171154; 219286, 2172006; 218282, 2169685; 214867, 2175808; 210939, 2174004; 209532, 2175089;

209494, 2176651; 213262, 2178498; 208392, 2187047; 210165, 2188544; 210162, 2188542; 210803, 2189143; 211768, 2188558; 214377, 2189201; 217216, 2188903; 221396, 2190818; 222990, 2190609; 223038, 2190602; 223044, 2190601; 224382, 2191593; 226252, 2188954; 229287, 2188260; 230414, 2189388; 234885, 2188211; 235657, 2187676; 234948, 2187010; 231708, 2187545; 231561, 2186512; 234898, 2186362; 235254, 2186077; 235032, 2185729; 235339, 2185480; 235602, 2185805; 236072, 2185421; 235419, 2184116; 236547, 2181683; 236410, 2179093; 237588, 2179190; 238332, 2176662; 236820, 2174962;

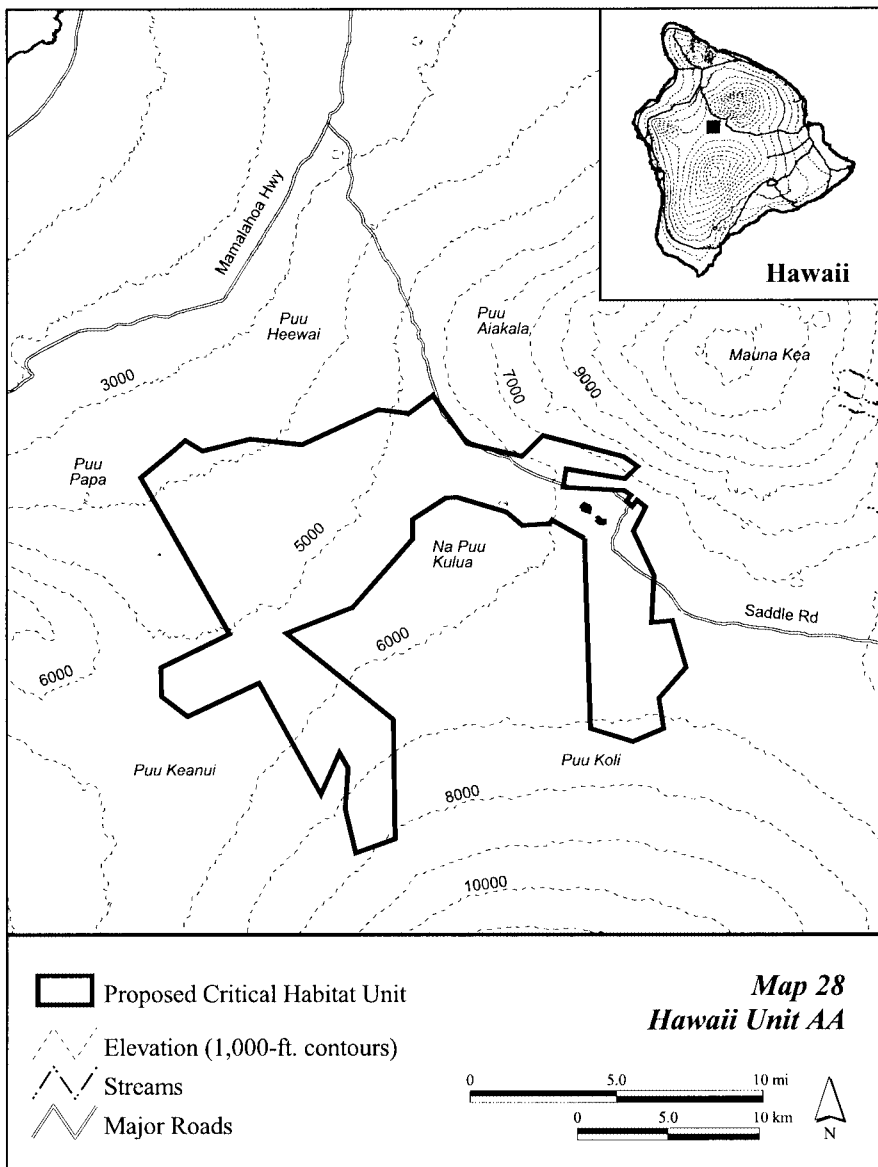
237090, 2173313; 235396, 2172615; 233055, 2173313; 232723, 2183705.

(ii) Excluding the following two areas:

(A) Bounded by the following 7 boundary points (10ha, 24ac): 232577, 2185323; 232599, 2185467; 232714, 2185578; 232934, 2185467; 232998, 2185368; 232954, 2185202; 232577, 2185323.

(B) Bounded by the following 9 boundary points (5ha, 11ac): 233384, 2184752; 233480, 2184822; 233636, 2184644; 233786, 2184671; 233811, 2184653; 233813, 2184596; 233682, 2184541; 233484, 2184638; 233384, 2184752.

(iii) **Note:** Map 28 follows:



(42) Hawaii BB (43 ha; 106 ac).

(i) Unit consists of the following 13 boundary points and the intermediate coastline: 181769, 2190198; 181706, 2189862; 181589, 2189862; 181195, 2189687; 180990, 2189424; 180757, 2189337; 180698, 2189351; 180707, 2189442; 181635, 2190130; 181662, 2190111; 181735, 2190198; 181750, 2190198; 181769, 2190198.

(ii) Note: Map 29 follows:

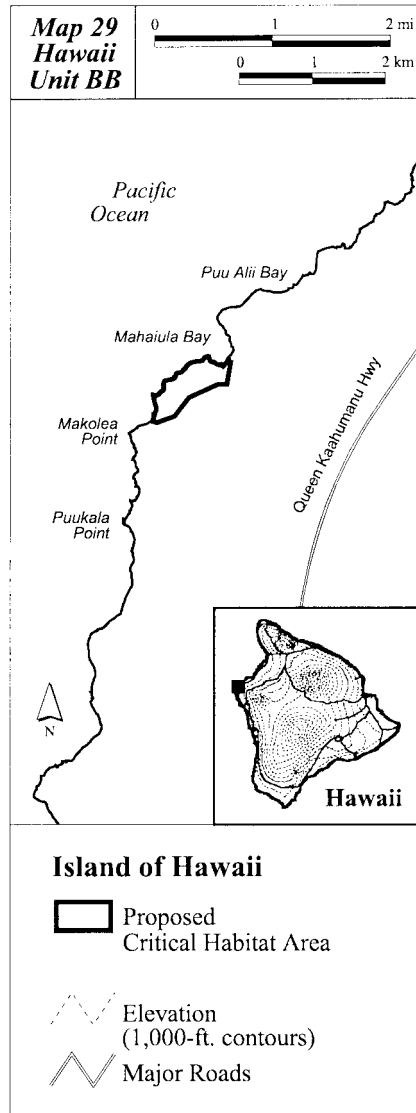


TABLE (a)(1)(i)(H).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON THE ISLAND OF HAWAII

Unit name	Species occupied	Species unoccupied
Hawaii A1 .....	<i>Pleomele hawaiiensis</i> .....	
Hawaii A2 .....	<i>Nothocestrum breviflorum</i> .....	
Hawaii B .....	<i>Achyranthes mutica</i> , <i>Clermontia drepanomorpha</i> , <i>Phyllostegia warshaueri</i> .	
Hawaii C .....	<i>Sesbania tomentosa</i> .....	
Hawaii D1 .....	<i>Portulaca sclerocarpa</i> .....	<i>Isodendrion hosakae</i> , <i>Vigna o-wahuensis</i> .
Hawaii D2 .....	.....	<i>Isodendrion hosakae</i> , <i>Portulaca sclerocarpa</i> , <i>Vigna o-wahuensis</i> .
Hawaii D3 .....	.....	<i>Isodendrion hosakae</i> .
Hawaii D4 .....	.....	<i>Isodendrion hosakae</i> , <i>Portulaca sclerocarpa</i> , <i>Vigna o-wahuensis</i> .
Hawaii D5 .....	<i>Isodendrion hosakae</i> , <i>Portulaca sclerocarpa</i> , <i>Vigna o-wahuensis</i> .	
Hawaii D6 .....	.....	<i>Isodendrion hosakae</i> , <i>Portulaca sclerocarpa</i> , <i>Vigna o-wahuensis</i> .
Hawaii D7 .....	<i>Isodendrion hosakae</i> , <i>Portulaca sclerocarpa</i> .....	<i>Vigna o-wahuensis</i> .
Hawaii D8 .....	<i>Isodendrion hosakae</i> .....	<i>Portulaca sclerocarpa</i> , <i>Vigna o-wahuensis</i> .
Hawaii E .....	<i>Clermontia lindseyana</i> , <i>Clermontia pyrularia</i> , <i>Phyllostegia racemosa</i> .	
Hawaii F .....	<i>Cyanea platyphylla</i> , <i>Cyanea shipmanii</i> , <i>Cyrtandra giffardii</i> , <i>Cyrtandra tintinnabula</i> , <i>Phyllostegia racemosa</i> , <i>Phyllostegia warshaueri</i> .	<i>Clermontia peleana</i> .



TABLE (a)(1)(i)(H).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON THE ISLAND OF HAWAII—Continued

Unit name	Species occupied	Species unoccupied
Hawaii G	<i>Argyroxiphium kauense</i> , <i>Asplenium fragile</i> var. <i>insulare</i> , <i>Clermontia lindseyana</i> , <i>Cyanea platyphylla</i> , <i>Cyanea shipmanii</i> , <i>Cyanea stictophylla</i> , <i>Cyrtandra giffardii</i> , <i>Phyllostegia racemosa</i> , <i>Phyllostegia velutina</i> , <i>Plantago hawaiiense</i> , <i>Sicyos alba</i> .	<i>Clermontia peleana</i> .
Hawaii H	<i>Argyroxiphium kauense</i> , <i>Phyllostegia racemosa</i> , <i>Plantago hawaiiensis</i> , <i>Silene hawaiiensis</i> .	
Hawaii I	<i>Hibiscadelphus giffardianus</i> , <i>Melicope zahlbruckneri</i> .....	
Hawaii J	<i>Adenophorus periens</i> .....	
Hawaii K	<i>Argyroxiphium kauense</i> , <i>Asplenium fragile</i> var. <i>insulare</i> , <i>Clermontia lindseyana</i> , <i>Cyanea stictophylla</i> , <i>Phyllostegia velutina</i> .	<i>Melicope zahlbruckneri</i>
Hawaii L	<i>Pleomele hawaiiensis</i> , <i>Portulaca sclerocarpa</i> , <i>Sesbania tomentosa</i> .	
Hawaii M1	<i>Ischaemum byrone</i> .....	
Hawaii M2	<i>Ischaemum byrone</i> .....	
Hawaii M3	<i>Ischaemum byrone</i> .....	
Hawaii M4	<i>Ischaemum byrone</i> .....	
Hawaii M5	<i>Ischaemum byrone</i> .....	
Hawaii N1	<i>Sesbania tomentosa</i> .....	
Hawaii N2	<i>Sesbania tomentosa</i> .....	
Hawaii O	<i>Mariscus fauriei</i> .....	
Hawaii P	<i>Pleomele hawaiiensis</i> .....	
Hawaii Q	<i>Colubrina oppositifolia</i> , <i>Diellia erecta</i> , <i>Flueggea neowawraea</i> , <i>Gouania vitifolia</i> , <i>Neraudia ovata</i> .	
Hawaii R	<i>Diellia erecta</i> , <i>Flueggea neowawraea</i> .....	
Hawaii S	<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i> , <i>Cyanea stictophylla</i>	
Hawaii T	<i>Cyanea stictophylla</i> .....	<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i> .
Hawaii U	<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i> .....	
Hawaii V	<i>Nothoecstrum breviflorum</i> .....	
Hawaii W	<i>Delissea undulata</i> .....	<i>Solanum incompletum</i> .
Hawaii X	<i>Cyanea hamatiflora</i> ssp. <i>carlsonii</i> .....	
Hawaii Y1	<i>Neraudia ovata</i> .....	
Hawaii Y2	<i>Isodendron pyrifolium</i> .....	<i>Neraudia ovata</i> .
Hawaii Z	<i>Bonamia menziesii</i> , <i>Colubrina oppositifolia</i> , <i>Cyanea stictophylla</i> , <i>Delissea undulata</i> , <i>Flueggea neowawraea</i> , <i>Hibiscadelphus hualalaiensis</i> , <i>Hibiscus brackenridgei</i> , <i>Nothoecstrum breviflorum</i> , <i>Phyllostegia velutina</i> , <i>Plantago hawaiiensis</i> , <i>Pleomele hawaiiensis</i> , <i>Zanthoxylum dipetalum</i> var. <i>tomentosum</i> .	
Hawaii AA	<i>Asplenium fragile</i> var. <i>insulare</i> , <i>Hedyotis coriacea</i> , <i>Neraudia ovata</i> , <i>Portulaca sclerocarpa</i> , <i>Silene hawaiiensis</i> , <i>Silene lanceolata</i> , <i>Solanum incompletum</i> , <i>Spermolepis hawaiiensis</i> , <i>Tetramolopium arenarium</i> , <i>Zanthoxylum hawaiiense</i> .	
Hawaii BB	<i>Sesbania tomentosa</i> .....	

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

*Family Amaranthaceae: Achyranthes mutica* (NCN).

Hawaii B, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Achyranthes mutica* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Acacia koaia* lowland dry forest primarily in gulches but also in remnant stands of forest containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Myoporum sandwicense*, *Osteomeles anthyllidifolia*, *Nestegis sandwicensis*, *Metrosideros polymorpha*, *Santalum*

*ellipticum*, *Erythrina sandwicensis*, or *Sophora chrysophylla*; and  
(2) Elevations between 643 and 1,518 m (2,110 and 4,990 ft).

*Family Apiaceae: Spermolepis hawaiiensis* (NCN).

Hawaii AA, identified in the legal description in paragraph (a)(1)(i)(H), constitute critical habitat for *Spermolepis hawaiiensis* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Shady spots in *Dodonaea viscosa* lowland dry shrubland, on pahoehoe lava and containing one or more of the following associated native plant species: *Myoporum sandwicense*, *Osteomeles anthyllidifolia*, or *Sophora chrysophylla*, and

(2) Elevations between 1,134 and 2,140 m (3,720 and 7,020 ft).

*Family Asteraceae: Argyroxiphium kauense* (Mauna Loa silversword).

Hawaii G, H, K, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Argyroxiphium kauense* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moist open forest; subalpine mesic shrubland, bogs; and weathered, old pahoehoe (smooth) or aa (rough) lava with well developed pockets of soil, and containing one or more of the following associated native plant species: *Coprosma montana*, *Plantago hawaiiensis*, *Silene hawaiiensis*, *Asplenium fragile* var. *insulare*,

*Metrosideros polymorpha*, *Styphelia tameiameia*, *Coprosma ernodeoides*, *Vaccinium reticulatum*, *Dubautia ciliolata*, *Geranium cuneatum*, *Carex montis-eeka*, *Carex alligata*, *Rhynchospora chinensis*, *Dodonaea viscosa*, *Gahnia gahniiformis*, or *Deschampsia nubigena*; and

(2) Elevations between 1,625 and 2,774 m (3,330 and 9,100 ft).

Family Asteraceae: *Tetramolopium arenarium* (NCN).

Hawaii AA, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Tetramolopium arenarium* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland and montane dry shrublands dominated by *Dodonaea viscosa*, containing one or more of the following associated native plant species: *Styphelia tameiameia*, *Dubautia linearis*, *Chamaesyce olowaluana*, *Haplostachys haplostachya*, *Sida fallax*, or *Chenopodium oahuense*, and

(2) Elevations between 1,363 and 1,762 m (4,470 and 5,780 ft).

Family Campanulaceae: *Clermontia drepanomorpha* (oha wai).

Hawaii B, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Clermontia drepanomorpha* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha*, *Cheirodendron trigynum*, and *Cibotium glaucum* dominated montane wet forests, containing one or more of the following native plant species: *Carex alligata*, *Melicope clusiifolia*, *Styphelia tameiameia*, *Astelia menziesii*, *Rubus hawaiiensis*, *Cyanea pilosa*, and *Coprosma* sp. or native sphagnum moss; and

(2) Elevations between 808 and 1,676 m (2,650 and 5,500 ft).

Family Campanulaceae: *Clermontia lindseyana* (haha).

Hawaii E, G, K, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Clermontia lindseyana* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slightly open forest cover in wet and mesic *Metrosideros polymorpha*-*Acacia koa* forest, *Metrosideros polymorpha* forest, and mixed montane mesic *Metrosideros polymorpha*-*Acacia koa* forest and containing one or more of the following associated native plant

species: *Styphelia tameiameia*, *Cheirodendron trigynum*, *Rubus hawaiiensis*, *Coprosma* sp., *Athyrium* sp., or *Peperomia* sp., and

(2) Elevations between 1,314 and 2,256 m (4,310 and 7,400 ft).

Family Campanulaceae: *Clermontia peleana* (oha wai).

Hawaii F, G, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Clermontia pyrularia* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Montane wet *Metrosideros-Cibotium* forest containing one or more of the following associated native plant species: *Clermontia hawaiiensis*, *Cheirodendron trigynum*, *Cyrtandra platyphylla*, *Cibotium menziesii*, *C. chamissoi*, *Ilex anomala*, *Sadleria* spp., or *Coprosma pubens*, and

(2) Elevations between 436 and 1,728 m (1,430 and 5,670 ft).

Family Campanulaceae: *Clermontia pyrularia* (oha wai).

Hawaii E, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Clermontia pyrularia* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet and mesic montane forest dominated by *Acacia koa* or *Metrosideros polymorpha*, and subalpine dry forest dominated by *M. polymorpha* containing one or more of the following associated native plant species: *Coprosma* sp., *Dryopteris wallichiana*, *Rubus hawaiiensis*, or *Hedyotis* sp.; and

(2) Elevations between 1,628 and 2,061 m (5,340 to 6,760 ft).

Family Campanulaceae: *Cyanea hamatiflora* ssp. *carlsonii* (haha).

Hawaii S, T, U, X, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Cyanea hamatiflora* ssp. *carlsonii* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Mesic montane forest dominated by *Metrosideros polymorpha* or *Acacia koa* containing one or more of the following associated native plants species: *Myoporum sandwicense*, *Clermontia clermontioides*, *Coprosma* sp., *Ilex anomala*, *Hedyotis* sp., *Sophora chrysophylla*, *Cibotium* spp., *Dryopteris* sp., or *Athyrium* sp.; and

(2) Elevations between 1,350 to 1,783 m (4,430 to 5,850 ft).

Family Campanulaceae: *Cyanea platyphylla* (haha).

Hawaii F, G, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Cyanea platyphylla* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha*-*Acacia koa* lowland and montane wet forests containing one or more of the following associated native plant species:

*Coprosma* sp., *Psychotria hawaiiensis*, *Perrottetia sandwicensis*, *Scaevola* spp., *Cibotium* sp., *Antidesma platyphyllum*, *Clermontia* spp., *Hedyotis* sp., or *Cyrtandra* spp.; and

(2) Elevations between 120 and 915 m (390 and 3,000 ft).

Family Campanulaceae: *Cyanea shipmanii* (haha).

Hawaii F, G, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Cyanea shipmanii* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Montane mesic forest dominated by *Acacia koa*-*Metrosideros polymorpha* on the windward slopes of the island containing one or more of the following associated native plant species: *Ilex anomala*, *Myrsine lessertiana*, or *Cheirodendron trigynum*; and

(2) Elevations between 1,619 and 2,027 m (5,310 and 6,650 ft).

Family Campanulaceae: *Cyanea stictophylla* (haha).

Hawaii G, K, S, T, Z, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Cyanea stictophylla* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Acacia koa* or wet *Metrosideros polymorpha* forests containing one or more of the following associated native plant species: *Melicope* spp., *Cibotium* sp., or *Urera glabra*; and

(2) Between elevations of 1,183 and 1,942 m (3,880 and 6,370 ft).

Family Campanulaceae: *Delissea undulata* (NCN).

Hawaii W, Z, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Delissea undulata* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry cinder cones and open *Sophora chrysophylla* and *Metrosideros polymorpha* forest containing one or more of the following associated native plant species: *Diospyros sandwicensis*, *Dodonaea viscosa*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum*

*paniculatum*, *Sophora chrysophylla*, *Nothocestrum breviflorum*, or *Acacia koa*, and

(2) Elevations between 890 to 1,747 m (2,920 to 5,730 ft).

Family *Caryophyllaceae*: *Silene hawaiiensis* (NCN).

Hawaii H, AA, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Silene hawaiiensis* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) In weathered lava, but also on variously aged lava flows and cinder substrates in montane and subalpine dry shrubland and containing one or more of the following associated native plants species: *Metrosideros polymorpha*, *Sophora chrysophylla*, *Vaccinium reticulatum*, *Styphelia tameiameia*, *Rumex giganteus*, or *Dodonaea viscosa*; and

(2) Elevations between 896 and 3,011 m (2,940 and 9,880 ft).

Family *Caryophyllaceae*: *Silene lanceolata* (NCN).

Hawaii AA, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Silene lanceolata* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rocky tumuli or outcrops, on aa lava, in deep ash deposits over pahoehoe lava and in Mauna Kea substrate in dry montane shrubland containing one or more of the following associated native plant species: *Eragrostis* sp., *Metrosideros polymorpha*, *Chamaesyce* sp., *Myoporum sandwicense*, *Sophora chrysophylla*, *Chenopodium oahuense*, *Dodonaea viscosa*, *Styphelia tameiameia*, or *Dubautia linearis*, and

(2) Elevations between 1,253 and 1,320 m (4,110 and 4,330 ft).

Family *Convolvulaceae*: *Bonamia menziesii* (NCN).

Hawaii Z, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Bonamia menziesii* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry forest containing one or more of the following associated native plant species: *Diospyros sandwicensis*, *Erythrina sandwicensis*, *Xylosma hawaiiense*, *Myrsine lanaiensis*, *Metrosideros polymorpha*, *Santalum paniculatum*, *Sapindus saponaria*, *Pouteria sandwicensis*, *Nototrichium sandwicense*, *Chenopodium oahuense*, *Senna gaudichaudii*, *Sophora chrysophylla*, *Sida fallax*, *Osteomeles*

*anthyllidifolia*, *Dodonaea viscosa*, *Canavalia hawaiiensis*, *Argemone glauca*, *Peperomia blanda* var.

*floribunda*, or *Psilotum nudum*, and (2) Elevations between 421 and 704 m (1,380 and 2,310 ft).

Family *Cucurbitaceae*: *Sicyos alba* (anunu).

Hawaii G, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Sicyos alba* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha-Cibotium glaucum* dominated montane wet forests, containing one or more of the following associated native plant species: *Coprosma* sp., *Astelia menziesii*, *Athyrium* sp., *Psychotria* sp., *Cheirodendron trigynum*, *Pritchardia beccariana*, *Platydesma spatulata*, *Broussaisia arguta*, *Cyrtandra lysiosepala*, *Stenogyne* sp., *Perrottetia sandwicensis*, *Cheirodendron trigynum*, *Cyanea tritomantha*, or *Athyrium microphyllum* and other ferns; and

(2) Elevations between 896 and 1,576 m (2,940 and 5,170 ft).

Family *Cyperaceae*: *Mariscus fauriei* (NCN).

Hawaii O, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Mariscus fauriei* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Diospyros sandwicensis-Metrosideros polymorpha-Sapindus saponaria* dominated lowland dry forests, often on a lava substrate containing one or more of the following associated native plant species: *Sophora chrysophylla*, *Myoporum sandwicense*, *Psydrax odorata*, *Peperomia blanda* var. *floribunda*, *Osteomeles anthyllidifolia*, or *Rauwolfia sandwicensis*, and

(2) Elevations between 107 and 402 m (350 and 1,320 ft).

Family *Euphorbiaceae*: *Flueggea neowawraea* (mehamehame).

Hawaii Q, R, Z, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Flueggea neowawraea* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Mesic *Metrosideros polymorpha* forest containing one or more of the following associated native plant species: *Nestegis sandwicensis*, *Psychotria hawaiiensis*, *Pittosporum hosmeri*, *Pipturus albidus*, *Pisonia* spp., *Diospyros sandwicensis*, *Psydrax odorata*, *Antidesma platyphyllum*, *A. pulvinatum*, or *Nephrolepis* spp., and

(2) Elevations between 424 to 820 m (1,390 to 2,690 ft).

Family *Fabaceae*: *Sesbania tomentosa* (ohai).

Hawaii C, L, N, BB, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Sesbania tomentosa* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Open, dry *Metrosideros polymorpha* forest with mixed native grasses, *Scaevola sericea* coastal dry shrubland on windswept slopes, and weathered basaltic slopes containing one or more of the following associated native plant species: *Sporobolus virginicus*, *Styphelia tameiameia*, *Wollastonia integrifolia*, *Jacquemontia sandwicensis*, *Sida fallax*, *Ipomoea pes-caprae*, *Dodonaea viscosa*, *Fimbristylis hawaiiensis*, *Myoporum sandwicense*, or *Waltheria indica*, and

(2) Elevations between sea level and 954 m (0 and 3,130 ft).

Family *Fabaceae*: *Vigna o-wahuensis* (NCN).

Hawaii D, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Vigna o-wahuensis* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated native plant species: *Chenopodium oahuense*, *Dodonaea viscosa*, *Osteomeles anthyllidifolia*, *Wikstroemia* sp., or *Sida fallax*; and

(2) Elevations between 351 and 2,274 m (1,150 to 7,460 ft).

Family *Gesneriaceae*: *Cyrtandra giffardii* (haiwale).

Hawaii F, G, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Cyrtandra giffardii* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet montane forest dominated by *Cibotium* sp. or *Metrosideros polymorpha* and *Metrosideros polymorpha-Acacia koa* lowland wet forests containing one or more of the following associated native plant species: *Hedyotis terminalis*, *Astelia menziesiana*, *Diplazium sandwicensis*, *Perrottetia sandwicensis*, or other species of *Cyrtandra*; and

(2) Between elevations of 637 and 1,676 m (2,090 and 5,500 ft).

Family *Gesneriaceae*: *Cyrtandra tintinnabula* (haiwale).

Hawaii F, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Cyrtandra tintinnabula* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland wet forest dominated by dense *Acacia koa*, *Metrosideros polymorpha*, and *Cibotium* spp. containing one or more of the following associated native plant species: *Cyrtandra* spp. or *Hedyotis* spp.; and

(2) Between elevations 390 and 1,430 m (1,280 and 4,690 ft).

Family Lamiaceae: *Phyllostegia racemosa* (NCN).

Hawaii E, F, G, H, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Phyllostegia racemosa* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Epiphytic conditions in *Acacia koa*, *Metrosideros polymorpha*, and *Cibotium* sp. dominated montane mesic or wet forests containing one or more of the following associated native plant species: *Vaccinium calycinum*, *Rubus hawaiiensis*, or *Dryopteris wallichiana*; and

(2) Elevations between 1,369 and 1,966 m (4,490 to 6,450 ft).

Family Lamiaceae: *Phyllostegia velutina* (NCN).

Hawaii G, K, Z, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Phyllostegia velutina* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha*-*Acacia koa* dominated montane mesic and wet forests containing one or more of the following native plant species: *Cibotium* spp., *Cheirodendron trigynum*, *Vaccinium calycinum*, *Coprosma* sp., *Dryopteris wallichiana*, *Rubus hawaiiensis*, *Pipturus albidus*, *Athyrium microphyllum* and other native wet forest terrestrial ferns, *Myrsine lessertiana*, or *Ilex anomala*; and

(2) Elevations between 908 and 1,887 m (2,980 and 6,190 ft).

Family Lamiaceae: *Phyllostegia warshaueri* (NCN).

Hawaii B, F, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Phyllostegia warshaueri* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* and *Cibotium montane* and lowland wet forest in which *Acacia koa* or *Cheirodendron trigynum* may co-dominate, containing one or more of the following associated native plant species: *Antidesma platyphyllum*, *Psychotria hawaiiensis*, *Hedyotis* sp., *Coprosma* sp., *Sadleria pallida*, *Broussaia arguta*, *Pipturus albidus*, *Clermontia parviflora*, *Athyrium sandwicense*, *Machaerina angustifolia*, *Cyanea pilosa*, or other *Cyanea* spp.; and

(2) Elevations between 730 and 1,150 m (2,400 and 3,770 ft).

Family Liliaceae: *Pleomele hawaiiensis* (hala pepe).

Hawaii A, L, P, Z, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Pleomele hawaiiensis* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Open aa lava in diverse lowland dry forests and *Metrosideros-Diospyros* lowland dry forest containing one or more of the following associated native plant species: *Metrosideros polymorpha*, *Reynoldsia sandwicensis*, *Dodonaea viscosa*, *Diospyros sandwicensis*, *Sophora chrysophylla*, *Psydrax odorata*, *Cocculus trilobus*, *Myoporum sandwicense*, *Nestegis sandwicensis*, *Bobea timonioides*, *Kokia drynarioides*, *Nototrachelium sandwicense*, *Sida fallax*, *Erythrina sandwicensis*, *Santalum paniculatum*, *Osteomeles anthyllidifolia*, *Caesalpinia kavaiensis*, *Colubrina oppositifolia*, *Nothocestrum breviflorum*, *Neraudia ovata*, or *Bidens micrantha* ssp. *ctenophylla*; and

(2) Elevations between 152 and 969 m (500 and 3,180 ft).

Family Malvaceae: *Hibiscadelphus giffardianus* (hau kuahiwi).

Hawaii I, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Hibiscadelphus giffardianus* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Mixed montane mesic forest containing one or more of the following native plant species: *Metrosideros polymorpha*, *Acacia koa*, *Sapindus saponaria*, *Coprosma rhyrachocarpa*, *Pipturus albidus*, *Psychotria* sp., *Nestegis sandwicensis*, *Melicope* spp., *Dodonaea viscosa*, or *Myoporum sandwicense*; and

(2) Elevations between 1,192 and 1,277 m (3,910 and 4,190 ft).

Family Malvaceae: *Hibiscadelphus hualalaiensis* (hau kuahiwi).

Hawaii Z, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Hibiscadelphus hualalaiensis* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat and the habitat components provided by:

(1) Dry mesic to dry *Metrosideros* forest on rocky substrate in deep soils containing one or more of the following native plants species: *Metrosideros polymorpha*, *Acacia koa*, *Sapindus saponaria*, *Coprosma rhyrachocarpa*, *Pipturus albidus*, *Psychotria* sp., *Nestegis sandwicensis*, *Melicope* spp., *Dodonaea viscosa*, or *Myoporum sandwicense*; and

(2) Between elevations 509 and 1,241 m (1,670 and 4,070 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

Hawaii Z, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Hibiscus brackenridgei* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Acacia koa* lowland mesic forest between containing one or more of the following native plants species: *Sida fallax* or *Reynoldsia sandwicensis*, and

(2) Elevations between 457 and 793 (1,500 and 2,600 ft).

Family Plantaginaceae: *Plantago hawaiiensis* (laukahi kuahiwi)

Hawaii G, H, Z, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Plantago hawaiiensis* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Either montane wet sedge land (often in damp cracks of pahoehoe lava) with mixed sedges and grasses, montane mesic forest, dry subalpine woodland, or *Metrosideros polymorpha* and native shrub, containing one or more of the following associated native plant species: stunted *Acacia koa* and *Metrosideros polymorpha*, *Styphelia tameiameia*, *Vaccinium reticulatum*, *Dodonaea viscosa*, *Coprosma montana*, or *Coprosma ernodeoides*; and

(2) Elevations between 1,512 and 2,585 m (4,960 and 8,480 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Hawaii M, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Ischaemum byrone* on Hawaii. Within this unit, the currently known primary

constituent elements of critical habitat are the habitat components provided by:

(1) Coastal wet to dry shrubland, near the ocean, rocks or pahoehoe lava in cracks and holes containing one or more of the following associated native plant species: *Scaevola sericea* or *Fimbristylis cymosa*, and

(2) Elevations between sea level and 137 m (0 and 460 ft).

Family *Portulacaceae*: *Portulaca sclerocarpa* (poe).

Hawaii D, L, AA, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Portulaca sclerocarpa* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Weathered Mauna Kea soils, cinder cones, or geologically young lavas, in montane dry shrubland, often on bare cinder, near steam vents, or in open *Metrosideros polymorpha* dominated woodlands containing one or more of the following associated native plant species: *Sophora chrysophylla*, *Wollastonia venosa*, or *Dodonaea viscosa*, and

(2) Elevations between 351 and 2,274 m (1,150 to 7,460 ft).

Family *Rhamnaceae*: *Colubrina oppositifolia* (kauila).

Hawaii Q, Z, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Colubrina oppositifolia* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* or *Metrosideros polymorpha*, containing one or more of the following associated native plant species: *Nototrichium sandwicense*, *Nothocestrum breviflorum*, *Bobea timoniodes*, *Rauwolfia sandwicensis*, *Erythrina sandwicensis*, *Sophora chrysophylla*, *Nestegis sandwicensis*, *Peperomia* sp., *Psydrax odorata*, *Reynoldsia sandwicensis*, *Pleomele hawaiiensis*, or *Styphelia tameiameia*; and

(2) Elevations between 162 and 945 m (530 and 3,100 ft).

Family *Rhamnaceae*: *Gouania vitifolia* (NCN).

Hawaii Q, identified in the legal description in paragraph (a)(1)(i)(H) constitutes critical habitat for *Gouania vitifolia* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry, rocky ridges and slopes in dry shrubland or dry to mesic *Nestegis-Metrosideros* forests on old substrate kipuka containing one or more of the

following associated native plant species: *Nestegis sandwicensis*, *Wikstroemia sandwicensis*, *Wikstroemia phillyrifolia*, *Nephrolepis* spp., or *Pipturus albidus*, and

(2) Elevations between 503 and 1,039 m (1,650 and 3,410 ft).

Family *Rubiaceae*: *Hedyotis coriacea* (kioele).

Hawaii AA, identified in the legal description in paragraph (a)(1)(i)(H) constitutes critical habitat for *Hedyotis coriacea* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Geologically young (<3,000 years old) Mauna Loa pahoehoe lava with sparse *Metrosideros* forest, open *Metrosideros* forest with sparse shrub understory or open *Metrosideros* forest with dense shrub understory containing one or more of the following native plant species: *Sophora chrysophylla*, *Myoporum sandwicense*, *Dodonaea viscosa*, *Chenopodium oahuense*, *Styphelia tameiameia*, *Eragrostis deflexa*, *Festuca hawaiiensis*, or *Portulaca sclerocarpa*; and

(2) Elevations between 1,506 to 1,780 m (4,940 to 5,840 ft).

Family *Rubiaceae*: *Melicope zahlbruckneri* (alani).

Hawaii I, K, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Melicope zahlbruckneri* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Acacia koa*-*Metrosideros polymorpha* dominated montane mesic forest containing one or more of the following associated native plant species: *Sapindus saponaria*, *Coprosma rhynchocarpa*, *Zanthoxylum dipetalum*, *Pipturus albidus*, *Psychotria hawaiiensis*, *Nestegis sandwicensis*, *Myoporum sandwicense*, *Pisonia brunoniana*, or *Melicope* spp.; and

(2) Elevations between 692 and 1,393 m (2,270 and 4,570 ft).

Family *Rutaceae*: *Zanthoxylum dipetalum* var. *tomentosum* (ae).

Hawaii Z, identified in the legal description in paragraph (a)(1)(i)(M) constitutes critical habitat for *Zanthoxylum dipetalum* var. *tomentosum* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* dominated montane mesic forest, often on aa lava, containing one or more of the following associated native plant species: *Sophora chrysophylla*, *Diospyros sandwicensis*, *Pouteria sandwicensis*, *Santalum paniculatum*,

*Reynoldsia sandwicensis*, *Myrsine* sp., or *Psychotria* sp.; and

(2) Elevations between 872 and 1,210 m (2,860 and 3,970 ft).

Family *Rutaceae*: *Zanthoxylum hawaiiense* (ae).

Hawaii AA, identified in the legal description in paragraph (a)(1)(i)(H) constitutes critical habitat for *Zanthoxylum hawaiiense* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* dry forest or in open *Myoporum-Dodonaea* shrubland on rough aa lava containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Myoporum sandwicense*, or *Dubautia linearis*; and

(2) Elevations between 1,204 and 1,756 m (3,950 and 5,760 ft).

Family *Solanaceae*: *Nothocestrum breviflorum* (aiea).

Hawaii A, V, Z, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Nothocestrum breviflorum* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland dry forest, montane dry forest, or montane mesic forest dominated by *Metrosideros polymorpha*, *Acacia koa*, or *Diospyros sandwicensis* on aa lava substrates containing one or more of the following associated native plant species: *Sophora chrysophylla*, *Reynoldsia sandwicensis*, *Psydrax odorata*, *Myoporum sandwicense*, *Bidens micrantha*, *Dodonaea viscosa*, *Osteomeles anthyllidifolia*, *Santalum paniculatum*, *S. ellipticum*, *Caesalpinia kavaiensis*, *Erythrina sandwicensis*, *Colubrina oppositifolia*, *Kokia drynarioides*, *Hibiscadelphus hualalaiensis*, or *Delissea undulata*; and

(2) Elevations between 152 and 1,948 m (500 and 6,390 ft).

Family *Solanaceae*: *Solanum incompletum* (popolo ku mai).

Hawaii W, AA, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Solanum incompletum* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry to mesic forest, diverse mesic forest, or subalpine forest containing one or more of the following associated native plant species: *Myoporum sandwicense*, *Myrsine lanaiensis*, or *Sophora chrysophylla*; and

(2) Elevations between 1,192 and 2,259 m (3,910 and 7,410 ft).

Family *Urticaceae*: *Neraudia ovata* (NCN).

Hawaii Q, Y, AA, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Neraudia ovata* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Open *Metrosideros polymorpha-Sophora chrysophylla* dominated lowland, montane dry forests, or *Metrosideros*-shrub woodland containing one or more of the following associated native plant species:

*Reynoldsia sandwicensis*, *Myoporum sandwicense*, *Cocculus triloba*, *Myrsine lessertiana*, *Myrsine lanaiensis*, *Nothoctrum breviflorum*, *Pleomele hawaiiensis*, *Capparis sandwichiana*, *Fimbristylis hawaiiensis*, or *Bidens micrantha* ssp. *ctenophylla*; and

(2) Elevations between 115 and 1,829 m (380 to 6,000 ft).

Family *Violaceae*: *Isodendron hosakae* (aupaka).

Hawaii D, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Isodendron hosakae* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cinder cones with montane dry shrubland containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Styphelia tameiameia*, *Wikstroemia pulcherrima*, *Dubautia linearis*, *Sophora chrysophylla*, *Osteomeles anthyllidifolia*, *Wollastonia venosa*, *Bidens menziesii*, or *Santalum ellipticum*; and

(2) Between elevations 655 and 1,259 m (2,150 and 4,130 ft).

Family *Violaceae*: *Isodendron pyrifolium* (wahine noho kula).

Hawaii Y, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Isodendron pyrifolium* on Hawaii.

Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland dry forests containing one or more of the following native plant species: *Psydrax odorata*, *Sida fallax*, *Myoporum sandwicense*, *Sophora chrysophylla*, or *Waltheria indica*; and

(2) Elevations between 18 to 137 m (60 to 450 ft).

(B) Ferns and Allies.

Family *Aspleniaceae*: *Asplenium fragile* var. *insulare* (NCN)

Hawaii G, K, AA, identified in the legal descriptions in paragraph (a)(1)(i)(H), constitute critical habitat for *Asplenium fragile* var. *insulare* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* dry montane forest, *Dodonaea viscosa* dry montane shrubland, *Myoporum sandwicense-Sophora chrysophylla* dry montane forest, *Metrosideros polymorpha-Acacia koa* forest, or subalpine dry forest and shrubland with big, moist lava tubes (from 3.05 m to 4.57 m (10 to 15 ft) in diameter), pits, deep cracks, and lava tree molds, with at least a moderate soil or ash accumulation or, infrequently, the interface between younger aa lava flows and much older pahoehoe lava or ash deposits, with a fairly consistent microhabitat (areas that are moist and dark), and containing one or more of the following associated native plant species: *Phyllostea ambigua*, *Styphelia tameiameia*, *Vaccinium reticulatum*, mosses, or liverworts; and

(2) Elevations between 930 and 2,710 m (3,050 and 8,890 ft).

Family *Aspleniaceae*: *Diellia erecta* (NCN)

Hawaii Q, R, identified in the legal descriptions in paragraph (a)(1)(i)(H),

constitute critical habitat for *Diellia erecta* on Hawaii. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha-Nestegis sandwicensis* lowland mesic forest containing one or more of the following associated native plant species:

*Diospyros sandwicensis*, *Psydrax odorata*, *Antidesma platyphyllum*, *A. pulvinatum*, *Microlepis* sp., *Nestegis sandwicensis*, *Wikstroemia sandwicensis*, *Wikstroemia phillyreifolia*, or *Nephrolepis* spp.; and

(2) Elevations between 448 and 982 m (1,470 and 3,220 ft).

Family *Grammitidaceae*: *Adenophorus periens* (pendant kahi fern)

Hawaii J, identified in the legal description in paragraph (a)(1)(i)(H), constitutes critical habitat for *Adenophorus periens* on Hawaii. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Epiphytic on *Metrosideros polymorpha* or *Ilex anomala* or possibly other native tree trunks, in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forest containing one or more of the following associated native plant species: *Broussasia arguta*, *Cheirodendron trigynum*, *Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linnearis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia hirtella*, *Machaerina angustifolia*, *Psychotria* sp., or *Psychotria hawaiiensis*; and

(2) Elevations between 338 and 1,180 m (1,110 and 3,870 ft).

Dated: May 2, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-11349 Filed 5-24-02; 8:45 am]

**BILLING CODE 4310-55-P**



# Federal Register

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**Tuesday,  
May 28, 2002**

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**Part III**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 17  
Endangered and Threatened Wildlife and  
Plants; Designations of Critical Habitat  
for Plant Species From the Island of  
Oahu, HI; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

RIN 1018-A124

**Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Oahu, HI**

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

**ACTION:** Proposed rule concerning designation of critical habitat.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for 99 of the 101 plant species known historically from the island of Oahu that are listed under the Endangered Species Act of 1973, as amended.

Critical habitat is not proposed for two species, *Pritchardia kaalae* and *Cyrtandra crenata*. We propose that critical habitat designation is not prudent for *Pritchardia kaalae* because it would likely increase the threat from vandalism or collection of this species on Oahu. Critical habitat is not proposed for *Cyrtandra crenata*, a species known only from Oahu, and for which we propose that critical habitat designation is not prudent because it has not been seen recently in the wild

and no viable genetic material of this species is known to exist.

We propose critical habitat designations for 99 species within 25 critical habitat units totaling approximately 45,067 hectares (111,364 acres) on the island of Oahu.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations. We may revise or further refine critical habitat boundaries prior to final designation based on habitat and plant surveys, public comment on the proposed critical habitat rule, and new scientific and commercial information.

**DATES:** We will accept comments until July 29, 2002. Public hearing requests must be received by July 12, 2002.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor,

U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3-122, P.O. Box 50088, Honolulu, HI 96850-0001.

2. You may hand-deliver written comments to our Pacific Islands Office at the address given above.

3. You may send comments by electronic mail (e-mail) to: FW1PIE\_Oahu\_crithab@r1.fws.gov. See the *Public Comments Solicited* section in Supplementary Information below for file format and other information about electronic filing.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone: 808/541-3441; facsimile: 808/541-3470).

**SUPPLEMENTARY INFORMATION:**

**Background**

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 101 plant species that, at the time of listing, were reported from the island of Oahu. Fifty-six of these species are endemic to Oahu, while 45 species are reported from one or more other islands, as well as Oahu (Table 1).

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 101 SPECIES FROM OAHU

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Islands, Kahoolawe, Niihau
<i>Abutilon sandwicense</i> (No common name) .....		C					
<i>Adenophorus periens</i> (pendant kihi fern) .....	C	H	C	H	H	C	
<i>Alectryon macrococcus</i> (mahoe) .....	C	C	C		C		
<i>Alsiniidendron obovatum</i> (No common name) .....		C					
<i>Alsiniidendron trinerve</i> (No common name) .....		C					
<i>Bonamia menziesii</i> (No common name) .....	C	C	H	C	C	C	
<i>Cenchrus agrimonioides</i> (kamanomano) .....		C		H	C		NW (H)
<i>Centaurium sebaeoides</i> (awiuwi) .....	C	C	H	C	C		
<i>Chamaesyce celastroides</i> var. <i>kaenana</i> (akoko) .....		C					
<i>Chamaesyce deppeana</i> (akoko) .....		C					
<i>Chamaesyce herbstii</i> .....		C					
<i>Chamaesyce kuwaleana</i> (akoko) .....		C					
<i>Chamaesyce rockii</i> (akoko) .....		C					
<i>Colubrina oppositifolia</i> (kauila) .....		C			C	C	
<i>Colubrina squamigera</i> (pauoa) .....		C			C	C	
<i>Ctenitis squamigera</i> (pauoa) .....	H	C	C	C	C	H	
<i>Cyanea acuminata</i> (haha) .....		C					
<i>Cyanea crispa</i> (haha) .....		C					
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> (haha) .....		C	C	C	C		
<i>Cyanea grimesiana</i> ssp. <i>obatae</i> (haha) ..		C					



TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 101 SPECIES FROM OAHU—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Islands, Kahoolawe, Niihau
<i>Cyanea humboltiana</i> (haha)		C					
<i>Cyanea kolauensis</i> (haha)		C					
<i>Cyanea longiflora</i> (haha)		C					
<i>Cyanea pinnatifida</i> (haha)		H					
<i>Cyanea st.-johnii</i> (haha)		C					
<i>Cyanea superba</i> (haha)		C					
<i>Cyanea truncata</i> (haha)		C					
<i>Cyperus trachysanthos</i> (puukaa)	C	C	H	H			Ni (H)
<i>Cyrtandra crenata</i> (haiwale)		H					
<i>Cyrtandra dentata</i> (haiwale)		C					
<i>Cyrtandra polyantha</i> (haiwale)		C					
<i>Cyrtandra subumbellata</i> (haiwale)		C					
<i>Cyrtandra viridiflora</i> (haiwale)		C					
<i>Delissea subcordata</i> (No common name)		C					
<i>Diellia erecta</i> (No common name)	H	C	C	H	C	C	
<i>Diellia falcata</i> (No common name)		C					
<i>Diellia unisora</i> (No common name)		C					
<i>Diplazium molokaiense</i> (No common name)	H	H	H	H	C		
<i>Dubautia herbstobatae</i> (naenae)		C					
<i>Eragrostis fostergii</i> (No common name)		C					
<i>Eugenia koolauensis</i> (nioi)		C	H				
<i>Euphorbia haeleleana</i> (akoko)	C	C					
<i>Flueggea neowawraea</i> (mehamehame)	C	C	H		C	C	
<i>Gardenia mannii</i> (nanu)		C					
<i>Gouania meyerii</i> (No common name)	C	C					
<i>Gouania vitifolia</i> (No common name)		C			H	C	
<i>Hedyotis coriacea</i> (kioele)		H			C	C	
<i>Hedyotis degeneri</i> (No common name)		C					
<i>Hedyotis parvula</i> (No common name)		C					
<i>Hesperomannia arborescens</i> (No common name)		C	C	H	C		
<i>Hesperomannia arbuscula</i> (No common name)		C			C		
<i>Hibiscus brackenridgei</i> (mao hau hele)	R	C	H	C	C	C	
<i>Isodendron laurifolium</i> (aupaka)	C	C					
<i>Isodendron longifolium</i> (aupaka)	C	C					
<i>Isodendron pyrifolium</i> (wahine noho kula)		H	H	H	H	C	Ni (H)
<i>Labordia cyrtandrae</i> (kamakahala)		C					
<i>Lepidium arbuscula</i> (anaunau)		C					
<i>Lipochaeta lobata</i> var. <i>leptophylla</i> (nehe)		C					
<i>Lipochaeta tenuifolia</i> (nehe)		C					
<i>Lobelia gaudichaudii</i> ssp. <i>koolauensis</i> (No common name)		C					
<i>Lobelia monostachya</i> (No common name)		C					
<i>Lobelia niihauensis</i> (No common name)	C	C					Ni (H)
<i>Lobelia oahuensis</i> (No common name)		C					
<i>Lysimachia filifolia</i> (No common name)	C	C					
<i>Mariscus pennatifolius</i> (No common name)	H	H			C	H	NW (C) Ni (H)
<i>Marsilea villosa</i> (ihi ihi)		C	C				
<i>Melicope lydgatei</i> (alani)		C					
<i>Melicope pallida</i> (alani)	C	C					
<i>Melicope saint-johnii</i> (alani)		C					
<i>Myrsine juddii</i> (kolea)		C					
<i>Neraudia angulata</i> (No common name)		C					
<i>Nototrichium humile</i> (kului)		C					
<i>Peucedanum sandwicense</i> (makou)	C	C	C		C		
<i>Phlegmariurus nutans</i> (wawaeiole)	H	C					
<i>Phyllostegia hirsuta</i> (No common name)		C					
<i>Phyllostegia kaalaensis</i> (No common name)		C					
<i>Phyllostegia mollis</i> (No common name)		C	H		C		
<i>Phyllostegia parviflora</i> (No common name)		C			H	H	
<i>Plantago princeps</i> (laukahi kauhiwi)	C	C	C		C	H	

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 101 SPECIES FROM OAHU—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Islands, Kahoolawe, Niihau
<i>Platanthera holochila</i> (No common name) .....	C	H	C	.....	C	.....	.....
<i>Pritchardia kaalae</i> (loulou) .....	.....	C	.....	.....	.....	.....	.....
<i>Pteris lidgatei</i> (No common name) .....	.....	C	H	.....	C	.....	.....
<i>Sanicula mariversa</i> (No common name) .....	.....	C	.....	.....	.....	.....	.....
<i>Sanicula purpurea</i> (No common name) ..	.....	C	.....	.....	C	.....	.....
<i>Schiedea hookeri</i> (No common name) ....	.....	C	.....	.....	H	.....	.....
<i>Schiedea kaalae</i> (No common name) .....	.....	C	.....	.....	.....	.....	.....
<i>Schiedea kealia</i> (No common name) .....	.....	C	.....	.....	.....	.....	.....
<i>Schiedea nuttallii</i> (No common name) ....	C	C	C	.....	H	.....	.....
<i>Sesbania tomentosa</i> (ohai) .....	C	C	C	H	C	C	Ni (H), Ka (C), NW (C)
<i>Silene lanceolata</i> (No common name) ....	H	C	C	H	.....	C	.....
<i>Silene perlmanni</i> (No common name) .....	.....	H	.....	.....	.....	.....	.....
<i>Solanum sandwicense</i> (aiakeakua, popolo) .....	C	H	.....	.....	.....	.....	.....
<i>Spermolepis hawaiiensis</i> (No common name) .....	C	C	C	C	C	C	.....
<i>Stenogyne kanehoana</i> (No common name) .....	.....	C	.....	.....	.....	.....	.....
<i>Tetramolopium filliforme</i> (No common name) .....	.....	C	.....	.....	.....	.....	.....
<i>Tetramolopium lepidotum</i> ssp. <i>lepidotum</i> (No common name) .....	.....	C	.....	H	.....	.....	.....
<i>Tetraplasandra gymnocarpa</i> (ohohe) ....	.....	C	.....	.....	.....	.....	.....
<i>Trematalobelia singularis</i> (No common name) .....	.....	C	.....	.....	.....	.....	.....
<i>Urera kaalae</i> (opuhe) .....	.....	C	.....	.....	.....	.....	.....
<i>Vigna o-wahuensis</i> (No common name) .....	.....	H	C	C	C	C	Ni (H), Ka (C)
<i>Viola chamissoniana</i> ssp. <i>chamissoniana</i> (olopu) .....	.....	C	.....	.....	.....	.....	.....
<i>Viola oahuensis</i> (No common name) .....	.....	C	.....	.....	.....	.....	.....

**KEY:**

C (Current)—population last observed within the past 30 years.  
 H (Historical)—population not seen for more than 30 years.  
 R (Reported)—reported from undocumented observations.  
 NW—NW Hawaiian Islands.  
 Ka—Kahoolawe.  
 Ni—Niihau.

We have reconsidered our findings concerning whether designating critical habitat for these 56 federally protected plants from the island of Oahu is prudent. In this proposal, we are proposing that critical habitat is prudent for 54 of these species (*Abutilon sandwicense*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce deppeana*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboltiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea pinnatifida*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyanea truncata*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia falcata*, *Diellia unisora*, *Dubautia herbstobatae*, *Eragrostis fosbergii*,

*Gardenia mannii*, *Hedyotis degeneri*, *Hedyotis parvula*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia oahuensis*, *Melicope lydgatei*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Sanicula mariversa*, *Schiedea kaalae*, *Schiedea kealiae*, *Silene perlmanni*, *Stenogyne kanehoana*, *Tetramolopium filiforme*, *Tetraplasandra gymnocarpa*, *Trematalobelia singularis*, *Urera kaalae*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*) because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risk that may result from human activity because of critical habitat designation.

We propose that critical habitat designation is not prudent for *Pritchardia kaalae* because it would likely increase the threat from vandalism or collection of this species of loulou palm on Oahu. We propose that critical habitat designation is not prudent for *Cyrtandra crenata*, a species known only from Oahu that has not been seen recently in the wild and for which no viable genetic material is known to exist.

Proposed prudency determinations for 45 other species (*Adenophorus periens*, *Alectryon macrococcus*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Diellia erecta*, *Diplazium molokaiense*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Flueggea neowawraea*,

*Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyriformis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Marsilea villosa*, *Melicope pallida*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Tetramolopium lepidotum* ssp. *lepidotum*, and *Vigna o-wahuensis*) which are reported from Oahu as well as Kauai, Niihau, Maui, Kahoolawe, Lanai, Molokai, the Northwestern Hawaiian Islands, and/or the island of Hawaii were published in the proposed rules published on November 7, 2000, and January 28, 2000 (Kauai and Niihau, 65 FR 66808 and 67 FR 3939); on December 18, 2000 and April 3, 2002 (Maui and Kahoolawe 65 FR 79192 and 67 FR 15856); on December 27, 2000 and March 4, 2002 (Lanai 65 FR 82086 and 67 FR 9806); on December 29, 2000 and April 5, 2002 (Molokai 65 FR 83158 and 67 FR 16492); on May 14, 2002 (Northwestern Hawaiian Islands 67 FR 34522), or elsewhere in this issue of the **Federal Register** (Hawaii Island).

Critical habitat for 99 of these 101 species from Oahu is proposed at this time. Critical habitat is not proposed for two species, *Pritchardia kaalae* and *Crytandra crenata*, for which we determine that designation of critical habitat is not prudent for the reasons described above.

### The Island of Oahu

The island of Oahu was formed from the remnants of two large shield volcanoes, the younger Koolau volcano to the east and the older Waianae volcano to the west (60 FR 51398; Service 1995a, 1996b). Their original shield volcano shape has been lost as a result of extensive erosion, and today these volcanoes are called mountains or ranges, and consist of long, narrow ridges. The Koolau Mountains were built by eruptions that took place primarily along a northwest-trending rift zone and formed a range now approximately 60 kilometers (km) (37 miles (mi)) long (Service 1996b). Median annual rainfall for the Koolau Mountains varies from 100 to 710 centimeters (cm) (40 to 280 inches (in)), most of which is received at higher elevations along the entire length of the

windward (northeastern) side (Service 1996b).

The Waianae Mountains were built by eruptions that took place primarily along three rift zones. The two principal rift zones run in a northwestward and south-southeastward direction from the summit, and a lesser one runs to the northeast. The range is approximately 32 km (20 mi) long. The caldera lies between the north side of Makaha Valley and the head of Nanakuli Valley (MacDonald *et al.* 1983). The Waianae Mountains are in the rain shadow of the parallel Koolau Mountains and receive much less rainfall, except for Mt. Kaala, the highest point on Oahu at 1,225 meters (m) (4,020 feet (ft)) (Wagner *et al.* 1999). The median annual rainfall for the Waianae Mountains varies from 51 to 19 cm (20 to 75 in), with only the small summit area of Mt. Kaala receiving the highest amount (Service 1995a).

### Discussion of the Plant Taxa

#### *Species Endemic to Oahu*

*Abutilon sandwicense* (No Common Name (NCN))

*Abutilon sandwicense*, a member of the mallow family (Malvaceae) and a short-lived perennial, is a shrub that grows to 3 m (5 ft) tall and is covered with short glandular hairs. This species is distinguished from others in the genus by the green or reddish-brown tipped petals which extend beyond the sepals (Bates 1999).

*Abutilon sandwicense* has been observed flowering in winter and spring. By summer, most plants have flowered and the fruits have usually dried up by fall. Fruit capsules develop within 6 weeks. Although seedlings are often initially abundant, few plants appear to survive to maturity for unknown reasons (56 FR 55770).

Historically, *Abutilon sandwicense* was known from nearly the entire length of the Waianae Mountains, from Makaleha Valley to Nanakuli Valley. This species is now known from Huliwai Gulch, Kaawa Gulch, Kaimuhole Gulch, Palikea Gulch, Makaha Valley, Makaha-Waianae Kai Ridge, Makaleha Valley, Manuwai Gulch, Halona subdistrict, Mikilua subdistrict, Alaiheihe Gulch, and Nanakuli Valley on Federal, State, private, city, and county lands. The 16 known populations contain an estimated 253 to 263 individuals (Hawaii Heritage Program (HINHP) Database 2001; Bates 1999).

*Abutilon sandwicense* typically grows on steep slopes or gulches in dry to mesic lowland forest between 149 and 875 m (489 and 2,870 ft) elevation.

Associated species include *Sapindus oahuensis* (lonomea), *Eugenia reinwardtiana* (nioi), *Hibiscus arnottianus* (kokio keokeo), *Psydrax odorata* (alahee), *Diospyros sandwicensis* (lama), *Reynoldsia sandwicensis* (ohe), *Nestegis sandwicensis* (olopua), *Antidesma pulvinatum* (hame), *Pittosporum* sp. (hoawa), *Pleomele* sp. (hala pepe), *Rauvolfia sandwicensis* (hao), *Myrsine lanaiensis* (kolea), *Pisonia* sp. (papala kepau), *Metrosideros polymorpha* (ohia), *Pipturus albidus* (mamaki), and *Elaeocarpus bifidus* (kalia) (Bates 1999; HINHP Database 2001; Environmental Division of the U.S. Army (EDA), *in litt.* 2001).

The major threats to *Abutilon sandwicense* are competition from the alien plant species *Pimenta dioica* (allspice), *Hyptis pectinata* (Comb hyptis), *Schinus terebinthifolius* (Christmasberry), *Syzygium cumini* (Java plum), *Clidemia hirta* (Koster's curse), *Ipomoea* sp. (morning glory), *Melinis minutiflora* (molasses grass), *Ficus microcarpa* (Chinese banyan), *Psidium cattleianum* (strawberry guava), *Psidium guajava* (guava), *Kalanchoe pinnata* (air plant), *Oplismenus hirtellus* (basketgrass), *Ageratina riparia* (haumakua pamakani), *Leucaena leucocephala* (koa haole), *Toona ciliata* (Australian red cedar), *Grevillea robusta* (silk oak), *Montanoa hibiscifolia* (tree daisy), *Aleurites molocana* (kuku i), *Rivina humilis* (coral berry), *Panicum maximum* (Guinea grass), *Melia azedarach* (chinaberry), and *Passiflora suberosa* (huehue haole); fire; black twig borer (*Xylosandrus compactus*); Chinese rose beetle (*Adoretus sinicus*); feral pigs (*Sus scrofa*) and goats (*Capra hircus*); and trampling by feral cattle (*Bos taurus*) (56 FR 55770; Service 1998b).

*Alsinidendron obovatum* (NCN)

*Alsinidendron obovatum*, a member of the pink family (Caryophyllaceae) and a short-lived perennial, is a branching subshrub growing to 3 ft (1 m) tall with thick, somewhat fleshy leaves. This species and *Alsinidendron trinerve* can be distinguished from other members of the genus by their shrubby habit and fleshy purple sepals surrounding the capsule (Wagner *et al.* 1999).

*Alsinidendron obovatum* generally flowers after about 2 years of growth. Plants flower and fruit year round, but flowering is usually heavier in winter and spring depending on the level of precipitation. Plants survive 3 to 6 years, unless there are drought conditions (56 FR 55770).

Historically, *Alsinidendron obovatum* was known from the northern and

southern end of the Waianae Range. This species remains in Keawapilau Gulch, Kahanakaiki Gulch, Makaleha, Kapuna Gulch, and Pahole Gulch on Federal and State lands. The five known populations contain about 8 to 10 individuals (HINHP Database 2001; EDA Database 2001; Wagner *et al.* 1999).

*Alsinidendron obovatum* typically grows on ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* (koa) and *Metrosideros polymorpha* between 476 and 943 m (1,561 and 3,093 ft) elevation.

Associated species include *Bidens torta* (kookoolau), *Antidesma platyphyllum* (hame), *Cibotium chamissoi* (hapuu), *Hedyotis terminalis* (manono), *Pipturu* sp. (mamaki), *Machaerina* sp. (uki), *Peperomia* sp. (ala ala wai nui), *Perrottetia sandwicensis* (olomea), *Ilex anomala* (kawau), *Psydrax odorata*, *Coprosma* sp. (pilo), *Alyxia oliviformis* (maile), or the endangered *cyanea lingiflora* (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Alsinidendron obovatum* are competition from the aggressive alien plant species *Melinis minutiflora*, *Schinus terebinthifolius*, *Psidium cattleianum*, *Blechnum occidentale* (NCN), *Clidemia hirta*, *Grevillea robusta*, *Stachytarpheta dichotoma* (owi), *Paspalum conjugatum* (Hilo grass), and *Rubus argutus* (prickly Florida blackberry); habitat degradation by feral pigs; trampling by humans; rockslides, and the small number of populations (56 FR 55770; Service 1998b).

#### *Alsinidendron trinerve* (NCN)

*Alsinidendron trinerve*, a member of the pink family (Caryophyllaceae) and a short-lived perennial, is very similar in appearance to *A. obovatum* but differs in that it has a more open inflorescence (flowering part of plant) with peduncles (stalk of a flower) more than 2 cm (0.8 in) long, sepals (leaves of the outer series floral leaves, i.e., calyx) with an acute tip, and usually is found in wet forests above 914 m (3,000 ft) in elevation. *Alsinidendron obovatum* has a congested inflorescence with peduncles less than 2 cm (0.8 in) long, sepals with a rounded tip, and usually grows in mesic forests 550 to 792 m (1,800 to 2,600 ft) in elevation (Wagner *et al.* 1999).

*Alsinidendron trinerve* flowers and fruits throughout the year with the possible exception of fall (56 FR 55770).

Historically, *Alsinidendron trinerve* was known from the north-central and southern Waianae Mountains. This species is known to be in Makaleha Gulch, on Mt. Kaala and Puu Kalena on Federal and State lands. The three

known populations total between 18 and 34 individuals (HINHP Database 2001; EDA Database 2001).

*Alsinidendron trinerve* typically grows on slopes in wet forest or the wetter portions of diverse mesic forest dominated by *Metrosideros polymorpha* and *Ilex anomala* or *Metrosideros polymorpha* montane wet forest between 833 and 1,233 m (2,732 and 4,044 ft) elevation. Associated species include *Machaerina* sp., *Hedyotis* sp. (NCN), *Peperomia* sp., *Perrottetia sandwicensis*, *Athyrium sandwichianum* (akolea), *Broussaisia arguta* (kanawao), *Vaccinium* sp. (ohelo), *Phyllostegia* sp. (NCN), *Coprosma ochracea* (pilo), *Gunnera* sp. (apeape), *Nothoperanema rubiginosa*, or *Pipturus albidus* (HINHP Database 2001; EDA, *in litt.* 2001; Wagner *et al.* 1999).

The major threats to *Alsinidendron trinerve* are competition from the aggressive alien plant species *Rubus argutus*, *Buddleia asiatica* (butterfly bush), *Clidemia hirta*, and *Kalanchoe pinnata*; habitat degradation by feral pigs; trampling by humans along trails; and the small number of extant individuals (56 FR 55770; Service 1998b).

#### *Chamaesyce celastroides* var. *kaenana* (akoko)

*Chamaesyce celastroides* var. *kaenana*, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is a low-growing or upright shrub to 5 ft (1.5 m) tall with milky sap and leaves which fall off during the dry season, are mostly hairless and are arranged in two opposite rows along the stem. This species is distinguished from other members of the genus in the area in which it grows in that it is a woody shrub; the other members of the genus in the area are herbs or small subshrubs (Koutnik and Huft 1999).

*Chamaesyce celastroides* var. *kaenana* has been observed flowering and fruiting throughout the year, probably in response to precipitation. Fruits mature in three to four weeks and plants live from five to ten years. No additional information is available on reproductive cycles, longevity, specific environmental requirements or limiting factors (56 FR 55770).

Historically, *Chamaesyce celastroides* var. *kaenana* was known from the northwestern end of the Waianae Mountains as well as from one collection from the southeastern end of the Koolau Mountains. This taxon remains at Kaena Point, Keawaula, Alau Gulch, Waianae Kai, and Kahanahaiki on State land and land under Federal jurisdiction. The 13 known populations

contain 569 individuals (HINHP Database 2001; Koutnik and Huft 1999).

*Chamaesyce celastroides* var. *kaenana* typically grows in coastal dry shrubland on windward talus slopes, leeward rocky cliffs, open grassy slopes, or on vegetated cliff faces between sea level and 862 m (0 and 2,827 ft) elevation. Associated species include: *Lipochaeta lobata* (nehe), *Myoporum sandwicense* (naio), *Heteropogon contus* (pili grass), *Santalum* sp. (ili ahi), *Plumbago zeylanica* (iliee), *Psydrax odorata*, *Boerhavia* sp. (alena), *Waltheria indica* (uhaloa), *Dodonaea viscosa* (aalii), *Artemisia australis* (ahinahina), *Psilotum nudum* (moa), *Chamaesyce celastroides* var. *amplectans* (akoko), *Gossypium tomentosum* (mao), *Jacquemontia ovalifolia* ssp. *sandwicensis* (pauohiika), *Santalum freycinetianum* (iliahi), or *Sida fallax* (ilima) (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Chamaesyce celastroides* var. *kaenana* are competition from the alien plant species *Leucaena leucocephala*, *Melinis repens* (natal redtop), *Schinus terebinthifolius*, *Pluchea symphytifolia* (sourbush), *Hyptis pectinata*, *Panicum maximum*, *Grevillea robusta*, and *Acacia confusa* (Formosakoa); fire; and effects of recreational activities (56 FR 55770; Service 1998b).

#### *Chamaesyce deppeana* (Akoko)

*Chamaesyce deppeana*, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is an erect subshrub up to 1.2 m (4 ft) tall with fuzzy branches. The hairless leaves, generally oval-shaped and often notched at their tips, are between 5 and 20 millimeter (mm) (0.2 and 0.8 in) long and 5 and 12 mm (0.2 and 0.5 in) wide; they are arranged in two opposite rows along the stem. The leaf margins are usually toothed. The small, petalless flower clusters, 1.5 to 3 mm (0.06 to 0.1 in) wide, are borne singly in the leaf axils (point between the stem and leaf stalk) and produce small capsules about 2 mm (0.1 in) long. Seeds have not been observed. This species is distinguished from others in the genus by the following combination of characters: leaves arranged in two rows on opposite sides of the branches, leaves glabrous, leaf apex notched, leaf margin toothed, and cyathia width (Koutnik and Huft 1999).

*Chamaesyce deppeana* has been observed in flower in May and September. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Chamaesyce deppeana* was known only from southern Oahu. Because the few collections that were made were collected prior to the 20th century, it was thought to be extinct. In 1986, Joel Lau and Sam Gon of The Nature Conservancy of Hawaii (TNCH) rediscovered *C. deppeana* on State land in the southern Koolau Mountains of Oahu in Nuuanu Pali Wayside State Park near the Pali Lookout, a popular tourist attraction. About 50 individuals grow near there (HINHP Database 2001; Koutnik and Huft 1999).

The habitat of the only known population of *Chamaesyce deppeana* is windward-facing ridge crests, cliff faces and mixed native cliffs with such plant species as *Metrosideros polymorpha* or *Bidens sandvicensis* (kookoolau) between 274 and 661 m (899 and 2,168 ft) elevation (HINHP Database 2001).

The major threats to the single known population of *Chamaesyce deppeana* are competition for water, space, light, and nutrients with the alien plant species *Casuarina equisetifolia* (common ironwood), *Paspalum conjugatum*, and *Schinus terebinthifolius*; and extinction due to naturally caused events because of the limited number of individuals and restricted range. Fire and impact by humans threaten the species as well (59 FR 14482; Service 1998b; HINHP Database 2001).

#### *Chamaesyce herbstii* (Akoko)

*Chamaesyce herbstii*, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is a small tree ranging from 3 to 8 m (10 to 26 ft) tall with thin, leathery leaves arranged in pairs on the same plane. This species is distinguished from others in the genus by the length of the flowering stalk and the color of the angular fruits (Koutnik and Huft 1999).

*Chamaesyce herbstii* has been observed in flower year-round in January, May, July, September, and October (Service 1998b).

Historically, *Chamaesyce herbstii* was known from scattered populations in the northern and central Waianae Mountains on the island of Oahu. Currently, this species is known from four populations with between 162 and 164 individuals in the central and northern Waianae Mountains—South Ekahanui Gulch, Pahole (Kukuila) Gulch, Kapuna Gulch, and West Makaleha-Central Makaleha. These populations are found on private and State lands (HINHP Database 2001; Geographic Decision Systems International (GDSI) 2001).

*Chamaesyce herbstii* typically grows in shaded gulch bottoms and slopes in

mesic *Acacia koa*/*Metrosideros polymorpha* lowland forests or diverse mesic forests at elevations between 435 and 886 m (1,427 and 2,906 ft). Associated plant species include *Xylosma* sp. (maua), *Pteralyxia* sp. (kaulu), *Morinda trimera* (noni), *Hedyotis* sp., *Coprosma* sp., *Pipturis albidus*, *Diplazium sandwichianum* (hoio), *Antidesma platyphyllum*, *Hibiscus arnottianus* var. *arnottianus* (kokio keokeo), *Melicope* sp. (alani), *Pouteria sandwicense* (alaa), or *Urera glabra* (opuhe) (HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Chamaesyce herbstii* are habitat degradation and/or destruction by feral pigs; competition with alien plant species such as *Clidemia hirta*, *Grevillea robusta*, *Passiflora suberosa*, *Psidium cattleianum*, and *Schinus terebinthifolius*; potential fire; and a risk of extinction from naturally occurring events (such as hurricanes) and/or reduced reproductive vigor due to the small number of remaining populations (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Chamaesyce kuwaleana* (Akoko)

*Chamaesyce kuwaleana*, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is an erect shrub 20 to 90 cm (8 to 36 in) tall with leaves arranged in two rows along the stem. This species is distinguished from other species of the genus in its habitat by its stalked, oval to rounded leaves with untoothed margins, and the bent stalk supporting the small capsule (Koutnik and Huft 1999).

*Chamaesyce kuwaleana* bear fruits in spring and early summer and is usually done fruiting by fall. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (56 FR 55770).

Historically, *Chamaesyce kuwaleana* was known from the central Waianae Mountains and Moku Manu Island off the eastern coast of Oahu. This species is currently known only from Kauaopuu Peak, Mauna Kuwale, Waianae Kai-Lualualei Ridge, Puu Kailio, and Kauaopuu in the Waianae Mountains, on Federal and State lands. The four populations contain around 2,001 individuals (HINHP Database 2001; Koutnik and Huft 1999; GDSI 2001).

*Chamaesyce kuwaleana* typically grows in thin guano soil on basaltic rock, on arid, exposed volcanic cliffs, on dry or mesic rocky ridges, or on sparsely vegetated slopes between sea level and 596 m (0 to 1,955 ft) elevation. Associated species include *Heteropogon contortus*, *Bidens* sp. (kookoolau),

*Artemisia* sp. (hinahina), *Plectranthus parviflorus* (ala ala wai nui), *Chamaesyce* sp. (akoko), *Schiedea* sp. (NCN), *Carex* sp. (NCN), *Sida fallax*, or *Dodonaea viscosa* (HINHP Database 2001; Koutnik and Huft 1999; Service 1998b).

The major threats to *Chamaesyce kuwaleana* are competition from the alien plant species *Leucaena leucocephala*, *Opuntia* sp. (prickly pear), *Cenchrus ciliaris* (buffelgrass), *Schinus terebinthifolius*, *Kalanchoe pinnata*, and *Melinis repens*; fire; two-spotted leafhoppers (*Saphonia rufofascia*); and the small number of populations (56 FR 55770; Service 1998b; HINHP Database 2001).

#### *Chamaesyce rockii* (Akoko)

*Chamaesyce rockii*, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is usually a compact shrub or sometimes a small tree typically ranging from 0.5 to 2 m (1.6 to 6.6 ft) tall, but in protected sites it has been known to reach 4 m (13 ft) in height. This species differs from others in the genus in that it has large, red, capsular fruit (Koutnik and Huft 1999).

*Chamaesyce rockii* has been observed fruiting in February. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Chamaesyce rockii* was known historically from scattered populations along the Koolau Mountains on the island of Oahu. Today, 16 populations are located in Waikakalua Gulch, Kaukonahua-Kahana summit area, Punaluu-Kaluanui, Peahinaia Trail Laie-Kaipapau-Kawai Nui junction area, Puu Keahiakahoe, Halawa Trail, summit ridge between Aiea Ridge Trail and Waimano Trail, Ewa Forest Reserve, Halemano Gulch, Kawaiiki-Opaaula Ridge, Puu Kainapuaa, Kawai Iki Stream, Maakua Gulch, and Kaipapau-Loloa Ridge, on State, Federal, and private lands. Currently the total number of plants is estimated to be between 641 and 773 plants (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Chamaesyce rockii* typically grows on gulch slopes, gulch bottoms, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* (uluhe) forest and shrubland between 208 and 871 m (682 and 2,857 ft) in elevation. Associated plant species include *Bidens* sp., *Antidesma platyphyllum*, *Hedyotis terminalis*, *Psychotria* spp. (kopiko), *Melicope* spp., *Coprosma longifolia* (pilo), *Diplopterygium pinnatum* (uluhe lau nui), *Cibotium* sp. (hapuu),

*Broussaisia arguta*, *Dubautia laxa* (naenae pua meleleme), *Machaerina* sp., *Psychotria fauriei* (kopiko), *Wikstroemia* sp. (akia), or the endangered species *Myrsine juddii* (kolea) (HINHP Database 2001).

The primary threats to *Chamaesyce rockii* are habitat degradation and/or destruction by feral pigs; trail clearing; potential impacts from military activities; and competition with alien plant species such as *Paspalum conjugatum*, *Pterolepis glomerata* (NCN), *Leptospermum scoparium* (tea tree), *Psidium cattleianum*, and *Clidemia hirta* (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Cyanea acuminata* (Haha)

*Cyanea acuminata*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub 0.3 to 2 m (1 to 6.6 ft) tall with inversely lance-shaped to narrowly egg-shaped or elliptic leaves. This species is distinguished from others in this endemic Hawaiian genus by the color of the petals and fruit and length of the calyx lobes, flowering stalk, and leaf stalks (Lammers 1999).

*Cyanea acuminata* has been observed fruiting in February and November. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Cyanea acuminata* was known from 31 scattered populations in the Ko olau Mountains of Oahu. Currently, fewer than 200 plants are known from 22 populations on private, city, county, State, and Federal lands on Puu o Kona, near South Kaukonahua Stream, in Halemano Gulch, Kawai Iki Gulch, near Poamoho Stream, on Schofield-Wai Kane Trail, Helemano-Punaluu summit ridge, Konahuanui, in Kamana Nui Valley, Pukele, in Makaua Gulch, on Niu-Waimanalo summit ridge, Waahila Ridge, Kaipapau, Puu Keahia Kahoe, Kaala, Kaluanui, Pia Gulch, Makaleha, and Maakua Gulch (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Cyanea acuminata* typically grows on slopes, ridges, or stream banks between 216 and 1,208 m (708 and 3,962 ft) elevation. The plants are found in *Metrosideros polymorpha-Dicranopteris linearis*, *Acacia koa-Metrosideros polymorpha* wet or mesic forest or shrubland, or *Diospyros sandwicensis-Metrosideros polymorpha* lowland mesic forest with one or more of the following associated native species *Hibiscus* sp. (aloalo), *Charpentiera* sp. (papala), *Cyrtandra* spp. (hai wale), *Antidesma* sp. (hame), *Freycinetia arborea* (ieie), *Athyrium*

*sandwichianum*, *Psychotria* sp., *Hedyotis* sp., *Perrottetia sandwicensis*, *Melicope* spp., *Thelypteris sandwicensis* (palapalaia), *Hedyotis centranthoides* (NCN), *Broussaisia argutus*, *Pipturus albidus*, *Labordia* sp. (kamakahala), *Chamaesyce* sp., *Pisonia* sp., *Touchardia latifolia* (olona), *Machaerina* sp., *Sadleria* sp. (amau), *Wikstroemia* sp., *Dubautia laxa*, *Ilex anomala*, *Syzygium sandwicensis* (ohia ha), or *Phyllostegia* sp. (HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea acuminata* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; potential predation by rats (*Rattus rattus*); competition with the alien plant species *Aleurites moluccana*, *Cordyline fruticosa* (ti), *Schinus terebinthifolius*, *Musa* sp. (banana), *Passiflora suberosa*, *Dioscorea* sp. (yam), *Erigeron karvinskianus* (daisy fleabane), *Rubus argutus*, *Schinus terebinthifolius*, *Clidemia hirta*, and *Ageratina adenophora* (Maui pamakani); and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Cyanea crispa* (Haha)

*Cyanea crispa*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub with leaves clustered at the ends of succulent stems. The broad oval leaves, 30 to 75 cm (12 to 30 in) long and 9 to 16 cm (3.5 to 6.3 in) wide, have undulating, smooth or toothed leaf margins. Each leaf is on a stalk 0.8 to 4 cm (0.3 to 1.6 in) long. Clusters of three to eight fuzzy flowers grow on stalks 2 to 3 cm (0.8 to 1.2 in) long, with each flower borne on a stalk 1 to 2 cm (0.4 to 0.8 in) long. The calyx lobes are oval or oblong, 6 to 12 mm (0.2 to 0.5 in) long, and often overlapping at their base. The fused petals, 4 to 6 cm (1.6 to 2.4 in) long and fuzzy, are pale magenta with darker longitudinal stripes. The fruits are spherical berries 1 cm (0.4 in) in diameter, that contain many minute, dark seeds. *Cyanea crispa* is distinguished from other species in this endemic Hawaiian genus by its leaf shape, distinct calyx lobes, and the length of the flowers and stalks of flower clusters (Lammers 1999).

*Cyanea crispa* was observed in flower in April 1930. It was more recently observed fruiting in June and September. No further information is available on reproductive cycles, longevity, specific environmental

requirements, or limiting factors (Service 1998b; 59 FR 14482).

Historically, *Cyanea crispa* was known from scattered locations throughout the upper elevations of the Koolau Mountains of Oahu from Kaipapau Valley to the north to Waialae Iki Ridge to the southeast. This species is now known from Federal, State, city, county, and private lands in Hidden Valley, Palolo Valley, Kapakahi Gulch, Moanalua Valley, Wailupe, Koolau Summit Trail, Kawaipapa Gulch, Maakua Gulch, Kaipapa Gulch, Maunawili, and Pia Valley. There are a total of 11 locations containing a total of 56 individual plants (HINHP Database 2001; EDA Database 2001).

*Cyanea crispa* is found in habitats ranging from steep, open mesic forests to gentle slopes or moist gullies of closed wet forests and streambanks, at elevations between 56 and 959 m (184 and 3,146 ft). Associated plant species include *Diospyros* sp. (lama), *Pipturus albidus*, *Cibotium chamissoi*, *Perrottetia sandwicensis*, *Metrosideros polymorpha*, *Boehmeria grandis* (akolea), *Broussaisia argutus*, *Dubautia* sp. (naenae), *Psychotria* sp., *Thelypteris cyatheoides* (palapalai), *Antidesma platyphylla*, *Cyrtandra* spp., *Pisonia umbellifera* (papala kepau), or *Touchardia latifolia* (HINHP Database 2001; Service 1998b).

The major threats to *Cyanea crispa* are habitat alteration and predation by feral pigs; competition with the alien plant species *Zingiber zerumbet* (awapuhi), *Setaria palmifolia* (palm grass), *Arthrosetema ciliatum* (NCN), *Psidium guajava*, *Pterolepis glomerata*, *Schinus terebinthifolius*, *Rubus rosifolius* (thimbleberry), *Clidemia hirta*, and *Psidium cattleianum*; and extinction due to naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals, their limited gene pool, and restricted distribution (Service 1998b; 59 FR 14482).

#### *Cyanea grimesiana* ssp. *obatae* (Haha)

*Cyanea grimesiana* ssp. *obatae*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a shrub, usually unbranched, growing from 1 to 3.2 m (3.3 to 10.5 ft) tall with wide, deeply lobed leaves. This subspecies can be distinguished from the other two by its short, narrow, calyx lobes which are not fused or overlapping (Lammers 1999).

*Cyanea grimesiana* ssp. *obatae* flowers and fruits year round, depending on rainfall. No further information is available on reproductive cycles, specific environmental

requirements, or limiting factors (59 FR 32932).

Historically, *Cyanea grimesiana* ssp. *obatae* was known from the southern Waianae Mountains from Puu Hapapa to Kaaikukai. This taxon is known to be extant in Kaluaa Gulch, Ekahanui Gulch, North Palawai Gulch, and Pahole Gulch. The populations are on State and private lands. A total of six populations are known which contain 16 individuals (HINHP Database 2001; Lammers 1999; GDSI 2000).

*Cyanea grimesiana* ssp. *obatae* typically grows on steep, moist, shaded slopes in diverse mesic to wet lowland forests between 404 and 1,075 m (1,325 and 3,528 ft) elevation. Associated species include *Pouteria sandwicensis*, *Psychotria hathewayi* (kopiko), *Streblus pendulinus* (aiiai), *Perrottetia sandwicensis*, *Dubautia* sp., *Rumex* sp. (sorrel), *Chamaesyce* sp., *Coprosma* sp., *Nothoecstrum* sp. (aiea), *Dryopteris unidentata* (NCN), *Freycinetia arborea*, *Cibotium chamissoi*, *Myrsine lessertiana* (kolea lau nui), *Hedyotis terminalis*, *Hedyotis acuminata* (au), *Selaginella arbuscula* (lepelepe a moa), *Charpentiera obovata* (papala), *Cyrtandra waianaeensis* (hai wale), *Pipturus albidus*, *Claoxylon sandwicense* (poola), *Pisonia umbellifera*, *Acacia koa*, *Metrosideros polymorpha*, *Antidesma platyphyllum*, *Diplazium sandwichianum*, or *Cyanea membranacea* (haha) (HINHP Database 2001; EDA, *in litt.* 2001; Lammers 1999).

The major threats to *Cyanea grimesiana* ssp. *obatae* are habitat degradation by feral pigs; competition from alien plant species such as *Buddleia asiatica*, *Passiflora suberosa*, *Blechnum occidentale*, *Thelypteris parasitica* (NCN), *Psidium cattleianum*, *Aleurites moluccana*, *Toona ciliata*, *Setaria palmifolia*, *Rubus rosifolius*, *Lantana camara* (lantana), *Myrica faya* (firetree), *Ageratina riparia*, *Paspalum conjugatum*, *Clidemia hirta*, and *Schinus terebinthifolius*; predation of seeds or fruits by introduced slugs; and extinction caused by naturally occurring events and/or reduced reproductive vigor due to the small number of extant individuals (HINHP Database 2001; 59 FR 32932; Service 1998b).

#### *Cyanea humboldtiana* (Haha)

*Cyanea humboldtiana*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub with woody stems 1 to 2 m (3.2 to 6.6 ft) tall and inversely egg-shaped to broadly elliptic leaves. The leaf edges are hardened and have shallow, ascending rounded teeth. This species differs from others in this endemic Hawaiian genus by the

downward bending flowering stalk and the length of the flowering stalk (Lammers 1999).

*Cyanea humboldtiana* has been observed in flower from September through January. No further information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Cyanea humboldtiana* was known historically from 17 populations from the central portion to the southern end of the Koolau Mountains of Oahu. Currently, between 133 and 239 plants are known from eight locations: Konahuanui summit, Moanalua-Kaneohe summit, Wailupe summit, Poamoho Trail, Opaepala Gulch, Maakua Gulch, Kaluanui, and Lulumahu Gulch. These populations occur on Federal, private, State, city, and county lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Cyanea humboldtiana* is usually found in wet *Metrosideros polymorpha*/*Dicranopteris linearis* lowland shrubland between 261 and 959 m (856 and 3,146 ft) elevation. Associated native plant species include ferns, *Hedyotis terminalis*, *Dubautia laxa*, *Cibotium chamissoi*, *Syzygium sandwicensis*, *Acacia koa*, *Psychotria mariniana* (kopiko), *Bobea elatior* (ahakea), *Sadleria* sp., *Wikstroemia* sp., *Broussaisia argutus*, *Phyllostegia* sp., *Melicope* sp., *Machaerina angustifolia* (uki), *Ilex anomala*, or *Scaevola mollis* (naupaka kuahiwi) (HINHP Database 2001).

The major threats to *Cyanea humboldtiana* are habitat degradation and/or destruction by feral pigs; potential predation by rats; competition with the alien plant species *Axonopus fissifolius* (narrow-leaved carpet grass), *Erigeron karvinskianus*, *Pterolepis glomerata*, *Psidium cattleianum*, and *Clidemia hirta*; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of remaining populations. The Konahuanui summit population is also threatened by trampling by hikers (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Cyanea koolauensis* (Haha)

*Cyanea koolauensis*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub with woody stems, 1 to 1.5 m (3.5 to 5 ft) tall with linear to narrowly elliptic leaves with a whitish underside. The leaf edges are hardened with shallow, ascending rounded teeth. *Cyanea koolauensis* is distinguished from others in this endemic Hawaiian genus by the leaf shape and width; the whitish green lower leaf surface and; the

lengths of the leaf stalks, calyx lobes, and hypanthium (Lammers 1999).

*Cyanea koolauensis* has been observed in flower and fruit during the months of May through August. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Cyanea koolauensis* was known historically from 27 scattered populations throughout the Koolau Mountains on Oahu. Currently, 25 populations totaling fewer than 80 plants are known from the Waimea-Malaekahana Ridge to Hawaii Loa Ridge in the Koolau Mountains. These populations occur on private, city, county, State, and Federal lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Cyanea koolauensis* is usually found on slopes, streambanks, and ridge crests in wet *Metrosideros polymorpha*-*Dicranopteris linearis* forest or shrubland at elevations between 163 and 959 m (535 and 3,146 ft). Associated plant species include *Acacia koa*, *Bobea elatior*, *Syzygium sandwicensis*, *Pittosporum* sp., *Dubautia* sp., *Cibotium* sp., *Hedyotis* sp., *Wikstroemia* sp., *Bidens* sp., *Machaerina* sp., *Diploterygium pinnatum*, *Pritchardia martii* (loulu hiwa), *Sadleria* sp., *Broussaisia argutus*, *Melicope* sp., *Antidesma platyphyllum*, *Psychotria mariniana*, or *Scaevola* sp. (naupaka) (HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea koolauensis* are habitat destruction by feral pigs; potential impacts from military activities; trail clearing, potential predation by rats; competition with the aggressive alien plant species *Pterolepis glomerata*, *Heliocarpus popayanensis* (moho), *Clidemia hirta*, and *Psidium cattleianum*; trampling by hikers; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Cyanea longiflora* (Haha)

*Cyanea longiflora*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub with woody stems 1 to 3 m (3.5 to 10 ft) long and elliptic or inversely lance-shaped leaves. Mature leaves have smooth or hardened leaf edges with shallow, ascending, rounded teeth. *Cyanea longiflora* differs from others in this endemic Hawaiian genus by the fused calyx lobes (Lammers 1999).

*Cyanea longiflora* has been observed in flower in February, April, and May and in fruit in August. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Cyanea longiflora* was known historically from five populations in the Waianae Mountains and six populations in the Koolau Mountains of Oahu. Currently, four populations with less than 217 individuals of this species are known on State, Federal, city, county, and private lands Makaha-Waianae Kai Ridge, Makaha Valley, Kapuna Gulch, and Pahole Gulch in the Waianae Mountains (Service 1998b; HINHP Database 2001; GDSI 2001).

*Cyanea longiflora* is usually found on steep slopes, bases of cliffs, or ridge crests in mesic *Acacia koa*-*Metrosideros polymorpha* lowland forest in the Waianae Mountains usually between 221 and 1,191 m (725 and 3,906 ft) elevation. Associated plant species include *Cibotium* sp., *Schiedea* sp., *Psychotria* sp., *Antidesma* sp., *Dicranopteris linearis*, *Coprosma* sp., or *Syzygium sandwicensis* (HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea longiflora* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; potential predation by rats; competition with the alien plant species *Psidium cattleianum* and *Rubus argutus*; potential fire; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining, widely dispersed populations (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Cyanea pinnatifida* (Haha)

*Cyanea pinnatifida*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a shrub, usually unbranched, growing from 0.8 to 3.0 m (2.6 to 10 ft) tall, with deeply lobed leaves. This species differs from other members of the genus on Oahu by its leaves, which are deeply cut into two to six lobes per side. The only other member of the genus on Oahu with lobed leaves has 9 to 12 lobes per side (Lammers 1999).

*Cyanea pinnatifida* has been observed flowering in August. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Cyanea pinnatifida* was known from the central Waianae Mountains. The last known wild individual died in August 2001 (Trae Menard, TNCH, pers. comm., 2001;

HINHP Database 2001; Lammers 1999). Currently, this species is known only from individuals under propagation at the University of Hawaii's Lyon Arboretum and the National Tropical Botanical Garden (Greg Koob, Service, pers. comm. 2002).

*Cyanea pinnatifida* typically grows on steep, wet, rocky slopes in diverse mesic forest between 450 and 881 m (1,476 and 2,890 ft) elevation. Associated plant species include *Strongylodon ruber* (nunuiwi), *Pisonia umbellifera*, *Pisonia sandwicensis* (papala kepa), *Psychotria* sp., *Canavalia* sp. (awikiwiki), *Diplazium sandwichianum*, *Pipturus albidus*, and native ferns (HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea pinnatifida* are the small number of extant individuals; competition from the alien plant species *Toona ciliata*, *Passiflora suberosa*, *Aleurites moluccana*, *Psidium cattleianum*, *Psidium guajava*, *Blechnum occidentale*, and *Clidemia hirta*; habitat degradation by feral pigs; slugs; trampling by humans on or near trails; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (56 FR 55770; Service 1998b).

#### *Cyanea st-johnii* (Haha)

*Cyanea st-johnii*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched shrub with a woody stem 30 to 60 cm (12 to 24 in) long with lance-shaped to inversely lance-shaped leaves. The leaf edges are thickened, smoothly toothed, and curl under. This species is distinguished from others in this endemic Hawaiian genus by the length of the leaves, the distinctly curled leaf margins, and the petal color (Lammers 1999).

*Cyanea st-johnii* has been observed in flower in July through September. No further information is available on reproductive cycles, longevity, specific requirements, or limiting factors (Service 1998b).

*Cyanea st-johnii* was known historically from 11 populations in the central and southern Koolau Mountains of Oahu. Currently, 57 plants are known from six locations Waimano Trail summit to Aiea Trail summit, the summit ridge crest between Manana and Kipapa Trails, between the summit of Aiea and Halawa trails, Summit Trail south of Poamoho Cabin, and Wailupe-Waimanalo summit ridge. These populations are found on city, county, private, and State lands, and lands under Federal jurisdiction (HINHP Database 2001; GDSI Database 2000).

*Cyanea st-johnii* typically grows on wet, windswept slopes and ridges between 415 and 959 m (1,361 and 3,146 ft) elevation in *Metrosideros polymorpha* mixed lowland shrubland or *Metrosideros polymorpha*-*Dicranopteris linearis* lowland shrubland. Associated plant species include *Psychotria* sp., *Alyxia oliviformis*, *Melicope* sp., *Broussaisia arguta*, *Cibotium* sp., *Labordia* sp., *Scaevola mollis*, *Dubautia laxa*, *Hedyotis* sp., *Antidesma* sp., *Sadleria pallida* (amau), *Syzygium sandwicensis*, *Machaerina angustifolia*, *Bidens macrocarpa* (kookoolau), *Chamaesyce clusifolia* (akoko), or *Freycinetia arborea* (HINHP Database 2001).

The major threats to *Cyanea st-johnii* are habitat degradation and/or destruction by feral pigs; potential predation by rats; slugs and snails; competition with the alien plant species *Axonopus fissifolius*, *Sacciolepis indica* (Glenwood grass), *Andropogon virginicus* (broomsedge), and *Clidemia hirta*; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining populations and individuals. The plants between the summit of Aiea and Halawa Trail are also threatened by trampling by hikers (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Cyanea superba* (Haha)

*Cyanea superba*, of the bellflower family (Campanulaceae) and a short-lived perennial, is a perennial with a very isolated geography and is morphologically very different from its closest relatives. It grows to 6 m (20 ft) tall and has a terminal rosette of large leaves each 50 to 100 cm long (20 to 40 in) by 10 to 20 cm (4 to 8 in) wide atop a simple, unbranched trunk (Lammers 1999).

The flowering season of *Cyanea superba* varies from year to year depending on precipitation. It ranges from late August to early October. Generally, flowering is at its peak in early to mid-September. Fruits have been known to mature in 2 to 5 months, depending on climatic conditions (Service 1998b).

Historically, *Cyanea superba* was collected from the gulches of Makaleha on Mt. Kaala in the Waianae Mountains of Oahu. Currently, there is one natural population on the Makua Military Reservation with one individual and an out-planted population of 140 individuals on State and Federal lands in the Waianae Mountains (Service 1998b; Matt Keir, EDA, pers. comm., 2001; HINHP Database 2001; GDSI 2001; EDA Database 2001).



*Cyanea superba* grows in the understory on sloping terrain on a well drained rocky substrate within mesic forest between 232 and 872 m (761 and 2,860 ft) in elevation with one or more of the following associated native species *Diospyros* sp., *Metrosideros polymorpha*, *Xylosma* sp., *Nestegis sandwicensis*, *Psychotria* sp., *Hedyotis terminalis*, and *Pisonia brunoniana* (papala kepau) (HINHP Database 2001).

The major threats to *Cyanea superba* are degradation of its habitat due to competition with the alien plant species *Schinus terebinthifolius*, *Aleurites moluccana*, *Psidium cattleianum*, and *Melinis minutiflora*; wildfires generated in the nearby military firing range; feral pigs; a restricted range which makes it vulnerable to even a small, local, environmental disturbance and a single incident which could destroy a significant percentage of the known individuals; and the limited gene pool may depress reproductive vigor (56 FR 46235; Service 1998b; HINHP Database 2001).

#### *Cyanea truncata* (Haha)

*Cyanea truncata*, of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched or sparsely branched shrub covered with small sharp prickles and oval leaves, which are wider above their middle, and lined with hardened teeth along the margins. *Cyanea truncata* is distinguished from other members of this genus by the length of the flower cluster stalk, and the size of the flowers and flower lobes (Lammers 1999).

*Cyanea truncata* was observed in flower in December 1919 and November 1980, the last time the species was observed before feral pigs extirpated that population. No other information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b; 59 FR 14482).

Historically, *Cyanea truncata* was known from Punaluu, Waikane, and Waiahole in the northern Koolau Mountains of Oahu. One population of at least one individual is known to exist in Hanaimoa Gulch on State and private lands (HINHP Database 2001; GDSI 2001).

*Cyanea truncata* typically grows on windward slopes and streambanks in mesic to wet forests at elevations between 54 and 705 m (177 and 2,312 ft). Associated plant species include *Cyrtandra calpidicarpa* (hai wale), *Cyrtandra laxiflora* (hai wale), *Pipturus albidus*, *Cibotium chamissoi*, *Hibiscus arnottianus*, *Diospyros sandwicensis*, *Metrosideros polymorpha*, *Cyrtandra propinqua* (hai wale), *Neraudia*

*melastomifolia* (maaloa), or *Pisonia umbellifera* (Service 1998b; HINHP Database 2001; Lammers 1999).

The major threats to *Cyanea truncata* are habitat degradation and predation by feral pigs; competition with the invasive alien plant species *Cordyline fruticosa*, *Oplismenus hirtellus*, *Thelypteris parasitica*, *Clidemia hirta*, and *Psidium cattleianum*; rats; slugs; and extinction due to naturally caused events and/or reduced reproductive vigor due to the small number of remaining individuals (59 FR 14482; Service 1998b).

#### *Cyrtandra crenata* (Haiwale)

*Cyrtandra crenata*, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a shrub 1 to 2 m (3 to 7 ft) tall with few branches and leaves arranged in whorls of three, tufted at the end of branches. *Cyrtandra crenata* is distinguished from other species in the genus by the combination of its three-leaf arrangement, bilaterally symmetrical calyx, and brownish, hemispherical glands (Wagner *et al.* 1999).

*Cyrtandra crenata* has been observed in flower in June. No other information exists on reproductive cycles, longevity, specific environmental requirements, and limiting factors (Service 1998b; 59 FR 14482).

Historically, *Cyrtandra crenata* was known from Waikane Valley along the Waikane-Schofield Trail in the Koolau Mountains and was last observed in 1947 (HINHP Database 2001).

*Cyrtandra crenata* typically grows on steep slopes, in ravines, or gulches in mesic to wet forests between elevations of 328 and 779 m (1,076 and 2,555 ft) with associated native plant species such as *Metrosideros polymorpha*, *Dicranopteris linearis*, and *Machaerina angustifolia* (Wagner *et al.* 1999; Service 1998b; HINHP Database 2001).

The primary threat to *Cyrtandra crenata* is extinction due to naturally caused events and/or reduced reproductive vigor due to the species' restricted range and the small number of individuals that are thought to exist (59 FR 14482; Service 1998b).

#### *Cyrtandra dentata* (Haiwale)

*Cyrtandra dentata*, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a sparingly branched shrub ranging from 1.5 to 5 m (5 to 16 ft) tall with papery textured leaves. This species is distinguished from others in the genus by the number and arrangement of the flowers, the length of the bracts and flower stalks, and the shape of the leaves (Wagner *et al.* 1999).

*Cyrtandra dentata* has been observed in flower and fruit in May and November. No other information exists on reproductive cycles, longevity, specific environmental requirements, and limiting factors (Service 1998b).

*Cyrtandra dentata* was historically known from six populations in the Waianae Mountains and three populations in the Koolau Mountains of Oahu. Currently, this species is found only in the Pahole Gulch, Kapuna Valley, Ekahanui Gulch, Keawapilau Gulch, Kahanahaiki, Kawai Iki Gulch, Opauala Stream, and Makaleha Valley on Federal, State, city, and county lands (within TNCH's Honouliuli Preserve). The eight known populations total 136 individuals (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Cyrtandra dentata* typically grows in gulches, slopes, streambanks, or ravines in mesic or wet forest with *Ureca glabra*, *Acacia koa*, *Pisonia sandwicensis*, *Pipturus albidus*, *Metrosideros polymorpha*, *Pouteria sandwicensis*, *Pisonia umbellifera*, or *Syzygium sandwicensis* at elevations between 255 and 953 m (836 and 3,126 ft) (HINHP Database 2001; Wagner *et al.* 1999; EDA, *in litt.* 2001).

The major threats to *Cyrtandra dentata* are competition with the alien plant species *Schinus terebinthifolius*, *Psidium guajava*, *Aleurites moluccana*, *Thelypteris parasitica*, *Belchnum occidentale*, *Clidemia hirta*, and *Psidium cattleianum*; potential predation by rats; potential fire; and a risk of extinction from naturally occurring events (such as landslides/hurricanes/flooding) and/or reduced reproductive vigor, due to the small number of extant populations and individuals (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Cyrtandra polyantha* (Haiwale)

*Cyrtandra polyantha*, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is an unbranched or few-branched shrub 1 to 3 m (3 to 10 ft) in height with leathery, elliptic, unequal leaves. *Cyrtandra polyantha* is distinguished from other species in the genus by the texture and hairiness of the leaf surfaces and the length, shape, and degree of cleft of the calyx. This species differs from *C. crenata* by the lack of short-stalked glands and by its leathery leaves, opposite leaf arrangement, and radially symmetrical calyx (Wagner *et al.* 1999).

No information exists on reproductive cycles, longevity, specific environmental requirements, and limiting factors for *Cyrtandra polyantha* (Service 1998b).

Historically, *Cyrtandra polyantha* was known from the Kalihi region and from Kūlepeamo Ridge above Niu Valley on the leeward (southwest) side of the southern Koolau Mountains. Currently, one population with three individuals is extant on the summit ridge between Kuliouou and Waimanalo on State and private lands (HINHP Database 2001).

*Cyrtandra polyantha* grows on ridges of valleys in *Metrosideros polymorpha* mesic or wet forests at elevations between 331 and 762 m (1,086 and 2,499 ft). *Cyrtandra polyantha* probably grows in association with *Machaerina angustifolia*, *Dicranopteris linearis*, *Broussaisia arguta*, *Coprosma foliosa* (pilo), and *Psychotria* sp. (Service 1998b; HINHP Database 2001).

The primary threats to *Cyrtandra polyantha* are habitat degradation by feral pigs; competition with the invasive plant species, *Clidemia hirta*, *Melinis minutiflora*, *Ageratina adenophora*, and *Erigeron karvinskianus*; extinction due to naturally caused events and/or reduced reproductive vigor due to the small number of remaining individuals and their restricted distribution (59 FR 14482; Service 1998b; HINHP Database 2001).

#### *Cyrtandra subumbellata* (Haiwale)

*Cyrtandra subumbellata*, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a shrub 2 to 3 m (6.6 to 10 ft) tall. Papery in texture, the leaves are almost circular to egg-shaped, 12 to 39 cm (4.7 to 15.4 in) long, and 3 to 19 cm (1.2 to 7.5 in) wide (Wagner *et al.* 1999).

*Cyrtandra subumbellata* has been observed in fruit in September. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Cyrtandra subumbellata* was known from the Koolau Mountains of Oahu. Currently, there are two populations containing 12 individuals in the central Koolau Mountains Schofield-Waikane Trail, Puu Ohulehule, and in Kaukonahua drainage on Federal, private, and State lands (HINHP Database 2001; EDA Database 2001).

*Cyrtandra subumbellata* typically grows on moist, forested slopes or gulch bottoms dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha*-*Dicranopteris linearis*-*Acacia koa* wet forests between 345 and 790 m (1,132 and 2,591 ft) elevation. Associated plant species include *Machaerina* sp., *Boehmeria grandis*, *Broussaisia arguta*, and *Thelypteris* sp. (palapalai) (HINHP

Database 2001; Service 1998b; Wagner *et al.* 1999).

The primary threats to *Cyrtandra subumbellata* are competition with the alien plant species *Clidemia hirta*; impacts from military activities; predation by rats; fire; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of extant populations and individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

#### *Cyrtandra viridiflora* (Haiwale)

*Cyrtandra viridiflora*, a member of the African violet family (Gesneriaceae) and a short-lived perennial, is a small shrub 0.5 to 2 m (1.6 to 6.6 ft) tall. This species is distinguished from others in the genus by the leaves, which are thick, fleshy, heart-shaped, and densely hairy on both surfaces (Wagner *et al.* 1999).

*Cyrtandra viridiflora* has been observed in fruit and flower from May through September. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Cyrtandra viridiflora* was known from scattered populations in the Koolau Mountains on the island of Oahu. This species is now known only from seven locations in the northern Koolau Mountains on Federal, State, and private lands at Kawainui-Laie summit divide, Kawainui-Kaipapau summit divide, Maakua-Kaipapau Ridge, and the Peahinaia Trail. Fifty-two plants are known from eight populations at Puu Kainapua, Maakua-Kaipapau Ridge, Kawai Nui Drainage, Opaulea Gulch, and Kawai Nui-Laie Divide (HINHP Database 2001; GDSI 2001).

*Cyrtandra viridiflora* is usually found on wind-blown ridge tops in cloud-covered wet forest or shrubland at elevations between 443 and 867 m (1,453 and 2,844 ft). Associated plant species include *Diplopterygium* (pinnatum), *Psychotria* sp., *Freycinetia arborea*, *Dubautia* sp., *Ilex anomala*, *Melicope* sp., *Hedyotis* sp., *Cheirodendron platyphyllum* (olapa), *Broussaisia arguta*, *Metrosideros polymorpha*, *Syzygium sandwicensis*, *Machaerina* sp., *Metrosideros rugosa* (lehua papa), or *Dicranopteris linearis* (HINHP Database 2001; Wagner *et al.* 1999; EDA, *in litt.* 2001).

The major threats to *Cyrtandra viridiflora* are habitat degradation or destruction by feral pigs; impacts from military activities, predation by rats, competition with the alien plant species *Clidemia hirta* and *Psidium catteianum*; and risk of extinction from naturally

occurring events and/or reduced reproductive vigor due to the small number of remaining populations and individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

#### *Delissea subcordata* (NCN)

*Delissea subcordata*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a branched or unbranched shrub 1 to 3 m (3.5 to 10 ft) tall. This species is distinguished from others in this endemic Hawaiian genus by the shape and size of the leaves, the length of the calyx lobes and corolla, and the hairless condition of the anthers (Lammers 1999).

Fertile plants of *Delissea subcordata* have been observed in July. An examination of herbarium specimens show that this plant flowers throughout the year. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Delissea subcordata* was known from scattered populations in the Waianae and Koolau Mountains of Oahu. A specimen collected by Mann and Brigham in the 1860s and labeled from the island of Kauai is believed to have been mislabeled. *Delissea subcordata* is now known from 18 populations at South Huliwai Gulch, Palikeya Gulch, Kaluaa Gulch, South Mohikeya Gulch, Kahanahaiki Valley, Kapuhi Gulch, South Ekahanui Gulch, Waikoekoe Gulch, Pahole Gulch, Kaawa Gulch, North Palawai Gulch, Kealia land section, Kapuna Gulch, Keawapilau Gulch, North Huliwai Gulch, Kuaokala, and Kolekole. This species is found on private, Federal, and State lands. The total number of plants in the 18 remaining populations is estimated to be fewer than 70 (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Delissea subcordata* typically grows on moderate to steep gulch slopes in mixed mesic forests between 162 and 1,025 m (531 and 3,362 ft) elevation. Associated plant species include a variety of native trees such as *Acacia koa*, *Alyxia oliviformis*, *Hedyotis acuminata*, *Streblus pendulinus*, *Diospyros sandwicensis*, *Psydrax odoratum*, *Bobea* sp. (ahakea), *Myrsine lanaiensis*, *Cloaxylon sandwicense*, *Charpentiera obovata*, *Chamaesyce multififormis* (akoko), *Pouteria sandwicensis*, *Antidesma* sp., *Metrosideros polymorpha*, *Pisonia* sp., *Diospyros hillebrandii* (lama), *Nestegis sandwicensis*, or *Psychotria hathewayi* (HINHP Database 2001; Service 1998b).

The major threats to *Delissea subcordata* are habitat degradation and/

or destruction by pigs and goats; impacts from military activities, including road construction and housing development; predation by rats and slugs; competition with the alien plant species *Passiflora suberosa*, *Blechnum occidentale*, *Toona ciliata*, *Syzygium cumini*, *Oplismenus hirtellus*, *Pimenta dioica*, *Grevillea robusta*, *Melinis minutiflora*, *Schinus terebinthifolius*, *Clidemia hirta*, *Psidium cattleianum*, and *Lantana camara*; fire; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; Service 1998b; 61 FR 53089).

#### *Diellia falcata* (NCN)

*Diellia falcata*, in the polypodium family (Polypodiaceae) and a short-lived perennial, grows from a rhizome (underground stem), 1 to 5 cm (0.4 to 2 in) long and 0.5 to 2 cm (0.2 to 0.8 in) in diameter, which is covered with small black or maroon scales. This species is distinguished from others in the genus by the color and texture of its leaf stalk, the venation pattern of its fronds, the color of its scales, its rounded and reduced lower pinnae, and its separate sori arranged on marginal projections (Wagner 1952; Service 1998b).

*Diellia falcata* hybridizes with *Diellia unisora*. It has been observed with fronds bearing sori (fern spores) year round. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Diellia falcata* was known from almost the entire length of the Waianae Mountains, from Manini Gulch to Palehua Iki, as well as from the Koolau Mountains of Oahu, from Kaipapau Valley to Aiea Gulch. This species remains in Waieli Gulch, Ekahanui Gulch, Makaleha Valley, Makaha Valley, Palikea Gulch, Makua Valley, Kaimuhole Gulch, Kuaokala-Manini Gulch, Pahole Gulch, Puu Ku Makalii, Kapuna Gulch, Mohiaka Gulch, Waianae Kai, Pualii Gulch, Napepeiaulelo Gulch, Kahanahaiki Valley, Nanakuli-Lualualei Ridge, Makua, Kamaileunu Ridge, Kaluaa Gulch, and Huliwai Gulch on Federal, State, city, county, and private lands. The 29 known locations contain fewer than 6,000 individuals (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Diellia falcata* is a terrestrial fern which typically grows in deep shade or open understory on moderate to moderately steep slopes and gulch bottoms in diverse mesic forest between 224 and 953 m (735 and 3,126 ft)

elevation. Associated species include *Pisonia sandwicensis*, *Doodia kunthiana* (NCN), *Dryopteris unidentata*, *Antidesma* sp., *Nestegis sandwicensis*, *Alyxia oliviformis*, *Psydrax odorata*, *Pipturis* sp., *Metrosideros polymorpha*, *Freycinetia arborea*, *Athyrium sandwichianum*, *Dryopteris unidentata*, *Nephrolepis exaltata* (kupukupu), *Diospyros hillebrandii*, *Acacia koa*, *Elaeocarpus bifidus*, *Myrsine lanaiensis*, *Selaginella arbuscula*, *Carex meyenii* (NCN), *Sophora chrysophylla* (mamane), *Claoxylon sandwicense*, *Psychotria* sp., *Hibiscus* sp., *Xylosma* sp., *Melicope* sp., *Coprosma foliosa*, *Asplenium kaulfussii* (NCN), *Nothoctrum* sp., *Charpentiera* sp., *Hedyotis terminalis*, *Sapindus oahuensis*, *Diospyros sandwicensis*, or *Pouteria sandwicensis* (HINHP Database 2001).

The major threats to *Diellia falcata* are habitat degradation by feral goats and pigs; competition from the alien plant species *Psidium cattleianum*, *Syzygium cumini*, *Schinus terebinthifolius*, *Passiflora suberosa*, *Pimenta dioica*, *Grevillea robusta*, *Lantana camara*, *Melinis minutiflora*, *Heliocarpus popayanensis*, *Blechnum occidentale*, *Kalanchoe pinnata*, *Ageratina riparia*, *Psidium guajava*, *Rubus argutus*, *Thelypteris parasitica*, *Toona ciliata*, *Passiflora lingularis* (sweet granadilla), *Aleurites moluccana*, *Clidemia hirta*, *Schefflera actinophylla* (octopus tree), and *Paspalum conjugatum*; and fire (Service 1998b; 56 FR 55770; HINHP Database 2001).

#### *Diellia unisora* (NCN)

*Diellia unisora*, a short-lived perennial in the fern family Polypodiaceae, grows from a slender, erect rhizome (underground stem), 0.5 to 3 cm (0.2 to 1.2 in) tall and 0.5 to 1 cm (0.2 to 0.4 in) in diameter, which is covered with the bases of the leaf stalks and a few small black scales. This species is distinguished from others in the genus by a rhizome completely covered by the persisting bases of the leaf stalks, and few, very small scales; by sori mostly confined to the upper pinnae margins; and by delicate fronds gradually and symmetrically narrowing toward the apex (Wagner 1952).

*Diellia unisora* hybridizes with *Diellia falcata*. Otherwise, little is known about its reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Diellia unisora* was known from steep, grassy, rocky slopes on the western side of the Waianae Mountains, Oahu. This species is known to be extant in four areas of the southern Waianae Mountains at South

Ekahanui Gulch, Palawai Gulch, and the Pualii-Napepeiaulelo Ridge. The four known populations, which are on State and private lands, contain fewer than 800 individuals (HINHP Database 2001; GDSI 2001).

*Diellia unisora* is a terrestrial fern which typically grows on moderate to steep slopes or gulch bottoms in deep shade or open understory mesic forest between 382 and 953 m (1,253 and 3,126 ft) elevation. Associated species include *Coprosma* sp., *Rumex* sp., *Antidesma* sp., *Psychotria* sp., *Carex meyenii*, *Dryopteris unidentata*, *Chamaesyce multiformis*, *Dodonaea viscosa*, *Bidens torta*, *Eragrostis grandis* (kawelu), *Hedyotis terminalis*, *Alyxia oliviformis*, *Myrsine lessertiana*, *Hedyotis schlechendahliana* (kopa), *Selaginella arbuscula*, *Acacia koa*, or *Metrosideros polymorpha* (59 FR 32932; HINHP Database 2001).

The major threats to *Diellia unisora* are habitat degradation by feral pigs and competition from the alien plant species *Ageratina riparia*, *Clidemia hirta*, *Schefflera actinophylla*, *Blechnum occidentale*, *Schinus terebinthifolius*, *Melinis minutiflora*, *Passiflora suberosa*, and *Psidium cattleianum* (59 FR 32932; HINHP Database 2001).

#### *Dubautia herbstobatae* (Naenae)

*Dubautia herbstobatae*, a member of the aster family (Asteraceae) and a short-lived perennial, is a small, spreading shrub to 50 cm (20 in) tall. *Dubautia herbstobatae* is distinguished from other species on Oahu by the presence of the outer bracts of the flower heads fused, forming a cup surrounding the florets and the presence of one large vein showing in each leaf (Carr 1999).

*Dubautia herbstobatae* is likely outcrossing and possibly self-incompatible (i.e., pollen from the same plant will not produce seed). Flowering usually occurs in May and June. Pollination is almost certainly achieved by insect activity and fruit dispersal is probably quite localized and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (Service 1998b).

*Dubautia herbstobatae* is known to be extant from four locations in the northern Waianae Mountains, on Ohikilolo and Kamaileunu Ridges, Keaau, and Waianae Kai on State lands and land under Federal jurisdiction; fewer than 100 individuals are known from these locations (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Dubautia herbstobatae* typically grows on rock outcrops, ridges, moderate slopes, or vertical cliffs in dry

or mesic shrubland at elevations between 266 and 978 m (872 and 3,208 ft). Associated species include *Dodonaea viscosa*, *Artemisia australis*, *Chamaesyce celastroides* (akoko), *Schiedea mannii* (NCN), *Carex meyenii*, *Bidens torta*, *Metrosideros polymorpha*, *Lysimachia waianaensis* (kolokolo kuahiwi), and *Eragrostis variabilis* (kawelu) (56 FR 55770; EDA, in litt. 2001; HINHP Database 2001).

The major threats to *Dubautia herbstobatae* are habitat degradation by feral goats and pigs; competition from the alien plant species *Ageratina riparia*, *Bromus mollis* (soft chest), *Melinis repens*, *Grevillea robusta*, *Schinus terebinthifolius*, *Leucana leucocephala*, and *Melinis minutiflora*; fire; visitation and possible trampling by humans; and the small number of individuals (56 FR 55770).

#### *Eragrostis fosbergii* (NCN)

*Eragrostis fosbergii*, a member of the grass family (Poaceae), is a perennial species with stout, tufted culms (stems) 61 to 102 cm (24 to 40 in) long, which usually arise from an abruptly bent woody base. This species is distinguished from others in the genus by its stiffly ascending flowering stalk and the long hairs on the margins of the glumes and occasionally on the margins of the lemmas (O'Connor 1999).

No information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Eragrostis fosbergii* was known only from the Waianae Mountains of Oahu, from the slopes of Mount Kaala and in Waianae Kai and its associated ridges. Only six individuals are known to remain in Waianae Kai and on Kumaipo Trail in four populations on Federal and State lands (HINHP Database 2001; GDSI 2001).

*Eragrostis fosbergii* typically grows on ridge crests or moderate slopes in dry and mesic forests between 578 and 941 m (1,896 and 3,086 ft) elevation. Associated plant species include; *Chamaesyce* sp., *Alyxia oliviformis*, *Sphenomeris* sp. (palaa), *Nephrolepis exaltata*, *Doodia* sp. (ohu pukupulauui), *Bidens* sp., *Melicope* sp., *Acacia koa*, *Metrosideros polymorpha*, *Psydrax odorata*, *Dodonaea viscosa*, or *Eragrostis grandis* (HINHP Database 2001; 61 FR 53089).

The major threats to *Eragrostis fosbergii* are degradation of habitat by feral pigs and goats; competition with alien plant species such as *Schinus terebinthifolius*, *Grevillea robusta*, and *Psidium cattleianum*; trampling by hikers; hybridization with *Eragrostis grandis*; and a threat of extinction from

random environmental events and/or reduced reproductive vigor due to the small number of remaining populations and individuals (HINHP Database 2001; Service 1998b; G. Koob, pers. comm. 2001).

#### *Gardenia mannii* (Nanu)

*Gardenia mannii*, a member of the coffee family (Rubiaceae), is a tree 5 to 15 m (16 to 50 ft) tall. This species is distinguished from others in the genus by the shape and number of the calyx spurs (Wagner *et al.* 1999).

*Gardenia mannii* has been observed in flower and fruit in June and September. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors. (Service 1998b)

Historically, *Gardenia mannii* was known from seven widely scattered populations in the Waianae Mountains and 39 populations distributed along almost the entire length of the Koolau Mountains of Oahu. Currently, there are 31 populations of *Gardenia mannii* at Haleauau Gulch, Peahinaia Ridge, Kaunala Gulch and Kaunala-Waimea Ridge, Castle Trail, Halawa Valley and Halawa-Kalauao Ridge, Moanalua Valley, Makaua-Kahana Ridge, Poamoho and Halemano Gulches, Kaluaa and Maunauna Gulches, Waimano Trail, Kawaiiloa Trail, Puu Hapapa and Waieli Gulch, Wiliwilinui Ridge, Koloa Stream, Waialae Nui-Kapakahi Ridge, Manaiki Valley, Laie Trail, Malaekahana-Waimea Summit Ridge, Haleauau Gulch, Schofield-Waikane Trail, Kaukonahua Gulch, Kapakahi Gulch, Manana Trail, Peahinaia Trail and Opauala Stream, Kamana Nui Stream, Pukele, Hanaimoa Gulch, Papali Gulch, Kawai Nui, and Kaipapau Gulch. The 31 extant populations occur on private, State, and Federal lands. The existing populations total between 69 and 80 plants (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Gardenia mannii* is usually found on moderate to moderately steep gulch slopes, ridge crests, in gulch bottoms, and on streambanks in mesic or wet forests between 82 and 1,050 m (269 and 3,444 ft) in elevation. Associated plant species include *Coprosma foliosa*, *Pisonia* sp., *Bobea* sp., *Syzygium sandwicensis*, *Melicope* sp., *Cheirodendron* sp. (NCN), *Perottettia sandwicensis*, *Elaeocarpus* sp., *Cibotium* sp., *Thelypteris* sp., *Pipturus* sp., *Ilex anomala*, *Freycinetia arborea*, *Boehmeria grandis*, *Metrosideros polymorpha*, *Pouteria sandwicensis*, *Acacia koa*, *Dicranopteris linearis*, *Antidesma platyphyllum*, *Broussaisia arguta*, *Hedyotis acuminata*, *Alyxia*

*oliviformis*, and *Psychotria mariniana* (HINHP Database 2001).

The major threats to *Gardenia mannii* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with alien plant species such as *Toona ciliata*, *Passiflora suberosa*, *Psidium guajava*, *Leptospermum scoparium*, *Clidemia hirta*, *Rubus argutus*, and *Psidium cattleianum*; fire; and risk of extinction from random environmental events and/or reduced reproductive vigor due to the widely dispersed, small number of remaining individuals. The Kapakahi Gulch population is also threatened by the black twig borer (HINHP Database 2001; 61 FR 53089; Service 1998b).

#### *Hedyotis degeneri* (NCN)

*Hedyotis degeneri*, a member of the coffee family (Rubiaceae), is a prostrate shrub with four-sided stems and peeling, corky bark. This species can be distinguished from others in the genus on Oahu by its low-growing habit, the peeling corky layers on older stems, and the short, crowded, leafy shoots growing in the leaf axils; two varieties within the species are recognized *Hedyotis var coprosmafolia* and *Hedyotis var. degeneri* (Wagner *et al.* 1999).

This species has been observed in flower in November, June, and July, and in fruit in July. No further information is available on flowering cycle, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Hedyotis degeneri* is known from Mt. Kaala in the northern Waianae Mountains. Variety *coprosmafolia* has not been collected since the 1980s and no current populations are known. Five populations, totaling 60 individuals, of variety *degeneri* are known from Makaleha, Pahole Gulch, Kahanahaiki, and Alaiheihe Gulch on Federal, State, city, and county lands (HINHP Database 2001; GDSI 2001; Wagner *et al.* 1999).

*Hedyotis degeneri* typically grows on ridge crests in diverse mesic forest between 349 and 1,083 m (1,145 and 3,552 ft) elevation. Associated species include *Styphelia tameiameia* (pukiawe), *Dicranopteris linearis*, *Wikstroemia oahuensis* (akia), *Dodonaea viscosa*, *Alyxia oliviformis*, *Diospyros sandwicensis*, *Psychotria hathewayi*, *Coccolus* sp. (huehue), *Lysimachia hillebrandii* (kolokolo kuahiwi), *Chamaesyce multiflora*, *Lobelia yuccoides* (NCN), *Gahnia* sp. (NCN), *Pleomele* sp., *Carex meyenii*, *Psydrax odorata*, *Metrosideros*

*polymorpha*, or *Hedyotis terminalis* (HINHP Database 2001).

The major threats to *Hedyotis degeneri* are habitat destruction by feral pigs; competition from the alien plant species *Grevillea robusta*, *Clidemia hirta*, *Blechnum occidentale*, *Toona ciliata*, *Psidium guajava*, *Ageratina adenophora*, *Rubus argutus*, *Schinus terebinthifolius*, *Melinis minutiflora*, and *Psidium cattleianum*; and a threat of extinction from random environmental events and/or decreased reproductive vigor due to the small number of extant individuals and populations (HINHP Database 2001).

*Hedyotis parvula* (NCN)

*Hedyotis parvula*, a member of the coffee family (Rubiaceae), is a small, many-branched shrub, either upright or sprawling, with stems usually no more than 30 cm (1 ft) in length. Closely spaced, overlapping leaves which are uniform in size along the stem separate this species from other members of the genus on Oahu (Wagner *et al.* 1999).

*Hedyotis parvula* has been observed flowering in both winter and summer. The plant is found in dry areas and flowering may be induced by rain. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Hedyotis parvula* was known from the central and southern Waianae Mountains, from Makaleha Valley to Nanakuli Valley. Currently, this species is known from five locations on Federal, State, city, and county lands at Makaleha Ridge, Makua-Keaau Ridge, Lualualei-Nanakuli Ridge, Ohikilolo Ridge, and Halona. Five populations totaling between 116 and 131 individuals are known (HINHP Database 2001; EDA Database 2001; Wagner *et al.* 1999; GDSI 2001).

*Hedyotis parvula* typically grows on and at the base of cliff faces, rock outcrops, and ledges in mesic habitat at elevations between 331 and 1,160 m (1,086 and 3,805 ft). Associated species include *Eragrostis* sp. (kawelu), *Carex* sp., *Rumex* sp., *Metrosideros polymorpha*, *Chamaesyce* sp., *Bidens* sp., *Dodonaea viscosa*, *Psydrax odorata*, *Metrosideros tremuloides* (lehua ahihi), or *Plectranthus parviflorus* (alaala wai nui) (56 FR 55770; HINHP Database 2001; Wagner *et al.* 1999).

The major threats to *Hedyotis parvula* are habitat degradation by feral goats and pigs; competition from the alien plant species *Ageratina riparia*, *Myrica faya*, *Schinus terebinthifolius*, and *Melinis minutiflora*; and a threat of extinction from random environmental events and/or decreased reproductive

vigor due to the small number of individuals and populations (56 FR 55770; HINHP Database 2001).

*Labordia cyrtandrae* (Kamakahala)

*Labordia cyrtandrae*, a member of the logania family (Loganiaceae), is a shrub 0.7 to 2 m (2.3 to 6.6 ft) tall. This species is distinguished from others in the genus by its fleshy, hairy, cylindrical stem which flattens upon drying, the shape and length of the floral bracts, and the length of the corolla tube and lobes (Wagner *et al.* 1999).

*Labordia cyrtandrae* has been observed flowering from May through June, and fruiting from July through August, is sporadically fertile year round. The flowers are functionally unisexual and male and female flowers are on separate plants. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Labordia cyrtandrae* was known from both the Waianae and Koolau Mountains of Oahu; in the Koolau Mountains, this species ranged from Kawailoa Trail to Waialae Iki, extending almost the entire length of the mountain range. This species currently is known only from 20 individuals in nine populations in Haleauau Gulch, Mohiaka Gulch, Kaala, and Makaleha. These populations occur on State, city, county, and private lands (GDSI 2001; EDA Database 2001; HINHP Database 2001).

*Labordia cyrtandrae* typically grows in shady gulches, slopes, and glens in mesic to wet forests and shrublands dominated by *Metrosideros polymorpha*, *Diplopterygium pinnatum*, and/or *Acacia koa* between the elevations between 212 and 1,233 m (695 and 4,044 ft). Associated plant species include *Broussaisia arguta*, *Cyrtandra* sp., *Phyllostegia* sp., *Dicranopteris linearis*, *Antidesma* sp., *Bidens torta*, *Artemisia australis*, *Dubautia plantaginea* (naenae), *Rumex* sp., *Lysimachia hillebrandii*, *Chamaesyce* sp., *Coprosma* sp., *Boehmeria grandis*, *Peperomia membranacea* (ala ala wai nui), *Pouteria sandwicensis*, *Diplazium sandwichianum*, *Pipturus albidus*, *Perrottetia sandwicensis*, or *Psychotria* sp. (HINHP Database 2001; Service 1998b).

The greatest threats to *Labordia cyrtandrae* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with the alien plant species *Axonopus fissifolius*, *Juncus planifolius* (NCN), *Setaria gracilis* (yellow foxtail), *Schinus terebinthifolius*, *Clidemia hirta*,

*Rubus argutus*, and *Psidium cattleianum*; fire; and risk of extinction from random environmental events and/or reduced reproductive vigor due to the small number of remaining individuals and populations (HINHP Database 2001; Service 1998b).

*Lepidium arbuscula* (Anaunau)

*Lepidium arbuscula*, a member of the mustard family (Brassicaceae), is a gnarled shrub 0.6 to 1.2 m (2 to 4 ft) tall. The species is distinguished from others in the genus by its height (Wagner *et al.* 1999).

*Lepidium arbuscula* has been observed in flower in February. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Lepidium arbuscula* was known from 11 populations in the Waianae Mountains, Oahu. Currently, there are a total of approximately 1,000 individuals known from 10 locations on Federal, State, city, and county lands at Kamaileunu Ridge, Lualualei-Nanakuli Ridge, Kapuhi Gulch, northwest of Puu Kaua, Manini Gulch, Mohiaka Gulch, Ohikilolo Ridge, Makua-Keaau Ridge, the ridge between the Paahoa and Halona subdistricts, northwest of Puu Ku Makalii, and Halona subdistrict (GDSI 2001; HINHP Database 2001; EDA Database 2001).

*Lepidium arbuscula* on Oahu generally grows on exposed ridge tops and cliff faces in mesic and dry vegetation communities between 131 and 978 m (430 and 3,208 ft) elevation. This species is typically associated with native plant species such as *Metrosideros polymorpha*, *Peperomia* sp., *Dryopteris unidentata*, *Sida fallax*, *Schiedea ligustrina* (NCN), *Artemisia australis*, *Rumex albescens* (huahu ako), *Styphelia tameiameia*, *Psydrax odorata*, *Carex wahuensis* (NCN), *Chamaesyce multifornis*, *Lysimachia hillebrandii*, *Dubautia* sp., *Sophora chrysophylla*, *Dodonaea viscosa*, *Eragrostis* sp., *Bidens* sp., or *Carex meyenii* (HINHP Database 2001; Service 1998b).

The primary threats to *Lepidium arbuscula* are habitat degradation and/or destruction by feral goats; potential impacts from military activities; competition with alien plants; and fire. The population at the head of Kapuhi Gulch is also threatened by its proximity to a road (HINHP Database 2001; 61 FR 53089).

*Lipochaeta lobata* var. *leptophylla* (Nehe)

*Lipochaeta lobata* var. *leptophylla*, a member of the aster family (Asteraceae),

is a low, somewhat woody, perennial herb with arched or nearly prostrate stems that may be up to 150 cm (59 in) long. Aside from a very rare coastal species, this species is the only member of its genus on Oahu with four-parted disk florets. This variety has narrower leaves, spaced more closely along the stem, than those of *Lipochaeta lobata* var. *lobata*, the only other variety of the species (Wagner *et al.* 1999).

Flowering of *Lipochaeta lobata* var. *leptophylla* is probably rain-induced. Populations may consist of fewer distinct individuals than it appears because many "individuals" are connected underground by the roots and are probably clones. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Lipochaeta lobata* var. *leptophylla* was known from the southern Waianae Mountains, from Kolekole Pass to Lualualei. Currently, there are a total of 147 individuals found in five locations on State, Federal, city, and county lands Lualualei-Nanakuli Ridge, Kauhiuhi, Puu Hapapa, Mikilua, and Kamaileunu Ridge, (HINHP Database 2001; GDSI 2001; EDA Database 2001; Wagner *et al.* 1999).

*Lipochaeta lobata* var. *leptophylla* typically grows on cliffs, ridges, and slopes in dry or mesic shrubland at elevations between 256 and 978 m (840 and 3,208 ft). Associated species include *Diospyros* sp., *Eragrostis* sp., *Artemisia australis*, *Lipochaeta tenuis* (nehe), *Stenogyne* sp. (NCN), *Carex meyenii*, *Dodonaea viscosa*, *Peperomia* sp., *Psydrax odorata*, and *Bidens* sp. (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Lipochaeta lobata* var. *leptophylla* include competition from alien plant species such as *Ageratina riparia*, *Passiflora suberosa*, *Lantana camara*, *Grevillea robusta*, *Kalanchoe pinnata*, *Erigeron karvinskianus*, *Ageratina adenophora*, *Schinus terebinthifolius*, *Leucaena leucocephala*, and *Melinis minutiflora*; habitat degradation by feral pigs and goats; fire; and a threat of extinction from random environmental events and/or decreased reproductive vigor due to the small number of individuals and populations (HINHP Database 2001).

*Lipochaeta tenuifolia* (Nehe)

*Lipochaeta tenuifolia*, a member of the aster family (Asteraceae), is a low growing, somewhat woody perennial herb with short, more or less erect branches. Its five-parted disk florets and its deeply cut, stalkless leaves separate

this species from other members of the genus (Wagner *et al.* 1999).

*Lipochaeta tenuifolia* has been observed flowering in April. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Lipochaeta tenuifolia* occurs in the northern half of the Waianae Mountains, from Kaluakauila Gulch to Kamaileunu Ridge and east to Mt. Kaala, and northwest, southwest, southeast, and north of Puu Ku Makalii on State, Federal, city, and county lands. The 12 known populations contain between 759 to 1,174 individuals (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Lipochaeta tenuifolia* typically grows on ridgetops and bluffs in open areas and protected pockets of dry to mesic forests and shrublands and forests dominated by *Diospyros sandwicensis* at elevations between 67 and 978 m (220 and 3,208 ft). Associated species include *Diospyros* sp., *Dodonaea viscosa*, *Eragrostis* sp., *Artemisia australis*, *Schiedea* sp., *Carex meyenii*, *Rumex* sp., *Dubautia* sp., *Bryophyllum* sp. (NCN), *Osteomeles anthyllidifolia* (ulei), *Reynoldsia sandwicensis*, *Psydrax odorata*, *Doryopteris* sp. (kumu niu), *Santalum* sp., *Myoporum sandwicense*, *Sapindus oahuensis*, or *Bidens* sp. (HINHP Database 2001; Wagner *et al.* 1999).

The major threats to *Lipochaeta tenuifolia* are habitat degradation by feral goats and pigs; competition for light and space from alien plant species including *Ageratina riparia*, *Blechnum occidentale*, *Grevillea robusta*, *Panicum maximum*, *Lantana camara*, *Hyptis pectinata*, *Rivina humilis*, *Aleurites moluccana*, *Toona ciliata*, *Coffea arabica* (coffee), *Schinus terebinthifolius*, *Leucaena leucocephala*, *Melinis minutiflora*, and *Psidium cattleianum*; and fire (HINHP Database 2001; 56 FR 55770).

*Lobelia gaudichaudii* ssp. *koolauensis* (NCN)

*Lobelia gaudichaudii* ssp. *koolauensis*, a member of the bellflower family (Campanulaceae), is an unbranched, woody shrub 0.3 to 1 m (1 to 3.5 ft) tall. The species is distinguished from others in the genus by the length of the stem, the length and color of the corolla, the leaf width, the length of the floral bracts, and the length of the calyx lobes. The subspecies *koolauensis* is distinguished by the greenish or yellowish white petals and the branched flowering stalks (61 FR 53089; Lammers 1990).

*Lobelia gaudichaudii* ssp. *koolauensis* has been observed in flower in September and fruit in December. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Lobelia gaudichaudii* ssp. *koolauensis* was known from only two populations in the central Koolau Mountains on Oahu. Currently, this subspecies is known from four populations in the central Koolau Mountains; on Federal, State, and private lands Waimano-Waiawa Ridge, Waimano, plateau above Sacred Falls, and Kaukonahua Gulch. The total number of plants is estimated to be fewer than 270 (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Lobelia gaudichaudii* ssp. *koolauensis* typically grows on moderate to steep slopes in *Metrosideros polymorpha* lowland wet shrublands and bogs at elevations between 383 and 867 m (1,256 and 2,844 ft). Associated plant species include—*Sadleria pallida*, *Isachne distichophylla* (ohe), *Vaccinium dentatum* (ohelo), *Cibotium* sp., *Melicope* sp., *Bidens* sp., *Scaevola* sp., *Machaerina angustifolia*, *Dicanthelium koolauensis* (NCN), or *Broussaisia arguta* (HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Lobelia gaudichaudii* ssp. *koolauensis* are—habitat degradation and/or destruction by feral pigs; competition with the alien plant species *Axonopus fissifolius*, *Pterolepis glomerata*, *Sacciolepis indica*, and *Clidemia hirta*; trampling by hikers; landslides; and risk of extinction from random environmental events and/or reduced reproductive vigor of the one remaining population (HINHP Database 2001; 61 FR 53089).

*Lobelia monostachya* (NCN)

*Lobelia monostachya*, a member of the bellflower family (Campanulaceae), is a prostrate woody shrub with stems 15 to 25 cm (6 to 10 in) long. The species is distinguished from others in the genus by its narrow, linear leaves without stalks and its short pink flowers (Lammers 1999).

This species has been observed in flower in May and June. Further information is not available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Lobelia monostachya* was known only from the Koolau Mountains and had not been seen since its original discovery in the 1800s in Niu Valley, and in the 1920s in Manoa Valley. In 1994, Joel Lau discovered one individual in a previously unknown

location in Wailupe Valley on State and private lands. Currently, a total of three plants are known (HINHP Database 2001; GDSI 2001).

*Lobelia monostachya* occurs on steep, sparsely vegetated cliffs in mesic shrubland between 44 and 614 m (144 and 2,014) elevation. Associated plant species include—*Artemisia australis*, *Carex meyenii*, *Psilotum nudum*, or *Eragrostis* sp. (HINHP Database 2001).

The major threats to *Lobelia monostachya* are—predation by rats; competition with the alien plants *Schinus terebinthifolius*, *Ageratum riparia*, *Kalanchoe pinnata*, and *Melinis minutiflora*; and risk of extinction from random environmental events and/or reduced reproductive vigor due to the low number of individuals in the only known population (HINHP Database 2001; 61 FR 53089).

#### *Lobelia oahuensis* (NCN)

*Lobelia oahuensis*, a member of the bellflower family (Campanulaceae), is a stout, erect, unbranched shrub 1 to 3 m (3 to 10 ft) tall. *Lobelia oahuensis* differs from other members of the genus in having the following combination of characters: erect stems 1 to 3 m (3 to 10 ft) long, dense rosettes of leaves at the end of stems, lower leaf surfaces covered with coarse grayish or greenish hairs, and flowers 42 to 45 mm (1.7 to 1.8 in) long (Lammers 1999).

This species was observed in flower during November. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Lobelia oahuensis* was known from Kahana Ridge, Kipapa Gulch, and the southeastern Koolau Mountains of Oahu. Ten populations totaling 42 individuals are located on private, State, and Federal lands. These populations occur on Mt. Olympus, Konahuanui summit, Waikakalaua-Waikane Ridge, Puu o Kona, the summit area between Aiea and Halawa Valley, Puu Keahiakahoe and the summit ridge south of Puu Keahiakahoe, Waialae Nui-Waimanalo and Kapakahi-Waimanalo, Puu Kalena, and Eleao (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Lobelia oahuensis* grows on steep slopes between elevations of 415 and 959 m (1,361 and 3,146 ft) on summit cliffs in cloudswep wet forests or in lowland wet shrubland that are frequently exposed to heavy wind and rain. Associated plant species include—*Sadleria squarrosa* (amau), *Peperomia* sp., *Broussaisia arguta*, *Scaevola* sp., *Vaccinium* sp., *Hedyotis* sp., *Cibotium* sp., *Freycinetia arborea*, *Lycopodium* sp. (wawae iole), *Bidens* sp., *Wikstroemia*

sp., *Phyllostegia* sp., *Syzygium sandwicensis*, *Melicope* sp., *Metrosideros polymorpha*, *Dicranopteris linearis*, *Machaerina angustifolia*, *Cheirodendron trigynum* (olapa), *Dubautia laxa*, or *Labordia hosakae* (kamakahala) (HINHP Database 2001; Service 1998b; Lammers 1999).

The primary threats to *Lobelia oahuensis* are—competition with the alien plant species *Rubus rosifolius*, *Rubus argutus*, *Paspalum conjugatum*, *Erigeron karvinskianus*, and *Clidemia hirta* and habitat degradation by feral pigs (HINHP Database 2001).

#### *Melicope lydgatei* (Alani)

*Melicope lydgatei*, a member of the citrus family (Rutaceae), is a small shrub that has leaves arranged oppositely or in threes. The species' leaf arrangement (opposite or in groups of three), the amount of fusion of the fruit sections, and the hairless exocarp (outermost layer of the fruit wall) and endocarp (innermost layer) distinguish it from others in the genus (Wagner *et al.* 1999).

This species has been observed in flower in May and in fruit from June to July. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Melicope lydgatei* was formerly known throughout the Koolau Mountains of Oahu from Hauula to Kahana, Kipapa Gulch to Waimano, and Kalihi Valley to Wailupe Valley. Only four populations, totaling between 14 to 15 individuals, remain within its historical range on State and private lands along Poamoho Trail, along Peahinaia Trail, and along Manana Trail (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Melicope lydgatei* typically grows in association with—*Acacia koa*, *Metrosideros polymorpha*, *Dicranopteris linearis*, *Psychotria* sp., *Syzygium sandwicensis*, or *Bobea elatior* on ridges in mesic and wet forests at elevations between 349 and 671 m (1,145 and 2,201 ft) (HINHP Database 2001; Service 1998b; EDA, *in litt.* 2001).

The primary threat to *Melicope lydgatei* is a threat of extinction due to random environmental events and/or reduced reproductive vigor because of the small number of individuals and populations remaining (59 FR 14482).

#### *Melicope saint-johnii* (Alani)

*Melicope saint-johnii*, a member of the rue family (Rutaceae), is a slender tree 3 to 6 m (10 to 20 ft) tall. The leaves are opposite or occasionally occur in threes on young lateral branches. The leaves are narrowly to broadly elliptic, sometimes elliptic egg-shaped or rarely

lance-shaped. Three to 11 flowers are arranged on an flowering stalk and are usually functionally unisexual, with staminate (male) and pistillate (female) flowers. The staminate flowers have broadly egg-shaped sepals which are hairless to sparsely covered with hair. The triangular petals are densely covered with hair on the exterior. The pistillate flowers are similar in hairiness to staminate flowers, but are slightly smaller in size. The dry fruit splits at maturity. The exocarp is hairless, whereas the endocarp is hairy. This species is distinguished from others in the genus by the combination of the hairless exocarp, the hairy endocarp, the densely hairy petals, and the sparsely hairy to smooth sepals (Stone *et al.* 1999).

No information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors.

Historically, *Melicope saint-johnii* was known from both the Waianae and Koolau Mountains at Makaha to Mauna Kapu in the Waianae Mountains and Papali Gulch in Hauula, Manoa-Aihualama, Wailupe, and Niu Valley in the Koolau Mountains. Today five locations of this species are found on Federal and private lands from the region between Puu Kaua and Puu Kanehoa to Mauna Kapu in the southern Waianae Mountains. Fewer than 170 individuals of this species are known (GDSI 2001; HINHP Database 2001).

*Melicope saint-johnii* typically grows on mesic forested ridges and gulch bottoms between elevations of 240 and 953 m (787 and 3,126 ft). Associated native plant species include—*Artemisia australis*, *Eragrostis* sp., *Hedyotis schlechtendahliana*, *Lysimachia hillebrandii*, *Bidens torta*, *Alyxia oliviformis*, *Carex wahuensis*, *Panicum beechyi* (NCN), *Rumex albenscens*, *Pittosporum* sp., *Pleomele halapepe* (hala pepe), *Pipturus albidus*, *Metrosideros polymorpha*, *Coprosma longifolia*, *Labordia kaalae* (kamakahala), or *Psychotria hathewayi* (HINHP Database 2001).

The primary threats to *Melicope saint-johnii* are habitat degradation and/or destruction by feral goats and pigs; potential predation by the black twig borer; potential fire; and competition with alien plant species such as *Psidium cattleianum*, *Clidemia hirta*, *Passiflora suberosa*, *Melinis minutiflora*, *Schinus terebinthifolius*, *Myrica faya*, *Ageratum riparia*, *Passiflora subcordata* (huehue haole), *Lantana camara*, *Ageratina adenophora*, and *Grevillea robusta*; and risk of extinction due to naturally-occurring events and/or reduced reproductive vigor because of the few

individuals remaining and their restricted distribution (Service 1998b; 61 FR 53089; HINHP Database 2001).

*Myrsine juddii* (Kolea)

*Myrsine juddii*, a member of the myrsine family (Myrsinaceae), is a many branched shrub ranging from 1 to 2 m (3.5 to 6.6 ft) tall. The leathery leaves are narrowly inverse lance-shaped or more elliptic. The upper leaf surface is hairless, whereas the lower surface is sparsely to moderately covered with short, coarse, stiff, whitish or brownish hairs toward the base and along the midrib. The leaf base is broadly wedge-shaped to heart-shaped, and the margins are smooth and curl under. The flowers are unisexual and the plants are dioecious (male and female flowers are on separate plants). Flowers occur in groups of four to eight in tight clusters surrounded by small bracts. The yellowish green petals are narrowly inverse lance-shaped. The fleshy, round fruit contains a single seed. This species is distinguished from others in the genus by the hairiness of the lower leaf surface and the shape of the leaf base. In addition, the hairy leaves distinguish this species from all other species of *Myrsine* on Oahu (Wagner *et al.* 1999).

*Myrsine juddii* has been reported from only three populations in the central Koolau Mountains—the North Kaukonahua-Kahana Summit divide, Peahinaia Trail, and Puu Kainapuaa to Poamoho Trail. These populations are found on State and Federal lands. The total number is thought to be around 5,000 individuals (HINHP Database 2001; GDSI 2001).

*Myrsine juddii* typically grows on ridge crests and gulch slopes in wet forests and shrublands dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* at elevations between 384 and 867 m (1,260 and 2,844 ft). Associated plant species include—*Machaerina* sp., *Cheirodendron trigynum*, *Cheirodendron platyphyllum*, *Melicope clusiifolia* (kolokolo mokihana), *Psychotria mariniana*, and *Syzygium sandwicensis* (Service 1998b; 61 FR 53089; GDSI 2001; HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Myrsine juddii* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with alien plant species such as *Clidemia hirta* and *Psidium cattleianum*; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of extant populations

(Service 1998b; 61 FR 53089; HINHP Database 2001).

*Neraudia angulata* (NCN)

*Neraudia angulata*, a member of the nettle family (Urticaceae), is an erect shrub 3 m (10 ft) tall. Leaves are thin and elliptic to oval in outline. The upper leaf surface has a few silky hairs, and the lower surface is moderately hairy. Flowers are male or female and grow on different plants. The female flowers produce a dry-walled fruit which is surrounded by fleshy, fused sepals. This species is distinguished from other species in its genus by the conspicuously angled, ridged, fleshy calyx in the female flower. There are two varieties, *N. a. var. angulata* and *N. a. var. dentata*, that differ in the types of leaf hairs on the lower surface of the leaves and the type of leaf margin (Wagner *et al.* 1999).

*Neraudia angulata* flowers and fruits from early spring to summer. Fruits mature in about a month. No other information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Neraudia angulata* was known from almost the entire length of the Waianae Mountains, from Kaluakauila Gulch nearly to Puu Manawahua. This species is currently known from Kaluakauila Gulch along Makua-Keaau Ridge to Makaha-Waianae Kai Ridge, on Federal, State, city, county, and private lands. The five known populations are estimated to comprise approximately 51 individuals (GDSI 2001; HINHP Database 2001; EDA Database 2001).

*Neraudia angulata var. angulata* typically grows on slopes, ledges, or gulches in lowland mesic or dry forest between 189 and 978 m (620 and 3,208 ft) elevation. Associated plant species include—*Diospyros* sp., *Dodonaea viscosa*, *Bidens* sp., *Artemisia australis*, *Sida fallax*, *Carex meyenii*, *Psydrax odorata*, *Hibiscus* sp., *Pisonia sandwicensis* (ūlu), or *Nestegis sandwicensis*. *Neraudia angulata var. dentata* typically grows on cliffs, rock embankments, gulches, and slopes in mesic or dry forests between 110 and 978 m (361 and 3,208 ft). Associated native plant species include *Diospyros sandwicensis*, *Diospyros hillebrandii*, *Dodonaea viscosa*, *Artemisia australis*, *Alyxia oliviformis*, *Sapindus oahuensis*, *Psydrax odorata*, *Pisonia* sp., *Antidesma pulvinatum*, *Nestegis sandwicensis*, *Myrsine lanaiensis*, *Hibiscus* sp., *Metrosideros polymorpha*, *Bidens torta*, *Canavalia* sp., *Rauvolfia sandwicensis*, *Carex* sp., *Charpentiera* sp., *Sida fallax*, *Streblus pendulinus*, or *Eragrostis* sp.

(HINHP Database 2001; EDA, *in litt.* 2001; Service 1998b; 56 FR 55770).

The major threats to *Neraudia angulata var. angulata* are habitat degradation by feral goats and pigs; military activities; competition from the alien plant species *Ageratina riparia*, *Schinus terebinthifolius*, *Passiflora subcordata*, *Melinis minutiflora*, and *Psidium cattleianum*; fire; and the small number of extant individuals. The major threats to *Neraudia angulata var. dentata* are habitat degradation by feral pigs and goats; fire; and competition with the alien plant species *Melinis minutiflora*, *Tecoma castanifolia* (yellow elder), *Schinus terebinthifolius*, *Melinis* sp., *Ageratina riparia*, *Montanoa hibiscifolia*, *Passiflora suberosa*, *Ageratina adenophora*, *Psidium guajava*, *Pimenta dioica*, *Aleurites moluccana*, *Syzygium cumini*, *Schefflera actinophylla*, *Oplismenus hirtellus*, *Leucaena leucocephala*, *Blechnum occidentale*, and *Erigeron karvinskianus* (HINHP Database 2001; Service 1998b; 56 FR 55770).

*Phyllostegia hirsuta* (NCN)

*Phyllostegia hirsuta*, a member of the mint family (Lamiaceae), is an erect subshrub or vine with stems densely covered with coarse or stiff hairs. The wrinkled leaves are egg-shaped, and both leaf surfaces are moderately covered with long, flat hairs. The upper surface is inconspicuously dotted with glands, while the lower surface is more densely glandulose. The egg-shaped floral bracts are 3 to 6 mm (0.1 to 0.2 in) long. The flowers have two lips the upper one is approximately 3 mm (0.1 in) long and the lower one is 5 to 7 mm (0.2 to 0.3 in) long. The tubular portion of the flower is slightly curved. The corolla is white and usually purple-tinged on the upper lip. The fruit is a nutlet about 3 mm (0.1 in) long. This species is distinguished from others in the genus by the texture, hairiness, and size of the leaves and the length of the upper bracts (Wagner *et al.* 1999).

*Phyllostegia hirsuta* has been observed in flower in February and in fruit in June. Cultivated material flowered in July. No other information on reproductive cycles, longevity, specific environmental requirements, or limiting factors is available (Service 1998b).

Historically, *Phyllostegia hirsuta* was known from widespread populations in the Waianae and Koolau Mountains on Oahu. Currently, this species is found in 23 locations with a total of between 214 and 227 individuals from the ridge between Makaha and Waianae Kai to the south fork of North Palawai Gulch in the Waianae Mountains and from



Kawainui Gulch in Kawailoa Training Area to south Kaukonahua drainage in the Koolau Mountains. These populations occur on Federal, State, city, county, and private lands (GDSI 2001; HINHP Database 2001; EDA Database 2001).

*Phyllostegia hirsuta* is usually found on steep, shaded slopes, cliffs, ridges, gullies, and streambanks in mesic or wet forests dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* between 195 and 1,202 m (640 and 3,943 ft) elevation. Associated plant species include *Pisonia* sp., *Diplazium sandwichiana*, *Freycinetia arborea*, *Chamaesyce multiformis*, *Hibiscus* sp., *Rumex albescens*, *Machaerina angustifolia*, *Clermontia kekeana* (oha wai), *Perotettia sandwicense*, *Cibotium* sp., *Hedyotis schlechtendahlia*, *Ilex anomala*, *Lysimachia hillebrandii*, *Melicope* sp., *Psychotria* sp., *Astelia* sp. (painiu), *Antidesma platyphyllum*, *Dubautia laxa*, *Cyanea membranacea*, *Elaeocarpus bifidus*, *Myrsine sandwicensis* (kōlea), *Scaevola gaudichaudiana* (naupaka kuahiwi), *Pleomele* sp., *Dryopteris unidentata*, *Streblus pendulinus*, *Claoxylon sandwicense*, *Nothocestrum* sp., *Neraudia* sp. (NCN), *Zanthoxylum kauaense* (ae), *Labordia kaalae*, *Cyrtandra waianaensis*, *Phyllostegia grandiflora* (NCN), *Liparis hawaiiensis* (awapuhiakanalao), *Dubautia sherffiana* (naenae), *Pouteria sandwicensis*, *Broussaissia arguta*, *Pipturis* sp., *Coprosma longifolia*, *Hedyotis terminalis*, *Myrsine lessertiana*, or native ferns (Service 1998b; HINHP Database 2001; 61 FR 53089).

The primary threats to *Phyllostegia hirsuta* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; rockslides; rats; and competition with *Passiflora suberosa*, *Blechnum occidentale*, *Pimenta dioica*, *Paspalum conjugatum*, *Rubus rosifolius*, *Drymaria cordata*, *Axonopus fissifolius*, *Athyrium* sp. (NCN), *Adiantum raddianum*, *Melinis minutiflora*, *Physalis peruviana* (poha), *Buddleia asiatica*, *Schinus terebinthifolius*, *Clidemia hirta*, *Lantana camara*, *Rubus argutus*, or *Psidium cattleianum* (HINHP Database 2001).

*Phyllostegia kaalaensis* (NCN)

*Phyllostegia kaalaensis*, a member of the mint family (Lamiaceae), is an herb. The egg-shaped leaves are 5 to 13 cm (2 to 5 in) long. Usually six flowers are arranged along a flowering stalk. The calyx is glabrous and the corolla tube is hairless. The species is distinguished from others of the genus by the

spreading, pointed teeth on the leaf edges and by the hairs along the margins of the calyx and bracts (Wagner *et al.* 1999).

No information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Phyllostegia kaalaensis* has been known from only six scattered populations in the Waianae Mountains of Oahu. Currently, this species is known from four populations containing a total of fewer than 45 plants, in Waianae Kai, Pahole Gulch, central Ekahanui Gulch, Ekahanui Gulch, and Palikea Gulch. These populations occur on State and private lands (HINHP Database 2001; GDSI 2001).

*Phyllostegia kaalaensis* is found on gulch slopes and bottoms and on almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest between 374 and 796 m (1,227 and 2,611 ft) elevation. Associated plant include *Myrsine lanaiensis*, *Myrsine lessertiana*, *Psychotria hathewayi*, *Antidesma platyphyllum*, *Diplazium sandwichianum*, *Pipturus albidus*, *Hibiscus* sp., *Claoxylon sandwicense*, *Neraudia melastomifolia*, *Streblus pendulinus*, *Pouteria sandwicensis*, *Freycinetia arborea*, or *Urera glabra*, (HINHP Database 2001).

The major threats to *Phyllostegia kaalaensis* are habitat degradation and/or destruction by feral pigs and goats; fire; trail clearing; competition with the alien plant species *Rubus rosifolius*, *Thelypteris parasitica*, *Ageratina adenophora*, *Buddleia asiatica*, *Psidium guajava*, *Lantana camara*, *Blechnum occidentale*, *Passiflora suberosa*, *Aleurites moluccana*, *Cordyline fruticosa*, *Oplismenus hirtellus*, *Passiflora edulis* (passion fruit), *Passiflora ligularis*, *Toona ciliata*, *Schinus terebinthifolius*, *Passiflora subcordata*, *Clidemia hirta*, and *Psidium cattleianum*; and risk of extinction from naturally-occurring events and/or reduced reproductive vigor due to the small number of populations and individuals (Service 1998b; 61 FR 53089; HINHP Database 2001).

*Pritchardia kaalae* (loulou)

*Pritchardia kaalae*, a member of the palm family (Arecaceae), is a single-stemmed palm up to 5 m (16 ft) tall. The waxy, hairless leaves are thin and papery or thick and leathery. Sometimes small points, dots, or linear, rusty scales are scattered on the lower leaf surface. The flowering stalks are composed of one or more branches. The round fruits are approximately 2 cm (0.8 in) in diameter. *Pritchardia kaalae* is

distinguished from other members of the genus by the hairless or scaly leaves (Read and Hodel 1999).

*Pritchardia kaalae* plants have been observed in fruit in April, August and October and may fruit throughout the year. No other information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Pritchardia kaalae* was known from scattered populations in the central and north-central Waianae Mountains of Oahu. Currently, six populations are known from Manuwai Gulch, East Makaleha, Kaumokunui Gulch, Waianae Kai-Haleauau summit divide, Makua-Keaau Ridge and Makaha Valley, totaling about 200 individuals. These populations are located on Federal, State, city, and county lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Pritchardia kaalae* is typically found on steep slopes and gulches in mesic forest or shrubland between elevations of 421 and 1,123 m (1,381 and 3,683 ft). Associated plant species include *Dodonaea viscosa*, *Myrsine* sp., *Bidens* sp., *Pipturus* sp., *Dubautia* sp., *Metrosideros polymorpha*, *Eragrostis* sp., *Metrosideros tremuloides*, or *Tetraplasandra* sp. (ohe ohe) (Service 1998b; HINHP Database 2001; 61 FR 53089; EDA, *in litt.* 2001).

Major threats to *Pritchardia kaalae* are habitat degradation by feral pigs and goats; fruit predation by rats; potential impacts from military activities; competition with the alien plant species *Schinus terebinthifolius*, *Ageratina adenophora*, and *Rubus argutus*; potential fire; and risk of extinction from naturally-occurring events and/or reduced reproductive vigor due to the small number of populations (Service 1998b; HINHP Database 2001; 61 FR 53089).

*Sanicula mariversa* (NCN)

*Sanicula mariversa*, a member of the parsley family (Apiaceae), is an upright herb, 40 to 70 cm (16 to 28 in) tall which produces a caudex (a single branched stem from a sturdy base) growing just beneath the surface of the soil. There are many heart- to kidney-shaped, leathery, three- to five-lobed leaves growing from the base of the plant. Leaves on the stem become smaller and more deeply lobed the closer they are to the tip of the stem. Flowers are arranged in one to four more or less flat-topped clusters; each cluster comprises 10 to 20 flowers and is located at the end of the stem or in the leaf axils. Each flower cluster has eight to 12 bracts beneath it and comprises both male and

hermaphroditic flowers. There are five nearly circular, fused, toothed, yellow petals. The egg-shaped fruit is covered with hooked prickles and separates into two single-seeded parts. The larger size of the plant and basal leaves, the color of the flower petals, and the hooked prickles on the fruit separate this species from others of the genus in Hawaii (Constance and Affolter 1999).

*Sanicula mariversa* is known to flower from February through May, and fruits can be found until August. Dry fruits remain on infructescences for a long time and may persist beyond August. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Sanicula mariversa* was known from the central Waianae Mountains from Makua-Keaau Ridge to Kaluaa-Lualualei Summit Ridge. This species is now extant on Ohikilolo Ridge, Keaau-Makaha Ridge, Kamaileunu Ridge, and northwest of Puu Kanehoa on Federal, State, city, and county lands. The four known populations contain approximately 170 individuals (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Sanicula mariversa* typically grows on well-drained, dry slopes and rock faces in mesic shrublands and open grassy areas at elevations between 582 and 978 m (1,909 and 3,208 ft). Associated species include *Carex meyenii*, *Eragrostis* sp., *Bidens torta*, *Metrosideros tremuloides*, *Dryopteris* sp., or *Metrosideros polymorpha* (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Sanicula mariversa* are habitat degradation by feral goats; fire; erosion; competition from the alien plant species *Stachytarpheta dichotoma*, *Ageratina riparia*, *Erigeron karvinskianus*, *Schinus terebinthifolius*, and *Melinis minutiflora*; trampling by humans on or near trails; and the risk of extinction due to the small number of populations (Service 1998b; HINHP Database 2001; 56 FR 55770).

*Schiedea kaalae* (NCN).

*Schiedea kaalae*, a member of the pink family (Caryophyllaceae), has a short woody caudex less than 20 cm (8 in) long. The thick, single-veined leaves are bunched at the top of the stem; they are long and elliptic or broader toward the tip and can reach a length of 24 cm (9.4 in) and a width of 6 cm (2.4 in). Flowers are in a panicle (an open, much branched inflorescence). The flowers lack petals, but have purple bracts and sepals. Stamens and nectaries each number five and are about 4 to 5 mm

(0.2 in) long. Capsules are about 4 mm (0.2 in) long, and seeds are dark grayish brown and about 1 mm (0.04 in) long. This species can be distinguished from other members of its genus by its very short stems and its thick leaves with one conspicuous vein (Wagner *et al.* 1999).

This plant has been observed in flower from March through June. Based on field and greenhouse observations, *Schiedea kaalae* has perfect flowers (each individual has both male and female reproductive organs). A series of experimental self-pollinations, within-population crosses, and crosses among populations have demonstrated that *Schiedea kaalae* experiences moderately strong inbreeding depression. These results indicate that reductions in population size could result in expression of inbreeding depression in seedlings, with potentially deleterious consequences for the long-term persistence of this species. Consistent with the evidence for inbreeding depression, *Schiedea kaalae* appears to be an outcrossing species. Under greenhouse conditions, flowers do not set fruit unless pollinated. In the field, this species was observed being visited by the introduced syrphid fly, *Simosyrphus grandicornis*. The fly did not appear to be foraging for nectar but may have been feeding on pollen. Individuals of *Schiedea kaalae* appear to be long-lived, but there is no evidence of regeneration from seed under field conditions. Seedlings of *Schiedea kaalae*, like those of other *Schiedea* species in mesic or wet sites are apparently consumed by introduced slugs and snails, which have been observed feeding on *Schiedea membranacea*, a mesic forest species from Kauai. *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because dry areas have fewer alien predators (Service 1998b; Weller and Sakai, unpublished data).

Historically, *Schiedea kaalae* was known from the north-central and south-central Waianae Mountains and the northern Koolau Mountains of Oahu. This species remains on State and private lands at Pahole Gulch, Kaluaa Gulch, Puu Kaa, Palawai Gulch, Maakua Gulch, Huliwai Gulch, and Makaua Stream. The eight known populations contain only 49 individuals (HINHP Database 2001; GDSI 2001).

*Schiedea kaalae* typically grows on steep slopes, cliffs, streambanks, and deep shade in diverse mesic and wet forests at elevations between 64 and 869 m (210 and 2,850 ft). Associated species include *Pisonia sandwicensis*, *Psychotria hathewayi*, *Pouteria sandwicensis*, *Freycinetia arborea*,

*Pipturus albidus*, *Cyrtandra laxiflora*, *Hedyotis acuminata*, *Selaginella arbuscula*, *Cyrtandra calpidicarpa*, *Boehmeria grandis*, *Claoxylon sandwicense*, *Diospyros hillebrandii*, *Dryopteris unidentata*, *Alyxia oliviformis*, *Charpentiera* sp., *Athyrium sandwichianum*, *Xylosma hawaiiensis* (maua), *Nothocestrum longifolium* (aiea), *Athyrium arnottii* (hoio), or *Pisonia umbellifera* (HINHP Database 2001; Service 1998b).

The major threats to *Schiedea kaalae* are habitat degradation by feral pigs and goats; competition from the alien plant species *Passiflora suberosa*, *Psidium cattleianum*, *Blechnum occidentale*, *Ageratina riparia*, *Psidium guajava*, *Thlypteris parasitica*, *Oplismenus hirtellus*, *Cordyline fruticosa*, *Rubus rosifolius*, *Schinus terebinthifolius*, *Ageratina adenophora*, *Passiflora subcordata*, *Clidemia hirta*, *Melinis minutiflora*, and *Myrica faya*; fire; predation by introduced slugs and snails; and the small number of extant individuals and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001; Service 1998b).

*Schiedea kealiae* (NCN)

*Schiedea kealiae*, a member of the pink family (Caryophyllaceae), is a subshrub with weakly ascending to sprawling stems which form loose clumps. The lower stems are smooth while the upper stems and flowering stalk bear glands. The opposite leaves are lance-shaped to elliptic lance-shaped and conspicuously three-veined with a prominent midrib. The flowering stalk have numerous unisexual flowers in crowded clusters. The green sepals of the male flowers are approximately 2.5 mm (0.1 in) long. The sepals of the female flowers, 1.5 to 2.2 mm (0.06 to 0.09 in) long, are slightly shorter. The nectaries are inconspicuous. The capsular fruit is 2 to 2.5 mm (0.08 to 0.1 in) long. The species is distinguished from others of this endemic Hawaiian genus by the length of the sepals and nectaries and the flowering stalk exclusively with stalkless glands (Wagner *et al.* 1999).

*Schiedea kealiae* has been observed in flower in December. A series of self-pollinations, intra-population crosses, and crosses among populations have demonstrated that many related *Schiedea* sp. experience moderately strong inbreeding depression. These results indicate that reductions in population size could result in expression of inbreeding depression among seedlings, with potentially deleterious consequences for the long

term persistence of this species. Individuals of *Schiedea kealiae* appear to be long-lived, however there is no evidence of regeneration from seed under field conditions. Seedlings of *Schiedea* species occurring in mesic or wet sites are apparently consumed by introduced slugs and snails, which have been observed feeding on *Schiedea membranacea*, a mesic forest species from Kauai. *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because dry areas have fewer alien predators (Service 1998b; Weller and Sakai, unpublished data).

Historically, *Schiedea kealiae* was known from the northern Waianae Mountains and one collection from the Palikea area, near the southern end of the same mountain range. Currently, four populations totaling between 265 and 315 plants are located on the cliffs above Dillingham Airfield and Camp Erdman and at Kaena Point at the northern end of the Waianae Mountains. These populations occur on private and State lands, and State lands under Federal jurisdiction (HINHP Database 2001; GDSI 2001; U.S. Army (Army) 2001b).

*Schiedea kealiae* is usually found on steep slopes and cliff faces and bases in dry remnant *Erythrina sandwicensis* forest at elevations between 46 and 341 m (151 and 1,118 ft). Associated plant species include *Sicyos* sp. (anunu), *Plumbago zeylanica*, *Lepidium bidentatum* (anaunau), *Lipochaeta remyi* (nehe), *Myoporum sandwicense*, *Hibiscus arnottianus*, *Psychotria odorata*, *Bidens* sp., or *Sida fallax* (HINHP Database 2001).

The major threats to *Schiedea kealiae* are competition with the alien plant species *Schinus terebinthifolius*, *Panicum maximum*, and *Leucaena leucocephala*; predation by introduced slugs and snails; lack of a pollinator; and risk of extinction from naturally-occurring events and/or reduced reproductive vigor due to the small number of existing populations. The Kaena Point population is additionally threatened by naturally-occurring rock slides and fire (Service 1998b; HINHP Database 2001; 61 FR 53089).

#### *Silene perlmanii* (NCN)

*Silene perlmanii*, a member of the pink family (Caryophyllaceae), is a perennial plant with stems that are woody at the base. It usually is much branched from the base and often forms clumps. Stems are 30 to 50 cm (12 to 20 in) long, and leaves are in the shape of narrow ellipses. A few flowers are arranged in clusters at the ends of stems. Each flower has fused sepals with five

lobes and white, deeply notched petals. Mature capsules have not been seen. It is the only species of the genus on Oahu and can be distinguished from other *Silene* species by its white petals and a calyx which is more than 19 mm (0.7 in) long and densely covered with short hairs (Wagner *et al.* 1999).

*Silene perlmanii* flowers in the spring, depending on climatic conditions. Flowers last for a day. Fruits develop in a few weeks. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1998b).

*Silene perlmanii* was discovered in the 1980s and was known from a few individuals in two populations in the southern Waianae Mountains on Federal and privately owned lands. The populations were about 1.6 km (1 mi) apart at Palikea and Palawai Gulch. As of December 1997, no individuals are known to be extant in the wild (GDSI 2001; HINHP Database 2001; Service 1998b; 56 FR 55770). Currently, this species is known only from individuals under propagation at the National Tropical Botanical Garden (G. Koob, pers. comm. 2002).

*Silene perlmanii* typically grew on steep rocky slopes in *Acacia koa*-*Metrosideros polymorpha* lowland mesic forest at elevations between 493 and 919 m (1,617 and 3,014 ft) (Service 1998b; HINHP Database 2001; 56 FR 55770).

The major threats to *Silene perlmanii* are competition from the alien plant species *Erigeron karvinskianus*, *Ageratina adenophora*, *Passiflora suberosa*, *Schinus terebinthifolius*, *Myrica faya*, and *Melinis minutiflora*; feral pigs; and the risk of extinction from naturally-occurring events and reduced reproductive vigor due to the small number of individuals (Service 1998b; HINHP Database 2001; 56 FR 55770).

#### *Stenogyne kanehoana* (NCN)

*Stenogyne kanehoana* is a scandent vine in the mint family (Lamiaceae) with stems weakly four-angled, hairy, and 1 to 2 m (3 to 6 ft) long. The leaves are oppositely arranged and are narrowly ovate to oblong-ovate, and thin but densely hairy. The flowers are in clusters of three to six per leaf axil; the petals are fused into a strongly curved tube, white or pale yellow with short, pink, corolla lobes. The fruit consists of four fleshy, black nutlets. *Stenogyne kanehoana* is distinguished from the only other member of the genus occurring on Oahu, *S. kaalae*, primarily by the size and color of its flowers. The flowers of *S. kanehoana* are large, white to yellow, and tipped in pink, while

those of *S. kaalae* are small and deep purple (Weller and Sakai 1999).

*Stenogyne kanehoana* generally flowers from February through March, but flowering depends on precipitation and flowers have been noted from January to as late as April. Fruits mature within 6 weeks. The life span of this species appears to be about 7 to 12 years. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1998b).

*Stenogyne kanehoana* was known from the east ridge of Puu Kanehoa, Waianae Mountains, near the summit of the ridge connecting Puu Kanehoa with Puu Hapapa to the north and Puu Kaua to the south; a distance totaling approximately 2.8 km (1.75 mi). This population consisting of two plants near the summit of Puu Kanehoa on privately owned land was found dead recently. An additional population in Kaluaa Gulch was discovered in 2000 by Joan Yoshioka of TNCH. This population consist of one to six individual plants and is located on private owned land (HINHP Database 2001; GDSI 2001; Service 1998b; 57 FR 20592).

The remnant population of *Stenogyne kanehoana* is found in lowland mesic forest between 559 and 1,168 m (1,834 and 3,831 ft) elevation. Associated native plant species include *Acacia koa*, *Metrosideros polymorpha*, *Psychotria* sp., *Freycinetia arborea*, *Bidens* sp., *Chamaesyce* sp., *Alyxia oliviformis*, *Cibotium* sp., or *Scaevola* sp. (HINHP Database 2001).

The major threats to *Stenogyne kanehoana* are habitat degradation and competition for space, water, light, and nutrients by naturalized, alien species (especially *Clidemia hirta*, *Schinus terebinthifolius*, *Psidium cattleianum*, *Passiflora suberosa*, and *Paspalum conjugatum*). The extremely small number of individual plants and their restricted distribution increases the potential for extinction from naturally-occurring events. Other potential threats which have been suggested include fire and deforestation, but, at present, these probably are not serious threats to the species. Feral pigs, the two spotted leafhopper, and hikers are also thought to be a threat to this species (Service 1998b; HINHP Database 2001; 57 FR 20592).

#### *Tetramolopium filiforme* (NCN)

*Tetramolopium filiforme*, a member of the aster family (Asteraceae), is a dwarf shrub from 5 to 15 cm (2 to 6 in) tall with complexly branched stems. The leaves are much longer than wide; from 1 to 2 cm (0.4 to 0.8 in) long and 0.4 to 1.2 mm (0.02 to 0.05 in) wide. The

flower heads are single or grouped in clusters of two to four, each having a bell-shaped involucre (one or more whorls of bracts situated below and close to a flower, flower cluster, or fruit). There are 35 to 52 white or pale lavender ray florets in a single circle at the edge of the head. There are 18 to 30 maroon (rarely yellow) disk florets in the center of each head. The ray florets are female, while the disk florets function as male flowers. Fruits are achenes (a small dry indehiscent one-seeded fruit). This species is distinguished from the other extant species on Oahu by its separate male and female flowers both on the same plant, and its inflorescence of one to four heads (Lowrey 1999).

In cultivation, *Tetramolopium filiforme* germinates in about 3 weeks. Fifteen weeks after germination, the plants are approximately 9 cm (3.5 in) high and they produce their first buds. The first blossoms are noted about 18 weeks after germination. During growth an inflorescence forms at the apex of each shoot while new shoots develop laterally. *Tetramolopium filiforme* is relatively short-lived and usually lives less than 5 years. In the wild, it usually flowers in the late winter or spring but flowering can also be induced by heavy rainfall (Service 1998b).

Historically, *Tetramolopium filiforme* was known from the northern Waianae Mountains, from Ohikilolo Ridge, Keaau Valley, and Makaha Valley. This species remains in Keaau Valley, Kahanahaiki Valley, Makua-Keaau Ridge, Lualualei, Waianae Kai and Puu Kawiwi on Federal, State, city, and county lands. The six known populations are estimated to contain approximately 253 individuals (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Tetramolopium filiforme* typically grows on dry cliff faces and ridges in dry and mesic forests at elevations of 247 to 978 m (810 to 3,208 ft). Associated species include *Bidens torta*, *Carex meyenii*, *Peperomia tetraphylla* (ala ala wai nui), *Schiedea* sp., *Sida fallax*, *Dodonaea viscosa*, *Artemisia australis*, or *Schiedea mannii* (HINHP Database 2001).

The major threats to *Tetramolopium filiforme* are habitat degradation by feral goats; competition from the alien plant species *Ageratina riparia*, *Lantana camara*, *Melinis repens*, *Acacia confusa*, *Kalanchoe pinnata*, *Schinus terebinthifolius*, *Leucaena leucocephala*, *Melinis minutiflora*, and *Erigeron karvinskianus*; fire; military activities; and a risk of extinction from naturally-occurring events and/or reduced reproductive vigor due to the small number of remaining populations and

trampling or collection by humans on or near trails (Service 1998b; HINHP Database 2001).

#### *Tetraplasandra gymnocarpa* (Oheohe)

*Tetraplasandra gymnocarpa*, a member of the ginseng family (Araliaceae), is a tree 2.5 to 10 m (8 to 33 ft) tall, either hairless or with fuzzy, short-lived hairs on the young leaves and flower clusters. The leaves have seven to 21 leathery, oval to elliptic leaflets per leaf. Each leaflet is folded upward along the midvein. The flowers are usually arranged in threes or in an umbrella-shaped arrangement. Petals usually number five or six per flower, with an equal number of stamens. The ovary, which usually has three or four sections, appears placed atop the receptacle (base of the flower) in a superior position, due to the expansion of the ovary disk (outgrowth of the receptacle) and the reduction of the hypanthium (basal portion of the flower). Fruits are purplish, oval or top-shaded drupes, that enclose a papery endocarp and single seeds.

*Tetraplasandra gymnocarpa* is distinguished from all other species in the genus in that its ovary appears fully superior (Lowrey 1999).

This species was observed in flower and fruit in November 1991 and in fruit in May and September. No further information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Tetraplasandra gymnocarpa* was historically known from Punaluu, Waikakalaua Gulch, Mount Olympus, and the region between Niu and Wailupe, all in the Koolau Mountains of Oahu. This species was also sighted in the Waianae Range at Palikea in 1954. Currently, 20 populations are scattered along the summit ridges of the Koolau Mountains from the region of Paumalu at the northern extreme to Kuliouou and Waimanalo at the southeastern most point, on Federal, State, city, and county lands. Fewer than 100 individuals are known (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Tetraplasandra gymnocarpa* is typically found on windswept summit ridges, slopes, or in gullies in wet or sometimes mesic lowland forests and shrublands between elevations of 93 and 959 m (305 and 3,146 ft). Associated plant species include *Cheirodendron* sp., *Antidesma platyphyllum*, *Syzygium sandwicensis*, *Hedyotis terminalis*, *Diplopterygium pinnatum*, *Melicope* spp., *Tetraplasandra oahuensis* (ohe mauka), *Bobea elaitor*, *Acacia koa*, *Cibotium chamissoi*, *Lobelia hypoleuca* (NCN),

*Myrsine fosbergii* (kolea), *Pouteria sandwicensis*, *Wikstroemia* sp., *Sadleria* sp., *Metrosideros polymorpha*, *Cheirodendron* sp., *Dicranopteris linearis*, *Machaerina angustifolia*, *Freycinetia arborea*, *Broussaisia arguta*, *Psychotria* spp., *Labordia* sp., *Hedyotis fosbergii* (manono), *Bidens* sp., *Dubautia laxa*, *Cibotium* sp., or the endangered *Cyanea humboldtiara* (Service 1998b; HINHP Database 2001; 59 FR 14482).

The major threats to *Tetraplasandra gymnocarpa* are competition with the alien plant species *Pterolepis glomerata*, *Aleurites moluccana*, *Eucalyptus* sp. (gum tree), *Setaria palmifolia*, *Araucaria columnaris* (Norfolk Island pine), *Ardisia elliptica* (shoebutton ardisia), *Sacciolepis indica*, *Erigeron karvinskianus*, *Axonopus fissifolius*, *Paspalum conjugatum*, *Clidemia hirta* and *Psidium cattleianum*; the two spotted leafhopper; habitat degradation by feral pigs; and reduced reproductive vigor due to the species' limited gene pool, a consequence of the small number of extant individuals (Service 1998b; HINHP Database 2001; 59 FR 14482).

#### *Trematolobelia singularis* (NCN)

*Trematolobelia singularis*, a member of the bellflower family (Campanulaceae), is an unbranched shrub with stems 0.6 to 1.5 m (2 to 5 ft) long. The long and narrow leaves are 10 to 18 cm (4 to 7 in) long and 1 to 1.8 cm (0.4 to 0.7 in) wide. The unbranched, erect flowering stalk is 20 to 42 cm (8 to 16.5 in) long. The violet petals are about 5 cm (0.2 in) long and collectively form a three-lobed tube. The largest lobe is curved downward and the other two are bent backward, giving the appearance of two lips. The capsules are almost round and contain numerous small, wind-dispersed seeds. This species differs from others of this endemic Hawaiian genus by the unbranched, erect flowering stalk (Lammers 1999).

This species has been observed in flower in October. No additional information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Trematolobelia singularis* has been reported only from the southern Koolau Mountains. Approximately 165 plants are known from three populations Moanalua-Tripler Ridge summit to Puu Keahiakahoe, Konahuanui, and Puu Lanipo. These populations are found on State and private lands (HINHP Database 2001; GDSI 2001).

This species usually grows on steep, windswept cliff faces or slopes in *Metrosideros polymorpha*-*Dicranopteris*

*linearis* lowland wet shrubland from 545 to 953 m (1,788 to 3,126 ft) elevation. Associated plant species include *Eugenia* sp.(nioi), *Wikstroemia* sp., *Melicope* sp., *Sadleria* sp., *Cibotium* sp., *Broussaisia arguta*, or *Dubautia laxa* (Service 1998b; HINHP Database 2001; 61 FR 53089).

The threats to *Trematobelia singularis* are habitat degradation by feral pigs; potential predation by rats and slugs; competition with the aggressive alien plant species *Clidemia hirta*; and risk of extinction from naturally-occurring events and/or reduced reproductive vigor due to the small number of extant populations are serious (Service 1998b; HINHP Database 2001; 61 FR 53089).

*Urera kaalae* (Opuhe)

*Urera kaalae*, a member of the nettle family (Urticaceae), is a small tree or shrub 3 to 7 m (10 to 23 ft) tall. The sap of the plant becomes greenish black when exposed to air. The leaves are pale green, thin and membranous, heart-shaped, 10 to 27 cm (4 to 11 in) long by 5 to 13 cm (2 to 5 in) wide, with three main veins and toothed margins. The flowers are either male or female and may grow on the same or different plants. They are arranged in three-branched inflorescences. Sepals of male flowers are fused into rather globe-shaped structures about 1.5 mm (0.06 in) long. Sepals of female flowers are less than 1 mm (0.04 in) long, and the inner pair becomes slightly fleshy to enclose the achene along about half of its 1 mm (0.04 in) length. This species can be distinguished from the other Hawaiian species of the genus by its heart-shaped leaves (Wagner *et al.* 1999).

*Urera kaalae* has been observed flowering in the spring. It is difficult to predict when seeds will be produced, and, when they are produced, they are often sterile. This may be an indication of pollinator limitation. The plants are fast-growing. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Urera kaalae* was known from the central to southern windward Waianae Mountains, from Waianae Uka to Kupehau Gulch. This species now occurs only in North and South Ekahanui, Pualii Gulch, Napepeiauolelo, Halona, and Kaluaa Gulches, North and South Palawai, Puu Hapapa, Napepeiauolelo Gulch, and Waianae Kai on Federal, State, and private lands. The 11 known populations contain approximately 41 individuals (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Urera kaalae* typically grows on slopes and in gulches in diverse mesic forest at elevations of 439 to 1,074 m (1,440 to 3,523 ft). Associated species include *Hibiscus* sp., *Alyxia oliviformis*, *Canavalia* sp., *Charpentiera* sp., *Senna gaudichaudii* (kolomona), *Claoxylon sandwicense*, *Pleomele* sp., *Xylosma hawaiiense*, *Chamaesyce* sp., *Antidesma platyphyllum*, *Athyrium* sp., *Streblus pendulinus*, *Hedyotis acuminata*, *Asplenium kaulfusii*, *Doryopteris* sp., *Pouteria sandwicensis*, *Freycinetia arborea*, *Pipturus albidus*, *Urera glabra*, *Psychotria* sp., *Diospyros hillebrandii*, or *Nestegis sandwicensis* (Service 1998b; 61 FR 53089; HINHP Database 2001; Wagner *et al.* 1999).

The major threats to *Urera kaalae* are habitat degradation by feral pigs; competition from the alien plant species *Psidium guajava*, *Pimenta dioica*, *Buddleia asiatica*, *Thelypteris parasitica*, *Rubus rosifolius*, *Clidemia hirta*, *Passiflora suberosa*, *Heliocarpus popayaensis*, *Schinus terebinthifolius*, *Myrica faya*, *Passiflora subcordata*, *Melinis minutiflora*, and *Psidium cattleianum*; fire; rockslides; and the small number of extant individuals and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (Service 1998b; 61 FR 53089; HINHP Database 2001).

*Viola chamissoniana* ssp. *chamissoniana* (Olopu)

*Viola chamissoniana* ssp. *chamissoniana*, a member of the violet family (Violaceae), is a branched shrub up to 90 cm (3 ft) tall. The toothed leaves, usually clustered at branch tips, are triangular-oval to heart-shaped in outline. Each flowering stalk produces one or two flowers with five sepals and five white, purple-tinged petals. Capsules contain dark brown to almost black seeds. This subspecies can be distinguished from the other members of the genus in the Waianae Mountains by the small size of its leaves (Wagner *et al.* 1999).

*Viola chamissoniana* ssp. *chamissoniana* has been observed in fruit and flower in April, August and October. No further information is available on flowering cycle, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Viola chamissoniana* ssp. *chamissoniana* was known from the central and southern Waianae Mountains and Makaleha Valley. This taxon now occurs on Kamaileunu Ridge, Palikea Ridge (between Nanakuli and Lualualei), Puu Hapapa, Makua-Keaau

Ridge, Halona, and Puu Kumakalii on Federal, State, city, and county lands. The five known populations contain 59 individuals (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Viola chamissoniana* ssp. *chamissoniana* typically grows on dry cliffs, rocky ledges, and steep slopes in mesic shrubland and cliff vegetation at elevations of 414 to 1,149 m (1,358 to 3,769 ft). Associated species include *Sida fallax*, *Chamaesyce* sp., *Dodonaea viscosa*, *Schiedea* sp., *Dubautia* sp., *Peperomia* sp., *Lipochaeta tenuis*, *Rumex* sp., *Artemisia australis*, *Bidens torta*, *Carex meyenii*, *Eragrostis* sp., *Metrosideros polymorpha*, or *Styphelia tameiameia* (pukiawe) (Service 1998b; 56 FR 55770; HINHP Database 2001).

The major threats to *Viola chamissoniana* ssp. *chamissoniana* are habitat degradation by feral goats and pigs; competition from the alien the plant species *Myrica faya*, *Schinus terebinthifolius*, *Eriogon karvinskianus*, *Ageratina adenophora*, *Ageratum riparia*, and *Melinis minutiflora*; fire; landslides; and the small number of extant individuals and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (Service 1998b; 56 FR 55770; HINHP Database 2001).

*Viola oahuensis* (NCN)

*Viola oahuensis*, a member of the violet family (Violaceae), is usually an erect, unbranched subshrub 6 to 40 cm (2.4 to 16 in) tall. The papery-textured leaves are elliptic-egg-shaped to elliptic. The leaf stalks are typically 0.5 to 1 cm (0.2 to 0.4 in) long. The narrowly triangular stipules (either pair of appendages borne at the base of the leaf in many plants) have fringed edges. One to two flowers are borne on stalks typically 25 to 60 mm (1 to 2.4 in) long. The petals are pale yellow, the upper ones 8 to 13 mm (0.3 to 0.5 in) long, the lateral ones 10 to 13.5 mm (0.4 to 0.5 in) long, and the lower one 12 to 16 mm (0.5 to 0.6 in) long. The capsules are 9 to 16 mm (0.4 to 0.6 in) long. This species is distinguished from other Hawaiian members of the genus by the stipule characters, the length of the leaf stalks, and the length and papery texture of the leaves (Wagner *et al.* 1999).

*Viola oahuensis* has been observed flowering in August and September. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Viola oahuensis* was known from 17 populations in the Koolau Mountains of Oahu scattered

over about a 37 km (23 mi) distance from Puu Kainapuaa to Palolo. The nine extant populations, which total fewer than 200 individuals, are now found from the Kawainui-Koloa summit divide to the Waimalu-Koolaupoko divide. These populations are found on Federal, State, and private lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Viola oahuensis* is generally found on exposed, windswept ridges of moderate to steep slope in wet *Metrosideros polymorpha-Dicranopteris linearis* shrublands and *Metrosideros polymorpha* mixed montane bogs in the cloud zone from 415 to 959 m (1,361 to 3,146 ft) elevation. This species typically grows among wind-stunted *Broussaisia arguta*, *Cibotium* sp., *Labordia* sp., *Dubautia laxa*, *Wikstroemia* sp., *Hedyotis terminalis*, *Antidesma* sp., *Syzygium sandwicensis*, *Melicope* sp., *Bidens macrocarpa*, *Machaerina* sp., *Sadleria* sp., or *Vaccinium* sp. (Service 1998b; HINHP Database 2001; 61 FR 53089).

The primary threats to *Viola oahuensis* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with *Pterolepis* sp. (NCN), *Axonopus fissifolius*, *Clidemia hirta*, *Psidium cattleianum*, and *Paspalum conjugatum*; and risk of extinction from naturally-occurring events and/or reduced reproductive vigor due to the small number of populations (Service 1998b; HINHP Database 2001; 61 FR 53089).

#### Multi-Island Species

*Adenophorus periens* (Pendant kihi fern)

*Adenophorus periens*, a member of the grammitis family (Grammitidaceae) and a short-lived perennial, is a small, pendant, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (a leaflet or primary division of a pinnate leaf or frond) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief,

probably measured in days at most. Due to the weak differences between the seasons in the habitats where this species is found, there seems to be no evidence of seasonality in growth or reproduction. *Adenophorus periens* appears to be susceptible to volcanic emissions and/or resultant acid precipitation. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not available (Linney 1989).

Historically, *Adenophorus periens* was known from Kauai, the Koolau Mountains of Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. This species is no longer extant on the island of Oahu. It was collected in 1909 on the west ridge of Palolo crater and the west ridge of Palolo Valley (HINHP Database 2001).

*Adenophorus periens* grows epiphytically on trees in *Metrosideros polymorpha* and *Metrosideros rugosa* wet forests between 309 and 867 m (1,014 and 2,844 ft) elevation. Associated native plant species include *Dicranopteris linearis*, *Cheirodendron* spp., *Machaerina angustifolia*, *Syzygium sanwicensis*, *Hedyotis terminalis*, or *Cibotium* sp. (HINHP Database 2001).

The threats to *Adenophorus periens* are habitat degradation by feral pigs and goats and competition with the alien plant species *Psidium cattleianum* (Service 1999; 59 FR 56333; HINHP Database 2001).

#### *Alectryon macrococcus* (Mahoe)

*Alectryon macrococcus*, a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish brown branches and net veined paper, or leather, leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, only when young in *A. macrococcus* var. *macrococcus*, and whether young or mature (persistent) in *A. macrococcus* var. *auwahiensis*. *Alectryon macrococcus* var. *auwahiensis* is only found on the island of Maui. The only member of its genus found in Hawaii, this species is distinguished from other members of its family by being a tree with a hard fruit 2.5 cm (1 in) or more in diameter (Wagner *et al.* 1999).

*Alectryon macrococcus* is a relatively slow growing, long lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of this species. Flowering cycles, pollination vectors, seed dispersal agents, and specific

environmental requirements are unknown (Service 1997).

Currently and historically, *Alectryon macrococcus* var. *macrococcus* occurs on Kauai, Oahu, Molokai, and Maui. On Oahu, there are a total of 34 populations containing around 300 individuals. These populations are found in Kapuna Gulch, Huliwai Gulch, Kaluaa Gulch, Ekahanui Gulch, Manuwai Gulch, Mohiakea Gulch, Makua Valley, Puu Ku Makalii, Nanakuli-Lualualei Ridge, Palikea Gulch, Makaha, Pahole Gulch, Makaleha Valley, Waianae Kai, Waieli Gulch, Kaluakauila Gulch, Kaaua Gulch, Puu Hapapa, Mikilua subdistrict, Kaawa Gulch, and Napepeiauolelo Gulch on Federal, State, city, county, and private lands (HINHP Database 2001; GDSI 2001; EDA Database 2001; Wagner *et al.* 1999; EDA, *in litt.* 2001).

*Alectryon macrococcus* var. *macrococcus* grows on slopes, ridges, or in gulches within mesic lowland forests between elevations of 367 and 941 m (1,204 and 3,086 ft). Associated native plant species include *Pisonia sandwicensis*, *Elaeocarpus bifidus*, *Streblus pendulinus*, *Psychotria hathewayi*, *Pouteria sandwicensis*, *Pisonia umbellifera*, *Diplazium sandwichianum*, *Claoxylon sandwicense*, *Neraudia* sp., *Pipturus albidus*, *Diospyros hillebrandii*, *Charpentiera* sp., *Hibiscus arnottianus*, *Metrosideros polymorpha*, *Diospyros sandwicensis*, *Nestegis sandwicensis*, *Pisonia* sp., *Xylosma* sp., *Antidesma platyphyllum*, *Myrsine lanaiensis*, *Psydrax odorata*, *Canavalia* sp., or *Alyxia oliviformis* (HINHP Database 2001).

The threats to *Alectryon macrococcus* var. *macrococcus* on Oahu are impacts of feral goats and pigs; impacts of the alien plant species *Heliocarpos popayanensis*, *Toona ciliata*, *Syzygium cumini*, *Aleurites moluccana*, *Blechnum occidentale*, *Oplismenus hirtellus*, *Psidium guajava*, *Melinis minutiflora*, *Clidemia hirta*, *Pennisetum clandestinum* (kikuyu grass), *Buddleia asiatica*, *Thelypteris parasitica*, *Rubus rosifolius*, *Passiflora suberosa*, *Lanata camara*, *Schinus terebinthifolius*, and *Psidium cattleianum*; damage from the black twig borer; seed predation by rats, mice (*Mus domesticus*), and insects; fire; depressed reproductive vigor; loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic (Service 1997; 57 FR 20772).

*Bonamia menziesii* (NCN)

*Bonamia menziesii*, a member of the morning glory family (Convolvulaceae) and a short-lived perennial, is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Bonamia menziesii* was known from Kauai, the Waianae Mountains of Oahu, Molokai, Maui, and the Island of Hawaii. Currently, this species is extant on Kauai, Oahu, Lanai, Maui, and the Island of Hawaii. There are 16 total populations containing a total of fewer than 100 individual plants on Oahu. On Oahu, populations are found in Niu Valley, Makaleha Valley, Makua-Keaau Ridge, Wailupe, Waialae Nui-Kapakahi Ridge and Kapakahi Gulch, Kaluakauila Gulch, Keawaula, Hawaii Ioa Ridge and Kului Gulch, Nanakuli Valley, Kuaokala, Halona, Waialae Iki, Kapuna Gulch, Mikilua, Waianae Kai, and Alaiheihe Gulch on Federal, State, and private lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Bonamia menziesii* is found on steep slopes or level ground in dry or mesic forest in open or closed canopy at elevations between 31 and 809 m (102 and 2,654 ft). Associated species include *Alyxia oliviformis*, *Pleomele* sp., *Sida fallax*, *Waltheria indica*, *Erythrina sandwicensis* (wili wili), *Rauvolfia sandwicensis*, *Sicyos* sp., *Acacia koa*, *Styphelia tameiameia*, *Dodonaea viscosa*, *Metrosideros polymorpha*, *Psydrax odorata*, *Dianella sandwicensis* (ukiuki), *Diospyros sandwicensis*, *Hedyotis terminalis*, *Melicope anisata* (mokihana), *Melicope barbigera* (alani), *Myoporum sandwicense*, *Nestegis sandwicensis*, *Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis*, or *Sapindus oahuensis* (HINHP Database 2001; Service 1999).

The primary threats to *Bonamia menziesii* on Oahu are habitat degradation and possible predation by wild and feral pigs, goats, and cattle; competition with the alien plant species *Pennisetum setaceum* (fountain grass), *Passiflora suberosa*, *Aleurites moluccana*, *Psidium cattleianum*, *Montanoa hibiscifolia*, *Schinus terebinthifolius*, *Grevillea robusta*, *Toona ciliata*, *Pimenta dioica*,

*Kalanchoe pinnata*, *Panicum maximum*, *Melia azedarach*, *Syzygium cumini*, *Leucaena leucocephala*, *Lantana camara*, *Hyptis pectinata*, and *Rivina humilis*; fire; an alien bug (*Physomerus grossipes*); and military activities (59 FR 56333; Service 1999; HINHP Database 2001).

*Cenchrus agrimonioides* (Kamanomano)

*Cenchrus agrimonioides*, a member of the grass family (Poaceae) and a short-lived perennial, is a grass with leaf blades which are flat or folded and have a prominent midrib. There are two varieties, *Cenchrus agrimonioides* var. *laysanensis* and *Cenchrus agrimonioides* var. *agrimonioides*. They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. *Cenchrus agrimonioides* var. *laysanensis* is only known from the Northwest Hawaiian Islands. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonioides*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown, however, this species has been observed to produce fruit year round (Service 1999).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from the Waianae Mountains of Oahu, Lanai, and Maui. This variety is currently extant on Oahu and Maui. Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from a total of eight populations containing between 113 and 118 individuals on Oahu. On Oahu, populations are found in the Pahole Gulch, on the Makaha-Waianae Kai Ridge, in or near Kahanahaiki Gulch, in east Makaleha, Puu Kaua, Huliwai Gulch, and in the Pualii Drainage, on Federal, State, city, county, and private lands (HINHP Database 2001; GDSI 2001; EDA Database 2001; 61 FR 53108; Service 1999).

*Cenchrus agrimonioides* var. *agrimonioides* is usually found on dry upper slopes, or ridges in lowland mixed mesic forest at elevations between 357 and 890 m (1,171 and 2,919 ft). Associated plant species include *Acacia koa*, *Metrosideros polymorpha*, *Alyxia oliviformis*, *Psydrax odorata*, *Diospyros sandwicensis*, *Carex wahuensis*, *Nestegis sandwicensis*, *Psychotria* sp., *Bobea* sp., *Chamaesyce multiflora*, *Gahnia beecheyi* (NCN), *Coprosma foliosa*, *Styphelia tameiameia*, or *Eragrostis variabilis*

(HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Cenchrus agrimonioides* var. *agrimonioides* on Oahu are habitat degradation and/or destruction by feral pigs; competition with the alien plant species *Schinus terebinthifolius*, *Blechnum occidentale*, *Ageratina riparia*, *Psidium cattleianum*, *Grevillea robusta*, *Passiflora suberosa*, *Clidemia hirta*, *Casuarina* sp. (ironwood), *Paspalum conjugatum*, and *Rubus argutus*; trampling and fire from military activities; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals (Service 1999; 61 FR 53108; HINHP Database 2001).

*Centaurium sebaeoides* (Awiwi)

*Centaurium sebaeoides*, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *Centaurium erythraea*, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

*Centaurium sebaeoides* has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains (56 FR 55770).

Historically, *Centaurium sebaeoides* was known from Kauai, Oahu, Molokai, Lanai, and Maui. This species is currently extant on Kauai, Maui, Lanai, and Oahu. Currently on Oahu, three populations of this species remains with a total of between 60 and 80 individuals at Kaena Point, Koko Head, and on the slopes above Halona Point on State, private, city, and county lands (HINHP Database 2001; Service 1999; Wagner *et al.* 1999).

*Centaurium sebaeoides* typically grows in volcanic or clay soils or on cliffs in arid coastal areas or on coral plains below 368 m (1,207 ft) elevation. Associated species include *Artemisia* sp., *Bidens* sp., *Jacquemontia ovalifolia*, *Lipochaeta succulenta* (nehe), or *Lysimachia* sp. (kolokoloko kuahiwi) (HINHP Database 2001; 56 FR 55770; Wagner *et al.* 1999).

The major threats to *Centaurium sebaeoides* on Oahu are habitat degradation by feral goats and cattle; competition from the alien plant species *Leucaena leucocephala*; trampling by humans on or near trails; and fire (56 FR 55770; Service 1999).

*Colubrina oppositifolia* (Kauila)

*Colubrina oppositifolia*, a member of the Buckthorn family (Rhamnaceae) and

a long-lived perennial, is a tree with extremely hard red wood. This species is readily distinguished from the other species in Hawaii by several characters opposite leaf position, dull leaf surface, and entire leaf margins (Wagner *et al.* 1999).

*Colubrina oppositifolia* was observed in fruit and flower during September and June, and in flower during December and January. No other life history information is currently available (HINHP Database 2001).

Historically, *Colubrina oppositifolia* was known from Oahu, Maui and the island of Hawaii. This species now occurs on the island of Hawaii, Oahu, and Maui. Currently there are a total of five populations containing a total of 61 individuals on Oahu. On Oahu, populations are found in Kaumokunui Gulch, Makaleha Valley, and Manuwai Gulch on State and private lands (HINHP Database 2001; GDSI 2001).

Habitats of *Colubrina oppositifolia* are lowland dry and mesic forests dominated by *Diospyros sandwicensis*, found at elevations between 277 and 761 m (909 and 2,496 ft). Associated native species include *Alyxia oliviformis*, *Nestegis sandwicensis*, *Sapindus oahuensis*, *Psydrax odorata*, or *Reynoldsia sandwicensis* (HINHP Database 2001).

The threats to this species on Oahu are habitat destruction by feral pigs and goats; competition with the alien plant species *Syzygium cumini*, *Psidium cattleianum*, *Aleurites moluccana*, *Lantana camara*, *Pennisetum setaceum*, and *Schinus terebinthifolius*; the introduction of black twig borer; Chinese rose beetles; fire; small population numbers; limited distributions; and disturbance by military and unauthorized personnel (59 FR 10305; Service 1996c; HINHP Database 2001).

#### *Ctenitis squamigera* (Pauoa)

*Ctenitis squamigera*, a member of the wood fern family (Aspleniaceae), has a rhizome creeping above the ground that is densely covered with scales similar to those on the lower part of the leaf stalk. It can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan colored scales on its frond (Degener and Degener 1957).

Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown for *Ctenitis squamigera* (Service 1998a).

Historically, *Ctenitis squamigera* was recorded from Kauai; Kaluanui, southeast of Kahana Bay, Pauoa, Nuuanu, Niu, and Wailupe in the Koolau Mountains, Mt. Kaala NAR and

Schofield Barracks in the Waianae Mountains of Oahu; Molokai; Maui; and the island of Hawaii. This species is currently extant on Oahu, Molokai, Lanai, and Maui. Currently on Oahu, four populations with more than 80 individuals are found in the Waianae Mountains in Makaleha Valley, Kaaawa Gulch, Makua Valley and Waianae Kai Forest Reserve on Federal, State, and private lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Ctenitis squamigera* is found on gentle to steep slopes in *Metrosideros polymorpha/Diospyros sandwicensis* mesic forest and diverse mesic forest at elevations of 387 to 923 m (1,269 to 3,027 ft). Associated native plant taxa include *Alyxia oliviformis*, *Hibiscus* sp., *Diospyros hillebrandii*, *Nestegis sandwicensis*, *Psydrax odorata*, *Pouteria sandwicensis*, *Carex meyenii*, *Dodonaea viscosa*, *Freycinetia arborea*, *Pisonia* sp., *Dryopteris unidentata*, *Doodia kunthiana*, *Myrsine* sp., *Psychotria* sp., or *Xylosma* sp. (HINHP Database 2001).

The primary threats to *Ctenitis squamigera* on Oahu are habitat degradation by feral pigs and goats; competition with the alien plant species, *Blechnum occidentale*, *Ageratina riparia*, *Toona ciliata*, *Clidemia hirta*, *Aleurites moluccana*, *Syzygium cumini*, *Psidium guajava*, *Psidium cattleianum* and *Schinus terebinthifolius*; fire; decreased reproductive vigor and extinction caused by naturally occurring events due to the small number of existing populations (Service 1998a; HINHP Database 2001; 59 FR 49025).

#### *Cyanea grimesiana* ssp. *grimesiana* (Haha)

*Cyanea grimesiana* ssp. *grimesiana*, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes which overlap at the base (Lammers 1999).

Little is known about the life history of *Cyanea grimesiana* ssp. *grimesiana*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Currently and historically, *Cyanea grimesiana* ssp. *grimesiana* is known from the Waianae and Koolau Mountains on Oahu, Molokai, Lanai, and Maui. On Oahu, there are populations known from Palikea Gulch,

North Haleauau Gulch, Pahole NAR, Pia Gulch, Kului Gulch, and in Waialae Iki-Kapakahi on Federal, State, city, county, and private lands in a total of six populations containing nine individuals (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Cyanea grimesiana* ssp. *grimesiana* is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa*, or on rocky or steep slopes of stream banks, at elevations between 114 and 746 m (374 and 2,447 ft).

Associated plant species include *Cyanea angustifolia* (haha), *Joinvillea* sp. (ohe), *Clermontia persicaefolia* (ohawai), *Melicope* sp., *Dicranopteris linearis*, *Coprosma* sp., *Alyxia oliviformis*, *Syzygium sandwicensis*, *Diplazium sandwichianum*, *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis*, *Psychotria* sp., or *Xylosma* sp. (61 FR 53108; Service 1999).

The threats to *Cyanea grimesiana* ssp. *grimesiana* on Oahu are habitat degradation and/or destruction caused by wild and feral goats and pigs; competition with the alien plant species, *Clidemia hirta*, *Psidium cattleianum*, and *Toona ciliata*; random naturally occurring events causing extinction due to the small number of existing individuals; fire; trampling by hikers and/or military activities; landslides; rats; and predation by various species of slugs (61 FR 53108; Service 1999).

#### *Cyperus trachysanthos* (Puukaa)

*Cyperus trachysanthos*, a member of the sedge family (Cyperaceae), is a perennial grass-like plant with a short rhizome (underground stem). The culms (aerial stems) are densely tufted, obtusely triangular in cross section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes, and the length of the culms (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Cyperus trachysanthos* was known from Niihau, Kauai, and Lanai. This species is now extant on Kauai and Oahu. On Oahu, it is known from the Kaena Point NAR, nearby Manini Gulch, State land at Diamond Head, Makapuu, Queens Beach, and the Kawainui Marsh area, on Federal, State, and private lands. There are six



populations with a total of 40 individuals on Oahu (HINHP Database 2001; Service 1999)

*Cyperus trachysanthos* is usually found in wet sites (mud flats, wet clay soil, seasonal ponds, or wet cliff seeps) on coastal cliffs or talus slopes at elevations above 248 m (813 ft). Associated native species include *Hibiscus tiliaceus* (hau) (Service 1999; Koyama 1999; 61 FR 53108; HINHP Database 2001).

The threats to *Cyperus trachysanthos* on Oahu are a risk of extinction from naturally occurring events due to the small number of populations; competition with alien plant species; feral goats; fire; off-road vehicles to all populations; and pumping of wetlands for flood and mosquito control; modifications to the wetland topography; mowing; herbicide application; and run-off from nearby Hawaii Army National Guard (HIARNG) activities such as the cleaning of vehicles, dumping of paints or thinners, or the use of pesticides to the Diamond Head population (61 FR 53108; Service 1999).

#### *Diellia erecta* (NCN)

*Diellia erecta*, a member of the spleenwort family (Aspleniaceae) and a short-lived perennial, is a fern that grows in tufts of three to nine lance shaped fronds which emerge from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori (one of the dots on the underside of a fertile fern frond consisting of a cluster of spores) along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known from Kauai; the Koolau Mountains on Oahu; Molokai; Lanai; Maui; and the island of Hawaii. Currently, it is known from Molokai, Maui, Oahu, and Hawaii. On Oahu, it is known from a single population containing at least 20 plants on Hawaii Loa Ridge on State and private lands (HINHP Database 2001; GDSI 2001).

*Diellia erecta* is found on moderate to steep gulch slopes or sparsely vegetated rock faces in mesic forest at elevations between 118 and 550 m (387 and 1,804 ft). Associated native plant species include *Sapindus oahuensis*, *Psydrax*

*odorata*, *Coprosma* sp., *Dodonaea viscosa*, *Dryopteris uidentata*, *Myrsine* sp., *Psychotria* sp., *Syzygium sandwicensis*, or *Wikstroemia* sp. (HINHP Database 2001; Service 1999).

The major threats to *Diellia erecta* on Oahu are habitat degradation by pigs; competition with alien plant species, including *Blechnum occidentale*, *Psidium cattleianum*, *Schinus terebinthifolius*, *Cordyline fruticosa*, *Oplismenus hirtellus*, *Schefflera actinophylla*, *Clidemia hirta*, and *Phymatosorus scolopendria* (NCN); and random naturally occurring events causing extinction and/or reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2001; 59 FR 56333; Service 1999).

#### *Diplazium molokaiense* (NCN)

*Diplazium molokaiense*, a member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome. The leaf stalks are 15 to 20 cm (6 to 8 in) long and green or straw colored. The frond is thin textured, ovate-oblong, 15 to 50 cm (6 to 20 in) long and 10 to 15 cm (4 to 6 in) wide, truncate at the base, and pinnate with a pinnatifid apex. The sori are 0.8 to 1.3 cm (0.3 to 0.5 in) long and lie alongside the side veins of the pinnae. *Diplazium molokaiense* can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characters, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Reproductive cycles, longevity, specific environmental requirements and limiting factors are for *Diplazium molokaiense* are unknown (Service 1998a).

Historically, *Diplazium molokaiense* was found on Kauai, Makaleha and Schofield Barracks on Oahu, Molokai, Lanai, and Maui. However, within the last 20 years, only one population of one individual has been recorded from Waiopai Gulch, East Maui on DHHL land. This species was last collected on Oahu in 1945 from Kolekole Pass to Kaala (HINHP Database 2001).

*Diplazium molokaiense* on Oahu was found on steep rocky wooded gulch walls in wet forests from 618 to 1,202 m (2,027 to 3,943 ft) elevation (HINHP Database 2001).

No other information is available for *Diplazium molokaiense* on Oahu.

#### *Eugenia koolauensis* (Nioi)

*Eugenia koolauensis*, a member of the myrtle family (Myrtaceae), is a small tree or shrub between 2 and 7 m (7 and 23 ft) tall with branch tips covered with

dense brown hairs. *Eugenia koolauensis* is one of two species in the genus that are native to Hawaii, it differs from the other species in having leaves that are densely hairy on the lower surface and leaf margins that curve under the leaves (Wagner *et al.* 1999).

This species has been observed in flower from February to December in various years. No other information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

*Eugenia koolauensis* was historically known from Maunaloa on western Molokai and from Kaipapau Valley, Hanaimoa and Kahawainui Gulches, and a gully southeast of Kahuku on Oahu. Currently, this species is only found on Oahu in ten populations on Federal, State, and private lands Hanaimoa Gulch, Papali Gulch, Kaleleiki Gulch, Aimuu Gulch, Kaunala Gulch, Pahipahialua Gulch, Oio Gulch, and Palikea Gulch. A total of fewer than 70 individuals occur in the Koolau populations (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Eugenia koolauensis* is found on gentle to steep slopes or ridges in mesic or dry forests dominated by *Metrosideros polymorpha* or *Diospyros* sp. from 57 to 437 m (187 to 1,433 ft) in elevation. Other associated plant species include *Bobea elaitor*, *Rauwolfia sandwicensis*, *Alyxia oliviformis*, *Pouteria sandwicensis*, *Dicranopteris linearis*, *Styphelia tameiameia*, *Carex meyenii*, *Myrsine lessertiana*, *Nestegis sandwicensis*, *Pleomele halapepe*, or *Psydrax odorata* (HINHP Database 2001; Service 1998b).

The major threats to *Eugenia koolauensis* on Oahu are habitat degradation by feral pigs; competition with alien plant species such as *Casuarina equisetifolia*, *Eucalyptus* sp., *Cordyline fruticosa*, *Passiflora laurifolia* (yellow granadilla), *Oplismenus hirtellus*, *Acacia confusa*, *Araucaria columnaris*, *Toona ciliata*, *Melia azedarach*, *Grevillea robusta*, *Aleurites moluccana*, *Syzygium cumini*, *Passiflora suberosa*, *Panicum maximum*, *Hyptis pectinata*, *Ardisia elliptica*, *Schinus terebinthifolius*, *Clidemia hirta*, *Psidium cattleianum*, and *Lantana camara*; and the limited numbers of this species make it vulnerable to extinction due to naturally caused events and reduced reproductive vigor (59 FR 14482; HINHP Database 2001).

#### *Euphorbia haeleleana* (Akoko)

*Euphorbia haeleleana*, a member of the spurge family (Euphorbiaceae) and a short-lived perennial, is a dioecious (female and male flowers on separate

plants) tree 3 to 14 m (10 to 46 ft) tall. The alternate leaves are papery in texture, elliptic, and usually 10 to 15 cm (4 to 6 in) long and 4 to 6 cm (2 in) wide. Male trees bear many small male flowers within a cyathium (a compact inflorescence with small individual flowers). The female trees have cyathia with a single female flower surrounded by numerous abortive male flowers. The capsules (dry fruit that open at maturity) are round. This species is distinguished from others in the family in that it is a tree, whereas most of the other species are herbs or shrubs, as well as by the large leaves with prominent veins (Wagner *et al.* 1999).

Individual trees of *Euphorbia haeleleana* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. This species sets fruit between August and October. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; Wagner *et al.* 1999).

*Euphorbia haeleleana* is known historically and currently from northwestern Kauai and the Waianae Mountains of Oahu. On Oahu, six populations of approximately 134 individuals are known from Keawaula Gulch, Kahanahaiki Valley, Kaumokunui-Kaumokuiki Ridge, and Alaieihe Gulch on Federal, State, and private lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Euphorbia haeleleana* on Oahu is usually found in dry forest that is often dominated by *Diospyros* sp. The plant is typically found at elevations between 156 and 586 m (512 and 1,922 ft). Associated plant species include *Psydrax odorata*, *Dodonaea viscosa*, *Erythrina sandwicensis*, *Pleomele* sp., *Reynoldsia sandwicensis*, or *Sapindus oahuensis* (HINHP Database 2001).

The main threats to *Euphorbia haeleleana* on Oahu are habitat degradation and/or destruction by wild and feral ungulates including goats and pigs; predation by rats; fire; potential military activities; and competition with the alien plant species, *Panicum maximum*, *Grevillea robusta*, *Toona ciliata*, *Lantana camara*, *Aleurites moluccana*, *Syzygium cumini*, *Melia azedarach*, *Psidium cattleianum*, *Passiflora suberosa*, *Schinus terenbinthifolius*, *Hyptis pectinata*, *Melinis minutiflora*, *Kalanchoe pinnata*, *Caesalpinia decapetala* (wait-a-bit), *Ficus microcarpa*, *Digitalis insularis* (sourgrass), *Rivina humilis*, *Coffea arabica*, and *Leucaena leucocephala* (HINHP Database 2001).

*Flueggea neowawraea* (Mehamehame)

*Flueggea neowawraea*, a member of the spurge family (Euphorbiaceae) and a long-lived perennial, is a large tree up to 30 m (100 ft) tall and 2 m (7 ft) in diameter with white oblong pores covering its scaly, pale brown bark. The thin, papery, oval leaves, 4 to 14 cm (1.5 to 5.5 in) long and 2 to 9 cm (0.8 to 3.5 in) wide, are green on the upper surface and pale green on the lower surface. This species is usually dioecious (having separate male and female plants) with unisexual flowers lacking petals. Male flowers, on stalks less than 4 mm (0.2 in) long, have five green sepals with brownish tips. The female flowers, on stalks 1 to 2.5 mm (0.04 to 0.1 in) long, have sepals of unequal length with irregular margins. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size; scaly bark; the shape, size, and color of the leaves; flowers clustered along the branches; and the size and shape of the fruits (Hayden 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; Hayden 1999).

Historically, *Flueggea neowawraea* was known from Molokai, Oahu, Kauai and the island of Hawaii. Currently, *Flueggea neowawraea* is known from Kauai, Oahu, east Maui, and Hawaii. On Oahu, *Flueggea neowawraea* is known from 19 locations with approximately 31 individuals on Federal, State, city, county, and private lands Makua Valley, Makaha, Alaieihe Gulch, Kaluaa Gulch, Makaleha Valley, Ekahanui Gulch, Pahole Gulch, Keaau Valley, Kahanahaiki Valley, Kaawa Gulch, Waianae Kai, Paliikea Gulch, Manuwai Gulch, Mohiaka Gulch, Kauhuhu, Mikilua, and Lualualei (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Flueggea neowawraea* occurs on gulch slopes, ridge crests, or near streams in dry or mesic forest at elevations of 323 to 1,006 m (1,059 to 3,300 ft). Associated plant species include *Pisonia sandwicensis*, *Hibiscus arnottianus*, *Morinda sandwicensis* (noni), *Hedyotis terminalis*, *Alfimia oliviformis*, *Chamaesyce multiflora*, *Metrosideros polymorpha*, *Myrsine* sp., *Pleomele* sp., *Myoporum sandwicense*, *Pteralyxia* sp., *Pipturis albidus*,

*Diospyros hillebrandii*, *Pisonia umbellifera*, *Charpentiera* sp., *Claoxylon sandwicensis*, *Antidesma platyphyllum*, *Sapindus oahuensis*, *Pittosporum* sp., *Erythrina sandwicensis*, *Diospyros sandwicense*, *Antidesma pulvinatum*, *Bobea* sp., *Psydrax odorata*, *Nestegis sandwicensis*, *Rauwolfia sandwicensis*, *Streblus pendulina*, and *Chamaesyce herbstii* (akoko) (HINHP Database 2001; Hayden 1999).

The primary threat to the continued existence of *Flueggea neowawraea* on Oahu is the black twig borer that has affected all known *Flueggea neowawraea* plants. Other major threats include habitat degradation by feral and wild ungulates, pigs and goats; competition with the alien plant species *Aleurites moluccana*, *Schinus terenbinthifolius*, *Psidium* spp., *Grevillea robusta*, *Paspalum conjugatum*, *Passiflora suberosa*, *Toona ciliata*, *Clidemia hirta*, *Lantana camara*, *Ficus macrophylla*, *Blechnum occidentale*, *Kalanchoe pinnata*, *Syzygium cumini*, *Ageratina riparia*, *Rivina* sp., *Melinis minutiflora*, and *Ficus microcarpa*; fire; Chinese rose beetle; the small population size with its limited gene pool and depressed reproductive vigor, compounded by a requirement for cross-pollination because the species is dioecious; military activities are possible threats at the Lualualei Naval Reservation and the Army's Schofield Barracks; and predation of the fruit by rats (Service 1999; HINHP Database 2001).

*Gouania meyenii* (NCN)

*Gouania meyenii*, a member of the buckthorn family (Rhamnaceae) and a short-lived perennial, is an erect to spreading shrub. The main character that tells this species apart from other members of its genus are its two to three winged fruits, peduncle length, and the hairiness of the fruits (Wagner *et al.* 1999).

*Gouania meyenii* flowers from March to May. Seed capsules develop in about six to eight weeks. Plants appear to live about ten to 18 years in the wild. No other information exists on specific environmental requirements or limiting factors (Service 1998b).

Historically, *Gouania meyenii* was known from central and southern areas of the Waianae Mountains, from Kamaileunu Ridge to Honouliuli. This species was also recorded from Diamond Head in 1831. Currently, this species is found on Oahu and Kauai. On Oahu, this species is found on Makaha-Waianae Kai Ridge on State, private, city, and county lands. The three known populations on Oahu contain an

estimated 63 individuals (HINHP Database 2001; Wagner *et al.* 1999; GDSI 2001).

*Gouania meyenii* typically grows on moderate to steep slopes in dry shrubland or mesic lowland forest at elevations of 17 to 930 m (56 to 3,050 ft). Associated plant species include *Diospyros sandwicensis*, *Charpentiera* sp., *Alyxia oliviformis*, *Pisonia* sp., *Hibiscus* sp., *Canavalia* sp., *Sophora chrysophylla*, *Sida fallax*, *Schiedea* sp., *Dubautia sherffiana*, *Psydrax odorata*, *Eragrostis* sp., *Dryopteris unidentata*, *Sapindus oahuensis*, *Myrsine* sp. (kolea) *Dodonaea viscosa*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, *Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii* (HINHP Database 2001).

The major threats to *Gouania meyenii* on Oahu are competition from the alien plant species *Pimenta dioica*, *Psidium guajava*, *Lantana camara*, *Melinis minutiflora*, *Grevillea robusta*, *Leucaena leucocephala*, *Kalanchoe pinnata*, *Oplismenus hirtellus*, *Psidium cattleianum*, and *Schinus terebinthifolius*; fire; habitat degradation by feral pigs and goats; and the small number of extant populations and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001).

#### *Gouania vitifolia* (NCN)

*Gouania vitifolia*, a member of the buckthorn family (Rhamnaceae), is a climbing shrub or woody vine with tendrils. The species is the only Hawaiian member of the genus with tendrils and toothed leaf margins (Wagner *et al.* 1999).

*Gouania vitifolia* flowers from March to May. Seed capsules develop in about 6 to 8 weeks. Plants appear to live about 10 to 18 years in the wild. No other information exists on specific environmental requirements or limiting factors. (Service 1998b).

Historically, *Gouania vitifolia* was known from West Maui; the Kau District of the island of Hawaii; and the northwestern portion of the Waianae Mountains in Makaleha, Keaau, and Waianae Kai Valleys on Oahu. Currently, this species is extant on Oahu and the island of Hawaii. On Oahu, it is known from two populations on State and private lands, located at Waianae Kai and Keaau Valley, totaling 44 individuals (HINHP Database 2001; GDSI 2001; Wagner *et al.* 1999).

*Gouania vitifolia* typically grows on the sides of ridges and gulches in dry to mesic forests at elevations of 39 to 978

m (128 to 3,208 ft). Associated plant species include *Erythrina sandwicensis*, *Dodonaea viscosa*, *Hibiscus arnottianus*, *Pipturus albidus*, *Urena glabra*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, or *Diospyros sandwicensis* (Service 1998b).

The major threats to *Gouania vitifolia* are competition from alien plant species particularly *Panicum* sp. (panic grass), *Leucaena leucocephala*, *Toona ciliata*, *Passiflora suberosa*, *Aleurites moluccana*, *Melinis minutiflora*, *Hyptis pectinata*, *Cordyline fruticosa*, *Passiflora edulis*, *Passiflora ligularis*, *Oplismenus hirtellus*, *Lantana camara*, *Rubus argutus*, *Buddleia asiatica*, *Psidium cattleianum* and *Schinus terebinthifolius*; habitat destruction by feral pigs; and a threat of random extinction and reduced reproductive vigor due to the small number of extant individuals (HINHP Database 2001; 59 FR 32932).

#### *Hedyotis coriacea* (Kioele)

*Hedyotis coriacea*, a member of the coffee family (Rubiaceae), is a small shrub with leathery leaves which are generally elliptic to oblong in shape, 3 to 8 cm (1.2 to 3.1 in) long and usually 1.5 to 3 cm (0.6 to 1.2 in) wide. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are longer than wide and flower buds which are square in cross section (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis coriacea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

Historically, *Hedyotis coriacea* was known from the Waianae and Koolau Mountains on Oahu and the Army's Pohakuloa Training Area on the island of Hawaii. Currently, this species is extant on Maui and Hawaii. This species was last collected on Oahu in the 1800s (HINHP Database 2001).

*Hedyotis coriacea* is found on steep, rocky, slopes in dry to mesic *Dodonaea viscosa* dominated shrublands or forests at elevations of 57 to 836 m (187 to 2,742 ft). Associated species include *Metrosideros polymorpha*, *Styphelia tameiameia*, or *Alyxia oliviformis* (HINHP Database 2001; 57 FR 20772).

The major threats to *Hedyotis coriacea* are the small number of remaining individuals; fire; and alien weeds (Service 1997; 57 FR 20772).

#### *Hesperomania arborescens* (NCN)

*Hesperomania arborescens*, a member of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomania* species in having the following combination of characters erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species was observed in flower from April through June and fruit during March and June. No other information is available on reproductive cycles, longevity, specific environmental requirements, and limiting factors (Service 1998b).

*Hesperomania arborescens* was formerly known from Molokai, Lanai, and scattered populations throughout the Koolau Mountains, Oahu, from Koolauloa and Pupukea at its northern extreme to Konahuanui at the southern end. This species is now known from Oahu, Molokai, and Maui. On Oahu, there are 23 populations containing between 86 and 93 individuals on private, city, county, State, and Federal lands at a few disjunct locations upslope of Kahuku, Laie, and Malaekahana; along Poamoho Trail above Poamoho Stream; along Waikane-Schofield Trail near the ridge summit; at Kipapa Gulch; on Halawa Ridge; Waimanalo-Niu divide, Kainawaanui, Kaukonahua Gulch, Maakua-Kaipapua Ridge, Kapakahi Gulch, Halemano-Opauala Ridge, Kawailoa Trail, Kaimananui Gulch, and upper Palolo Valley to Niu Valley (HINHP Database 2001; GDSI 2001; EDA Database 2001; Service 1998b).

*Hesperomania arborescens* on Oahu, is often found on slopes or ridges in association with *Scaevola glabra* (oho naupaka), *Broussaisia arguta*, *Melicope* sp., *Acacia koa*, *Machaerina angustifolia*, *Hedyotis terminalis*, *Tetraplasandra oahuensis*, *Scaevola gaudichaudiana* (naupaka kahakai), *Dubautia* sp., *Labordia sessilis* (kamakahala), *Cibotium* sp., *Perottetia sandwicensis*, *Pipturus* sp., *Wikstroemia* sp., *Cheirodendron* sp., *Coprosma* sp., *Myrsine* sp., *Bobea elatior*, *Hibiscus arnottianus*, *Metrosideros polymorpha*, *Nestegis sandwicensis*, *Dicranopteris linearis*, *Antidesma platyphyllum*, *Psychotria mariniana*, *Syzygium sandwicensis*, and common *Melicope* spp. It typically grows on steep slopes, ridge tops, and gulches in lowland wet forests and occasionally in shrublands between 110 and 1,147 m (361 and 3,762 ft) in elevation (HINHP Database

2001; Wagner *et al.* 1999; Service 1998b).

The major threats to *Hesperomannia arborescens* are habitat degradation by feral pigs and goats; competition with the alien plant species *Clidemia hirta*, *Psidium cattleianum*, *Leptospermum scoparium*, and *Axonopus fissifolius*; fire; impact by humans; and extinction due to random environmental events or reduced reproductive vigor due to this species' limited numbers (59 FR 14482; HINHP Database 2001)

*Hesperomannia arbuscula* (NCN)

*Hesperomannia arbuscula*, a member of the aster family (Asteraceae), is a small shrubby tree, 2 to 3.3 m (7 to 11 ft) tall. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Wagner *et al.* 1999).

*Hesperomannia arbuscula* usually flowers in the spring depending on precipitation. Seeds mature in about 6 weeks and trees last about 10 to 15 years. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Hesperomannia arbuscula* was known from the central and southern Waianae Mountains, from Makaleha to Puu Kanehoa on Oahu, and from West Maui. This species is currently known to be extant on the Makaha-Waianae Kai Ridge and in Kaluaa and Kapuna Gulches on Oahu and on West Maui. The six known populations on Oahu contain between 90 and 92 individuals on State, private, city, and county lands (HINHP Database 2001; GDSI 2001).

*Hesperomannia arbuscula* on Oahu typically grows on slopes and ridges in dry to wet forest dominated by *Acacia koa* and *Metrosideros polymorpha* at elevations of 370 and 1,053 m (1,214 and 3,454 ft). Associated species include *Syzygium sandwicensis*, *Freycinetia arborea*, *Antidesma* sp., *Bobea elatior*, *Hibiscus* sp., *Diospyros hillebrandii*, *Hedyotis terminalis*, *Bidens* sp., *Alyxia oliviformis*, and *Psychotria* sp., or the endangered *Cyanea longiflua* (HINHP Database 2001; Service 1998b; Wagner *et al.* 1999).

The major threats to *Hesperomannia arbuscula* on Oahu are habitat degradation by feral pigs; competition from the alien plant species *Lantana camara*, *Psidium cattleianum*, *Rubus argutus*, *Clidemia hirta*, and *Schinus terebinthifolius*; trampling by humans; and the small number of populations and a risk of extinction from naturally occurring events and/or reduced

reproductive vigor due to the small number of remaining individuals (56 FR 55770; HINHP Database 2001).

*Hibiscus brackenridgei* (Mao hau hele)

*Hibiscus brackenridgei*, a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Three subspecies of *Hibiscus brackenridgei* are now recognized, *brackenridgei*, *molokaiana*, and *mokuleianus*. Subspecies *molokaiana* and *mokuleianus* are found on the island of Oahu. When we listed this species in 1994 only two subspecies, *brackenridgei* and *mokuleianus*, were recognized.

Subsequent to the final rule listing this species in 1994, we became aware of Wilson's (1993) taxonomic treatment of this group in which *Hibiscus brackenridgei* ssp. *molokaiana* was changed to subspecies status and recognized as distinct from *Hibiscus brackenridgei* ssp. *brackenridgei*. Wilson's (1993) treatment is cited in the supplement in the revised edition of the Manual of the Flowering Plants of Hawaii as the basis for recognizing *Hibiscus brackenridgei* ssp. *molokaiana*. We will address this name change in a future **Federal Register** notice (HINHP Database 2000; Bates 1999; Wilson 1993; Wagner *et al.* 1999).

*Hibiscus brackenridgei* is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

*Hibiscus brackenridgei* ssp. *mokuleianus* is currently known from Oahu, Lanai, Maui, and Hawaii; it may possibly occur on Kauai. On Oahu there are a total of fewer than 206 individual plants in five populations—Kaumokunui Gulch, Kawaiu Gulch, Palikea Gulch, Kihakapu Gulch, and Kaimuhole Gulch on State and private lands. *Hibiscus brackenridgei* ssp. *molokaiana* is currently known from Oahu. On Oahu, there are a total of 5 individual plants in one population in Makua Valley on land under federal jurisdiction (Joel Lau, TNCH, pers. comm., 2001; HINHP Database 2001; GDSI 2001).

*Hibiscus brackenridgei* ssp. *mokuleianus* on Oahu occurs on slopes, cliffs, and arid ledges in lowland dry forest and shrubland from 24 to 490 m (79 to 1,607 ft) in elevation. Associated plant species include *Erythrina sandwicensis*, *Heteropogon contortus*, *Waltheria indica*, *Doryopteris* sp., *Lepidium bidentatum*, *Lipochaeta remyi*, *Bidens amplexans* (kookoolau), *Chamaesyce* sp., *Reynoldsia sandwicensis*, *Pleomele halapepe*, *Diospyros hillebrandii*, *Dodonaea viscosa*, *Psydrax odorata*, or *Sida fallax*. *Hibiscus brackenridgei* ssp. *molokaiana* occurs in dry shrublands between 23 and 580 m (75 to 1,902 ft) elevation. Associated plant species include *Waltheria indica*, *Sida fallax*, *Doryopteris* sp., *Dodonaea viscosa*, and *Heteropogon contortus* (HINHP Database 2001; GDSI Database 2001; EDA, *in litt.* 2001).

The primary threats to *Hibiscus brackenridgei* ssp. *mokuleianus* on Oahu are habitat degradation and possible predation by pigs, goats, cattle, and rats; competition with the alien plant species *Panicum maximum*, *Syzygium cumini*, *Melia azedarach*, *Aleurites moluccana*, *Hyptis pectinata*, *Leucaena leucocephala*, *Schinus terebinthifolius*, *Toona ciliata*, *Caesalpinia decapetala*, *Ageratum conyzoides*, *Glycine wightii* (NCN), *Grevillea robusta*, *Passiflora suberosa*, *Coffea arabica*, *Spathodea campanulata* (African tulip tree), and *Passiflora edulis*; road construction; fire; and susceptibility extinction caused by random environmental events or reduced reproductive vigor due to small population size and a limited number of populations. The primary threats to *Hibiscus brackenridgei* ssp. *molokaiana* on Oahu are habitat degradation and possible predation by pigs and goats; competition with the alien plant species *Panicum maximum*, *Leucaena leucocephala*, and *Ageratum conyzoides*; fire; Chinese rose beetle; and susceptibility extinction caused by random environmental events or reduced reproductive vigor due to small population size and a limited number of populations (HINHP Database 2001; 59 FR 56333).

*Isodendron laurifolium* (Aupaka)

*Isodendron laurifolium*, a member of the violet family (Violaceae), is a slender, straight shrub with few branches. The species is distinguished from others in the genus by its leathery, oblong-elliptic, narrowly elliptic lance-shaped leaves (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental

requirements, and limiting factors are unknown (Service 1999).

Historically, *Isodendron laurifolium* was known from scattered locations on Kauai and the Waianae and Koolau mountains of Oahu. Currently, this species is found on Kauai and Oahu. On Oahu, there are a total of between 22 and 23 individuals found in five locations on State, private, city, and county lands Makaha in the Waianae Mountains, East Makaleha Valley, Waianae Kai, Kaawa Gulch, and Kaumokunui Gulch, (Schofield Barracks Military Reservation) (HINHP Database 2001; GDSI 2001).

*Isodendron laurifolium* on Oahu is usually found between 90 and 959 m (295 and 3,146 ft) elevation on gulch slopes, in ravines, and on ridges in diverse mesic or dry forest dominated by *Metrosideros polymorpha*, *Acacia koa*, *Eugenia reinwardtiana*, or *Diospyros sandwicensis* with one or more of the following associated native plant species *Nestegis sandwicensis*, *Hibiscus arnottianus*, *Alyxia oliviformis*, *Rauvolfia sandwicensis*, *Psydrax odorata*, *Carex wahuensis*, *Charpentiera tomentosa* (papala), *Doodia* sp., *Dryopteris unidentata*, *Sapindus* sp. (soapberry), *Antidesma pulvinatum*, *Smilax melastomifolia* (hoi kuahiwi), *Antidesma platyphyllum*, *Xylosma hawaiiense*, *Hedyotis terminalis*, *Pisonia* sp., or *Pouteria sandwicensis* (HINHP Database 2001; Service 1999).

The primary threats to *Isodendron laurifolium* on Oahu are habitat degradation by feral goats and pigs; competition with the alien plant species *Schinus terebinthifolius*, *Aleurites moluccana*, *Cordyline fruticosa*, *Psidium cattleianum*, *Toona ciliata*, and *Grevillea robusta*; and a potential threat from military activities (HINHP Database 2001; 61 FR 53108).

*Isodendron longifolium* (Aupaka)

*Isodendron longifolium*, a member of the violet family (Violaceae), is a slender, straight shrub. The hairless, leathery, lance shaped leaves distinguish this species from others in the genus (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Isodendron longifolium* was known from scattered locations on Kauai and the Waianae Mountains on Oahu. Currently, *Isodendron longifolium* is known from populations on Kauai and Oahu. On Oahu, there are a total of 30 individual plants in four locations on Federal, State, and private lands Palikea Gulch, Kaawa Gulch,

Makaua Gulch, and Kaukonahua Stream, (HINHP Database 2001; EDA Database 2001).

*Isodendron longifolium* on Oahu is found on steep slopes and stream banks in mixed mesic or lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest, usually between 363 and 964 m (1,191 and 3,162 ft) elevation. Associated plant species include *Syzygium sandwicensis*, *Pouteria sandwicensis*, *Acacia koa*, *Psydrax odorata*, *Alyxia oliviformis*, *Melicope* sp., *Pittosporum* sp., *Carex* sp., *Selaginella arbuscula*, *Isachne pallens* (NCN), *Bobea brevipes* (ahakea lau lii), *Antidesma* sp., *Cyanea* sp. (haha), *Cyrtandra* sp., *Hedyotis terminalis*, *Peperomia* sp., *Perrottetia sandwicensis*, or *Psychotria* sp. (HINHP Database 2001; Service 1999).

The major threats to *Isodendron longifolium* on Oahu are habitat degradation or destruction by feral goats and pigs; and competition with the alien plants, *Clidemia hirta*, *Psidium cattleianum*, *Thelypteris parasitica*, *Paspalum conjugatum*, *Oplismenus hirtellus*, *Ageratina riparia*, and *Blechnum occidentale*. The Palikea Gulch population is potentially threatened by fire (HINHP Database 2001; 61 FR 53108).

*Isodendron pyriformis* (wahine noho kula)

*Isodendron pyriformis*, a member of the violet family (Violaceae), is a small, branched shrub. The species is distinguished from other taxa in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening 1 to 2 months later. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1996c).

*Isodendron pyriformis* was known historically from Oahu's central Waianae mountains, Maui, Hawaii, Niihau, Molokai, and Lanai. Currently, this species is found on Hawaii. This species was last collected on Oahu in the late 1800s (HINHP Database 2001).

*Isodendron pyriformis* on Oahu was found on bare rocky hills and in wooded ravines in dry shrublands at low elevations from 363 to 964 m (1,191 to 3,162 ft.) (Wagner *et al.* 1999; HINHP Database 2001).

No threat information is available for *Isodendron pyriformis* on Oahu.

*Lobelia niihauensis* (NCN)

*Lobelia niihauensis*, a member of the bellflower family (Campanulaceae), is a small, branched shrub. This species is distinguished from others in the genus by its leaves lacking or nearly lacking leaf stalks, the magenta-colored flowers, the width of the leaf, and length of the flowers (56 FR 55770).

*Lobelia niihauensis* flowers in late summer and early fall. Fruits mature a month to 6 weeks later. Plants are long-lived and are known to live as long as 20 years (Service 1998b).

Historically, *Lobelia niihauensis* was known from the Waianae Mountains of Oahu (Uluhulu Gulch to Nanakuli Valley), from Kauai, and Niihau. It is now known to be extant only on Kauai and Oahu. On Oahu, this species remains on Ohikilolo Ridge, Kaimokuiki-Manuwai Ridge, Kamaileunu Ridge, Mt. Kaala, Makaha-Waianae Kai, Makua Military Reservation, Nanakuli, South Mohiaka Gulch, East of Puu Kalena, Kahanahaiki Valley, between Puu Hapapa and Puu Kanehoa, Puu Kailio, between Kolekole Pass and Puu Hapapa, North of Palikea, Puu Kaa-Kauhiuhi-Pahoa-Halona subdistricts, and Lualualei Naval Magazine in 21 populations containing between 362 and 397 individual plants on Federal, State, city, and county lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Lobelia niihauensis* on Oahu typically grows on exposed mesic or dry cliffs and ledges, at elevations from 339 to 926 m (1,112 to 3,037 ft). Associated plant species include *Osteomeles anthyllidifolia*, *Dodonaea viscosa*, *Schiedea mannii*, *Carex meyenii*, *Dryopteris* sp., *Sida fallax*, *Styphelia tameiameia*, *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus*, *Lipochaeta tenuis*, or *Artemisia* sp. (HINHP Database 2001; 56 FR 55770).

On Oahu, the major threats to *Lobelia niihauensis* are habitat degradation and predation by feral goats, rats, and slugs; fire; military activities; and competition from the alien plant species *Schinus terebinthifolius*, *Leucaena leucocephala*, *Acacia confusa*, *Grevillea robusta*, *Lantana camara*, *Melinis minutiflora*, *Melinis repens*, *Ageratina riparia*, *Erigeron karvinskianus*, *Kalanchoe pinnata*, and *Ficus microcarpa* (HINHP Database 2001; 56 FR 55770).

*Lysimachia filifolia* (NCN)

*Lysimachia filifolia*, a member of the primrose family (Primulaceae), is a small shrub 15 to 50 cm (0.5 to 1.6 ft) tall. The linear leaves measure 15 to 54 mm (0.6 to 2.1 in) long and 0.3 to 1.8 mm (0.01 to 0.07 in) wide and are

usually alternately arranged. They are single veined and sparsely hairy or hairless. The bell shaped flowers are reddish purple, 6 to 10 mm (0.2 to 0.4 in) long, and borne singly on flower stalks about 18 to 30 mm (0.7 to 1.2 in) long which elongate upon fruiting. Fruits are thick, hard capsules about 5 mm (0.2 in) long which contain numerous minute, nearly black, irregularly shaped seeds. This species is distinguished from other taxa of the genus by its leaf shape and width, calyx lobe shape, and corolla length (Service 1995b).

Little is known about the life history of *Lysimachia filifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b).

Historically, *Lysimachia filifolia* was known only from Kauai. This species is now known from Oahu and Kauai. On Oahu, there is one population containing a total of 50 individuals, on the slopes of Waiahole Valley in the Koolau Mountains on State land (HINHP Database 2001; GDSI 2001).

On Oahu, *Lysimachia filifolia* typically grows on mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests at elevations of 65 to 798 m (213 to 2,617 ft). Associated plants include mosses, ferns, liverworts, and *Pilea peplodes* (NCN) (Service 1995b; HINHP Database 2001; Wagner *et al.* 1999).

The major threat to *Lysimachia filifolia* on Oahu is competition with the alien plant species *Ageratina riparia*, *Schefflera actinophylla*, *Cordyline fruticosa*, *Pluchea* sp. (sourbush), and *Blechnum occidentale*. Additionally, individuals of the species are vulnerable to rock slides. Because only one population of *Lysimachia filifolia* occurs on each of only two islands, the species is threatened by extinction due to naturally caused events (HINHP Database 2001; 59 FR 09304).

#### *Mariscus pennatiformis* (NCN)

*Mariscus pennatiformis*, a member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. The stout, smooth, three-angled stems are between 0.4 and 1.2 m (1.3 and 4 ft) long, slightly concave, and 3 to 7 mm (0.1 to 0.3 in) in diameter in the lower part. The three to five linear, somewhat leathery leaves are 8 to 17 mm (0.3 to 0.7 in) wide and at least as long as the stem. Each flower cluster, umbrella-shaped and moderately dense, is 4 to 15 cm (1.5 to 6 in) long and five to 25 cm

(2 to 10 in) wide. About five to 18 spikes, comprised of numerous spikelets, form each cluster. Each spikelet, measuring about 8 to 14 mm (0.3 to 0.6 in) in length, is yellowish brown or grayish brown and is comprised of eight to 25 densely arranged flowers. The glumes (bracts beneath each flower), which are less than twice as long as wide, are spreading and overlap tightly. The lowest glume does not overlap the base of the uppermost glume. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems. The two subspecies are distinguished primarily by larger and more numerous spikelets, larger achenes (dry, one-seeded fruits), and more overlapping and yellower glumes in ssp. *pennatiformis* as compared with ssp. *bryanii*. Subsequent to the final rule listing this species in 1994, we became aware of Tucker's (1994) treatment of this genus in which the genus *Mariscus* was changed to *Cyperus*. Tucker's (1994) treatment is cited in the supplement in the revised edition of the Manual of the Flowering Plants of Hawaii as the basis for recognizing *Mariscus* as *Cyperus*. We will address this name change in a future **Federal Register** notice (Service 1999; Wagner *et al.* 1999).

Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown for *Mariscus pennatiformis* ssp. *pennatiformis* (Service 1999).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu (Waianae Mountains on a ridge above Makaha Valley), East Maui, the island of Hawaii, and from Laysan (ssp. *bryanii*) in the Northwestern Islands. Only one population has been seen in the last 70 years on the main islands, when an unknown number of plants were seen sometime in Keanae Valley on Maui in the 1970s (HINHP Database 2001).

*Mariscus pennatiformis* typically grows in mesic and wet *Metrosideros polymorpha* forest and *Metrosideros polymorpha*-*Acacia koa* forest at elevations between 424 and 1,032 m (1,391 and 3,385 ft). The associated native plant species on Oahu are unknown (J. Lau, *in litt.* 2001).

No threat information is available for *Mariscus pennatiformis* on Oahu.

#### *Marsilea villosa* (Ihiihi)

*Marsilea villosa*, a member of the marsilea family (Marsileaceae) is an aquatic to semiaquatic fern similar in appearance to a four-leaved clover that requires periodic flooding to complete

its life cycle. The species is the only member of the genus native to Hawaii and is closely related to *Marsilea vestita* of the western coast of the United States (Service 1996a).

Sexual reproduction of *Marsilea villosa* is initiated through the production of a hard sporocarp borne on the rhizome of a leaf pair node. The young sporocarp is covered with rust-colored hairs which are lost as the sporocarp matures. The sporocarp will mature only if the soil dries below threshold levels for leaf growth. The sporocarp remains in the soil for an extended period of time and must be scarified before it will open. It is not known how the sporocarp (a structure in or on which spores are produced) is scarified in *Marsilea villosa* but bacterial action is thought to erode the wall of the sporocarp to the point that water can be absorbed and force the sporocarp to open, as in other *Marsilea* species (Service 1996a).

*Marsilea villosa* was historically known from Oahu, Molokai, and Niihau. Currently, it is found on Oahu and Molokai. There are four populations with an unknown total number of individuals on the island of Oahu Koko Head Crater, on the Lualualei Naval Reservation, Kealakekapa, and Ihiihilauakea, on Federal, city, county, and private lands (HINHP Database 2001; GDSI 2001; Service 1996a).

*Marsilea villosa* typically grows in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, or lowland grasslands at elevations 424 and 1,032 m (1,391 and 3,385 ft). Associated native plant species include *Sida fallax* (HINHP Database 2001).

The main reason for the decline of *Marsilea villosa* on Oahu is habitat destruction and the destruction of natural hydrology; many of the areas from which it is known to have occurred are now sugar cane fields, industrial parks, housing developments, and pastures. The greatest immediate threats to the survival of this species are the encroachment and competition from naturalized, exotic plants, such as *Prosopis pallida* (kiawe), *Panicum maximum*, *Bidens pilosa* and *Cynodon dactylon* (Bermuda grass); and the disturbance of areas where the plant grows by off-road vehicles or by grazing cattle; continued development and habitat degradation; fire; small population size; and fragmentation, trampling and other impacts from humans and introduced mammals (57 FR 27863; HINHP Database 2001).

#### *Melicope pallida* (Alani)

*Melicope pallida*, a member of the citrus family (Rutaceae), is a tree with

grayish white hairs and black, resinous new growth. The species differs from *Melicope haupuensis*, *Melicope knudsenii*, and other members of the genus by presence of resinous new growth, leaves folded and in clusters of three, and fruits with separate carpels (Wagner *et al.* 1999).

Little is known about the life history of *Melicope pallida*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b).

*Melicope pallida* is currently and historically known from Kauai and Oahu on State and private lands from the Waianae Mountains, the base of Mount Kaala and near Palikea, within TNCH's privately owned Honouliuli Preserve. On Oahu, it is currently known from the base of Mount Kaala near Palikea in the Waianae Mountains. There is a single population with a single individual (HINHP Database 2001; GDSI 2001).

*Melicope pallida* usually grows on steep rock faces in lowland dry or mesic forests at elevations of 234 to 841 m (768 to 2,758 ft). Associated plant species include *Psychotria mariniana*, *Bobea elatior*, *Acacia koa*, *Cibotium* sp., *Wikstroemia oahuensis*, *Syzygium sandwicensis*, *Alyxia oliviformis*, *Dryopteris* sp. (NCN), *Metrosideros polymorpha*, *Pipturus albidus*, *Sapindus oahuensis*, *Tetraplasandra* sp. (ohiohe), *Xylosma hawaiiense* or the endangered *Abutilon sandwicense* (HINHP Database 2001; 59 FR 09304).

The major threat to *Melicope pallida* on Oahu is competition from introduced plants, especially *Andropogon virginicus*, *Psidium cattleianum*, *Pterolepis glomerata*, *Clidemia hirta*, and *Toona ciliata*. A potential threat to *Melicope pallida* is the black twig borer, which is known to occur in areas where this species grows and to feed on members of the genus *Melicope*. Additional threats to *Melicope pallida* are fire; habitat degradation by feral pigs; and extinction due to naturally caused events and/or reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2001; 59 FR 09304).

#### *Nototrichium humile* (Kului)

*Nototrichium humile*, a member of the amaranth family (Amaranthaceae), is an upright to trailing shrub with branched stems to 1.5 m (5 ft) long. Stems and young leaves are covered with short hairs. Leaves are oppositely arranged, oval to oblong in outline, 3 to 9 cm (1.2 to 3.5 in) long, and 2 to 5 cm (0.8 to 2.0 in) wide. Stalkless flowers are arranged

in a spike at the ends of the stem. Membranous bracts grow below each flower. Two of the bracts and the sepals fall off with the mature fruit. This species is distinguished from the only other species in the genus by its inflorescence, a slender spike 4 mm (0.2 in) in diameter or less, which is covered with short hairs (Wagner *et al.* 1999).

*Nototrichium humile* is found on and at the base of rock cliffs and talus slopes in areas that do not receive full sun all day. Plants have been observed flowering after heavy rain, but flowering is generally heaviest in the spring and summer. Fruits mature a few weeks after flowering. In cultivation, this species is known to live for more than a decade (Service 1998b).

Historically and currently, *Nototrichium humile* is known from Oahu and Maui. Currently, on Oahu, it is found in Kapuhi Gulch, Pahole Gulch, Kealia, Kahanahaiki, Kaluakauila Gulch, along Makua-Keaau Ridge to Makaha-Waianae Kai Ridge, and Nanakuli, where it occurs on Federal, State, city, county, and private lands. There are a total of 21 populations containing between 75 and 995 individuals on the island of Oahu (HINHP Database 2001; EDA Database 2001; GDSI 2001).

*Nototrichium humile* typically grows at elevations of 185 to 806 m (607 to 2,644 ft) on cliff faces, gulches, streambanks, or steep slopes in dry or mesic forests often dominated by *Sapindus oahuensis* or *Diospyros sandwicensis*. Associated species include *Erythrina sandwicensis*, *Sicyos* sp., *Rauwolfia sandwicensis*, *Nestegis sandwicensis*, *Streblus pendulinus*, *Myoporium sandwicense*, *Metrosideros polymorpha*, *Antidesma pulvinatum*, *Pouteria sandwicensis*, *Charpentiera* sp., *Hibiscus* sp., *Alyxia oliviformis*, *Pisonia umbellifera*, *Lipochaeta tenuis*, *Stenogyne* sp., *Artemisia australis*, *Bidens cervicata* (kookoolau), *Carex wahuensis*, *Elaeocarpus bifidus*, *Peperomia* sp., *Dodoanea viscosa*, *Canavalia* sp., *Psydrax odorata*, *Syzygium sandwicensis*, *Reynoldsia sandwicensis*, *Pleomele* sp., *Eugenia reinwartiana*, *Myrsine lanaiensis*, or the endangered species *Abutilon sandwicense* (Service 1998b; HINHP Database 2001; 56 FR 55770).

On Oahu, the major threats to *Nototrichium humile* are habitat degradation by feral goats and pigs; military activities; competition from the alien plant species *Grevillea robusta*, *Panicum maximum*, *Lantana camara*, *Hyptis pectinata*, *Rivina humilis*, *Aleurites moluccana*, *Toona ciliata*, *Coffea arabica*, *Passiflora suberosa*, *Melia azedarach*, *Syzygium cumini*,

*Blechnum occidentale*, *Oplismenus hirtellus*, *Schefflera actinophylla*, *Spathodea campanulata*, *Psidium guajava*, *Triumfetta semitriloba* (Sacramento bur), *Buddleia asiatica*, *Ageratina adenophora*, *Ficus microphylla*, *Kalanchoe pinnata*, *Adiantum hispidulum*, *Caesalpinia decapetala*, *Cordyline fruticosa*, *Pimenta dioica*, *Montanoa hibiscifolia*, *Schinus terebinthifolius*, *Leucaena leucocephala*, *Melinis minutiflora*, and *Psidium cattleianum*; road building and maintenance; and fire (Service 1998b; HINHP Database 2001; 56 FR 55770).

#### *Peucedanum sandwicense* (Makou)

*Peucedanum sandwicense*, a short lived perennial and a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands (Constance and Affolter 1999).

Information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (Service 1995b).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to the island of Oahu. On Oahu, there are a total of four populations containing 51 individual plants on State, city, and county lands Keaau Valley, Puu Kawiwi, Waianae Kai, and Kamaileunu Ridge, (GDSI 2001; HINHP Database 2001).

*Peucedanum sandwicense* grows on cliffs, slopes, and ridges in *Metrosideros polymorpha* lowland mesic forest between 395 and 977 m (1,296 and 3,205 ft) elevation and is associated with native species such as *Dodonaea viscosa*, *Carex meyenii*, *Eragrostis* sp., *Santalum ellipticum* (iliahialoe), *Reynoldsia sandwicensis*, *Osteomeles anthyllidifolia*, *Scaevola sericea* (naupaka kahakai), *Senna gaudichaudii*, *Pittosporum halophilum* (hoawa), *Sida fallax*, *Plumbago zeylandica*, *Artemisia australis*, *Portulaca lutea* (ihi), *Lepidium bidentatum* var. *o-waihiense* (anaunau), *Schiedea globosa* (NCN), *Lipochaeta integrifolia* (nehe), *Peperomia renyi* (alaala wai nui), *Plechranthus parviflorus*, and *Dianella sandwicensis* (Constance and Affolter 1999; Service 1995b; HINHP Database 2001).

Threats to *Peucedanum sandwicense* on Oahu are habitat degradation by feral goats and pigs and competition with the non-native plant species *Schinus*

*terebinthifolius*, *Melinis minutiflora*, *Kalanchoe pinnata*, and *Lantana camara* (HINHP Database 2001).

*Phlegmariurus nutans* (Wawaeiole)

*Phlegmariurus nutans* is a member of the clubmoss family (Lycopodiaceae). This species can be distinguished from others of the genus in Hawaii by its epiphytic habit, simple or forking fruiting spikes, and larger and stiffer leaves (59 FR 14482).

This species has been observed fertile, with spores, in May and December. No other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Phlegmariurus nutans* was known from the island of Kauai and from scattered locations in the Koolau Mountains of Oahu, bounded by Kaluanui Valley to the north, Paalaa to the west, and Mount Tantalus to the south. On Oahu, this species is now known from only five populations containing seven individual plants on Federal and State lands Kaukonahua Gulch, Kahana, and Kaipapau Gulch, (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Phlegmariurus nutans* on Oahu grows on tree trunks, usually on open ridges, forested slopes, and cliffs in *Metrosideros polymorpha* dominated wet forests, cliffs, and shrublands and occasionally mesic forests between 227 and 846 m (745 and 2,775 ft) in elevation. Associated native plant species include *Machaerina angustifolia*, *Wikstroemia oahuensis*, *Antidesma platyphyllum*, *Syzygium sandwicensis*, *Elaphoglossum* sp. (ekaha), *Hibiscus* sp., *Psychotria mariniana*, *Cyrtandra laxiflora*, *Hedyotis terminalis*, *Broussaisia arguta*, or *Dicranopteris linearis* (HINHP Database 2001; EDA, *in litt.* 2001; Service 1998b).

The primary threat to *Phlegmariurus nutans* on Oahu is susceptibility to extinction from naturally caused events and decreased reproductive vigor because of the small number of remaining individuals and limited distribution of the species. Additional threats to *Phlegmariurus nutans* are feral pigs; floods; and the alien plants *Clidemia hirta*, *Paspalum conjugatum*, *Sacciolepis indica*, and *Psidium cattleianum* (HINHP Database 2001).

*Phyllostegia mollis* (NCN)

*Phyllostegia mollis*, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Leaves are oval in outline with rounded teeth. Flowers, usually in groups of six, are

spaced along a stem; there are two shorter flowering stems directly below the main stem. The flowers have fused sepals and white petals fused into a tube and flaring into a smaller upper and a larger lower lip. Fruits are fleshy, dark green to black nutlets. A suite of technical characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Wagner *et al.* 1999).

Individual *Phyllostegia mollis* plants live for approximately 5 years. The species is known to flower in late winter and spring. Additional information on the life history of this plant, reproductive cycles, specific environmental requirements, and limiting factors is generally unknown (Service 1998b).

Historically, *Phyllostegia mollis* was known from the central and southern Waianae Mountains, from Mt. Kaala to Honouliuli, and from Makiki in the Koolau Mountains of Oahu; Molokai; and East Maui. Currently, this species is only known from Oahu and Maui. On Oahu, this species remains only in Kaluaa Gulch, Palawai Gulch, Puu Kumakalii, Mohiakea Gulch, Huliwai Gulch, Waieli Gulch, and Pualii Gulch on Federal and private lands. The eight populations contain between 85 and 105 individuals (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Phyllostegia mollis* typically grows on steep slopes and in gulches in diverse mesic to wet forests at elevations of 519 to 928 m (1,702 to 3,044 ft). Associated plant species include *Pouteria sandwicensis*, *Antidesma platyphyllum*, *Dryopteris unidentata*, *Carex meyenii*, *Metrosideros polymorpha*, *Chamaesyce multiformis*, *Acacia koa*, *Claoxylon sandwicense*, *Alyxia oliviformis*, *Myrsine* sp., *Diospyros hillebrandii*, *Psychotria hathewayi*, *Pipturus alba*, *Urera glabra*, or *Pisonia umbellifera* (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Phyllostegia mollis* are competition from the alien plant species *Passiflora suberosa*, *Psidium cattleianum*, *Kalanchoe pinnata*, *Blechnum occidentale*, *Clidemia hirta*, *Ageratina adenophora*, *Thelypteris parasitica*, *Heliocarpus popayanensis*, *Rubus rosifolius*, and *Schinus terebinthifolius*; rockslides; habitat degradation and predation by feral pigs and goats; and the small number of extant populations, which makes the species vulnerable to random mass mortality events (HINHP Database 2001).

*Phyllostegia parviflora* (NCN)

*Phyllostegia parviflora*, a member of the mint family (Lamiaceae), is a perennial herb with forward-bending hairs on the stems and straight or slightly curved hairs on the flowering stalk. The egg-shaped to broadly egg-shaped, wrinkled leaves are usually 19 to 33 cm (7.5 to 13 in) long and 7.5 to 15.3 cm (3 to 6 in) wide. The leaf surfaces are usually conspicuously dotted with coarse or stiff hairs, especially along the veins, and the edges are toothed. The leaf stalks are typically 6 to 13.5 cm (2.4 to 5.3 in) long, with straight, spreading hairs. Usually six hairy flowers are arranged along a flowering stalk with a main terminal stem and many side branches immediately below. The individual flower stalks are usually 8 to 15 mm (0.3 to 0.6 in) long with rather coarse or stiff hairs. The calyx is bell-shaped and has short, stiff hairs. The corolla is white, sometimes tinged with purple, and has short, stiff hairs. The upper corolla lip is about 3 mm (0.1 in) long while the lower lip is about 6 to 9 mm (0.2 to 0.4 in) long. The mature fruits are nutlets about 3 to 6 mm (0.1 to 0.2 in) long. The species is distinguished from others of the genus by the egg-shaped to broadly egg-shaped leaves, leaf stalks usually 6 to 13.5 cm (2.4 to 5.3 in) long, and the lower corolla lip 6 to 9 mm (0.24 to 0.36 in) long. *Phyllostegia parviflora* var. *glabriuscula* has fewer glandular hairs in the inflorescence, less pubescent leaves, and usually unbranched inflorescences compared with *Phyllostegia parviflora* var. *parviflora*. *Phyllostegia parviflora* var. *lydgatei* has shorter leaf stalks, spreading hairs on the leaf stalks, and fewer gland-tipped hairs in the inflorescence. At the time of listing of this species, only two varieties were recognized, *P. p.* var. *glabriuscula* and *P. p.* var. *parviflora*. Subsequent to the final rule listing this species in 1996, we became aware of Wagner *et al.* (1999) taxonomic treatment of this group in which *Phyllostegia parviflora* var. *lydgatei* was changed to variety status and recognized as distinct from *Phyllostegia parviflora* var. *parviflora*. Wagner *et al.* (1999) treatment is cited in the supplement in the revised edition of the Manual of the Flowering Plants of Hawaii as the basis for recognizing *Phyllostegia parviflora* var. *lydgatei*. This name change will be addressed in a future **Federal Register** notice (Wagner *et al.* 1999).

Historically, *Phyllostegia parviflora* was known from three islands Oahu, Hawaii, and Maui. This species is now known only from two populations on Oahu. *Phyllostegia parviflora* var.



*glabriuscula* was only known from the island of Hawaii on private land and has not been observed since the 1800s. *Phyllostegia parviflora* var. *parviflora* was known from Oahu and Maui, but is now known from only 30 plants on the east side of Puu Pauao, on State and Federal lands. *Phyllostegia parviflora* var. *lydgatei* is known from only four plants in North Puulii Gulch on private land (HINHP Database 2001; GDSI 2001).

*Phyllostegia parviflora* var. *lydgatei* is typically found on moderate to steep slopes in mesic forest from 555 to 881 m (1,820 to 2,890 ft) elevation. Native vegetation associated with *Phyllostegia parviflora* var. *lydgatei* includes *Xylosma hawaiiense*, *Claoxylon sandwicense*, *Antidesma platyphyllum*, *Pouteria sandwicensis*, *Pipturus albidus*, *Myrsine lessertiana*, *Chamaesyce multiformis*, *Coprosma foliosa*, *Dryopteris unidentata*, *Selaginella arbuscula*, or *Pipturus alba*. *Phyllostegia parviflora* var. *parviflora* is typically found in *Metrosideros polymorpha* mixed lowland wet forest from 232 to 867 m (761 to 2,844 ft) elevation. Native vegetation associated with *Phyllostegia parviflora* var. *parviflora* includes *Cibotium* sp., *Dicranopteris linearis*, *Broussaisia arguta*, *Antidesma* sp., *Pritchardia* sp. (loulou), *Tetraplasandra* sp., *Touchardia latifolia*, *Pipturus* sp., *Cheirodendron* sp. (Olapa), *Phyllostegia glabra* (NCN), *Cyrtandra* sp., *Syzygium sandwicensis*, or *Melicope* sp. (HINHP Database 2001).

The major threats to *Phyllostegia parviflora* var. *lydgatei* are habitat degradation and/or destruction by feral pigs; landslides, rockslides, competition with the alien plant species *Schinus terebinthifolius*, *Passiflora suberosa*, *Rubus rosifolius*, *Psidium cattleianum*, *Ageratina adenophora*, *Thelypteris parasitica*, and *Rivina humilis*; and extinction and/or reduced reproductive vigor due to the small number of remaining individuals and in each respective population. The major threats to *Phyllostegia parviflora* var. *parviflora* on Oahu are competition with the alien plant species *Clidemia hirta* and *Ageratina* sp.; and extinction and/or reduced reproductive vigor due to the small number of remaining individuals and in each respective population (HINHP Database 2001; Service 1999; 61 FR 53108).

*Plantago princeps* (laukahi kuahiwi)

*Plantago princeps*, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust short lived perennial herb. This species differs from other native members of the genus in Hawaii by its

large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala*, *laxiflora*, *longibracteata*, and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of *Plantago princeps*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (Service 1999).

*Plantago princeps* is historically and currently found on Kauai, Oahu, Molokai, and Maui. It is no longer extant on the island of Hawaii. *Plantago princeps* var. *anomala* is currently known from Kauai; var. *longibracteata* is known from Kauai and Oahu; var. *princeps* is known from Oahu; and var. *laxiflora* is known from Molokai and Maui. On Oahu, there are currently no remaining populations of var. *longibracteata*, and six remaining populations consisting of between 130 and 180 individuals of var. *princeps* on Federal, State, city, county, and private lands Palawai Gulch, Ekahanui Gulch, Nanakuli-Lualualei Ridge, Makua-Makaha Ridge, Mohiakea Gulch, and Pahole Gulch, (GDSI 2001; HINHP Database 2001; EDA Database 2001).

On Oahu, *Plantago princeps* var. *longibracteata* is typically found on the sides of waterfalls and wet rock faces at around 64 and 835 m (210 and 2,739 ft) elevation. Associated native plant species include *Lobelia gaudichaudii* (NCN), *Scaevola glabra*, *Bidens* sp., *Eugenia* sp., *Coprosma granadensis* (makole), or *Metrosideros rugosa* (HINHP Database 2001). *Plantago princeps* var. *princeps* is typically found on slopes and ledges in *Metrosideros polymorpha* lowland mesic forests and shrublands between 110 to 1,064 m (361 to 3,490 ft) elevation. Associated native plant species include *Lysimachia* sp., *Chamaesyce* sp., *Eragrostis* sp., *Pilea peploides*, *Artemisia australis*, *Viola* sp. (pamakani), *Dubautia plantaginea*, and *Bidens* sp. (HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Plantago princeps* var. *longibracteata* on Oahu are predation and habitat degradation by feral pigs and goats and competition with various alien plant species. The primary threats to *Plantago princeps* var. *princeps* on Oahu are rockslides and competition with the alien plant

species *Erigeron karvinskianus*, *Melinis minutiflora*, and *Schinus terebinthifolius* (HINHP Database 2001; 59 FR 56333; Service 1999).

*Platanthera holochila* (NCN)

*Platanthera holochila*, a short-lived perennial and a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai. Currently, *Platanthera holochila* is extant on Kauai, Molokai, and Maui. This species was last collected on Oahu in 1938 in the area from Puu Kainapuaa to Kawainui-Kaipapua summit ridge and Kipapa Gulch (HINHP Database 2001).

On Oahu, *Platanthera holochila* was found in *Metrosideros polymorpha*-*Dicranopteris linearis* montane wet forest or *Metrosideros polymorpha* mixed montane bogs between 447 and 867 m (1,466 and 2,844 ft) elevation. Associated native plant species include *Cibotium* sp., *Coprosma ernodeoides* (kukae nene), *Styphelia tameiameia*, *Wikstroemia* sp., *Scaevola chamissoniana* (naupaka kuahiwi), *Sadleria* sp., *Lythrum maritimum* (pukamole), *Deschampsia nubigena* (hair grass), *Luzula hawaiiensis* (wood rush), *Sisyrinchium acre* (mauu la ili), *Broussaisia arguta*, *Clermontia* sp. (oha wai), *Lycopodium cernuum* (wawaeiole), *Dubautia scabra* (naeae), *Polypodium pellucidum* (ae), *Mareletia gahniiformis* (NCN), and *Vaccinium reticulatum* (ohelo ai) (61 FR 53108; Service 1999).

*Pteris lidgatei* (NCN)

*Pteris lidgatei*, a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in) thick and at least 10 cm (3.9 in) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in) long and 20 to 45 cm (8 to 18 in) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter

sori, with intermediate conditions being common. *Pteris lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner and Wagner 1992; Wagner 1949).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1998a).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and West Maui. Currently, this species is known from Oahu and Maui. Five populations with approximately 13 individuals occur on Oahu on Federal, State, and private lands Kaluanui, Kawainui drainage, Kaukonahua Gulch, Kawai Iki Stream, Waimano Stream and Waimano Gulch, (GDSI 2001; HINHP Database 2001; EDA Database 2001).

*Pteris lidgatei* on Oahu grows on steep stream banks and cliffs around 75 m (246 ft) elevation in wet *Metrosideros polymorpha-Dicranopteris linearis* forest with *Cyrtandra* sp., *Machaerina angustifolia*, *Selaginella arbuscula*, *Isachne pallens*, *Thelypteris sandwicensis*, *Diploterygium pinnatum*., *Sadleria* sp., *Broussaisia arguta*, *Cibotium chamissoi*, *Dicranopteris linearis*, *Elaphoglossum crassifolium* (ekaha), *Sadleria squarrosa*, *Asplenium* sp. (NCN), *Doodia lyonii* (NCN), or *Sphenomeris chusana* (palaa) (HINHP Database 2001; EDA, *in litt.* 2001).

The primary threats to *Pteris lidgatei* on Oahu are competition with the alien plant species *Psidium cattleianum*, *Sacciolepis indica*, *Thelypteris parasitica*, *Ageratina riparia*, *Paspalum conjugatum*, *Pterolepis glomerata*, and *Clidemia hirta*; habitat destruction by feral pigs, and a risk of extinction due to random environmental events and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HINHP Database 2001).

#### *Sanicula purpurea* (NCN)

*Sanicula purpurea*, a short-lived member of the parsley family (Apiaceae), is a stout perennial herb, 8 to 36 cm (3 to 14 in) tall, arising from a massive perennial stem. The stems are tufted and branched, with the lower portion of the stem lying close to the ground, while the upper portion rises above the ground. The basal leaves are numerous and leathery in texture and are kidney-shaped or circular to egg-

heart-shaped, with three to seven lobes. The leaf lobes are circular to inversely egg-shaped. The leaf veins are impressed on the upper surface and prominent on the lower surface. The leaf margins bear short, sharp teeth. The basal leaf stalks are slender and abruptly sheathed at the base. The leaves are palmately three-to five-lobed. The small purple, or cream-colored with a purple tinge, flowers occur in branched terminal clusters, each of which contains six to ten flowers. Each flower cluster contains one to three perfect flowers and five to seven staminate flowers. Below the inflorescence is a series of about ten oblong or inversely lance-shaped bracts. The nearly spherical fruits are covered with prickles. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1999).

Additional information on the life history of *Sanicula purpurea*, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1999).

Historically and currently, *Sanicula purpurea* is known from Oahu and West Maui. On Oahu, four populations totaling between 21 individuals are currently known from Kaukonahua-Kahana Divide, Helemano-Punaluu Divide, the summit between Aiea and Waimano, and North Kaukonahue-Punaluu on Federal, State, and private lands (GDSI 2001; HINHP Database 2001; EDA Database 2001).

*Sanicula purpurea* on Oahu typically grows in open *Metrosideros polymorpha* mixed montane bogs and windswept shrublands within the cloud zone between 415 and 959 m (1,361 and 3,146 ft) elevation. Associated plant species include *Cheirodendron* sp., *Sadleria pallida*, *Bidens* sp., *Dicanthelium koolauensis*, *Styphelia tameiameia*, *Gahnia beechyi*, *Plantago pachyphylla* (laukahi kuahiwi), *Lycopodium* sp., *Vaccinium* sp., or *Machaerina angustifolia* (HINHP Database 2001; EDA, *in litt.* 2001).

The major threats to *Sanicula purpurea* on Oahu are habitat degradation by feral pigs; a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations; sun exposure; and competition with the alien plant species *Axonopus fissifolius* and *Clidemia hirta* (61 FR 53108; Service 1999; HINHP Database 2001).

#### *Schiedea hookeri* (NCN)

*Schiedea hookeri*, a member of the pink family (Caryophyllaceae), is a sprawling or clumped perennial herb. The stems, 0.3 to 0.5 m (1 to 1.6 ft) long, curve slightly upward or lie close to the ground and often produce matted clumps. The thin, opposite leaves are narrowly lance-shaped to narrowly elliptic. The petalless, perfect flowers are borne in open branched inflorescences, which are hairy, somewhat sticky, and 5 to 22 cm (2 to 9 in) long. The lance-shaped sepals are green to purple and 3 to 4.5 mm (1.2 to 1.8 in) long. The fruit is a capsule about 3 mm (0.1 in) long. This species is distinguished from others in this endemic Hawaiian genus by its open, hairy, and sometimes sticky inflorescence, and by the size of the capsules (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea hookeri*. Based on field and greenhouse observations, it is hermaphroditic, which means each individual has both male and female reproductive organs. Mature fruits have been observed in June and August. *Schiedea hookeri* appears to be an outcrossing species. Under greenhouse conditions, flowers do not set fruit unless pollinated. In the field, the species is presumed to be pollinated by insects, although none have been observed (a related species, *Schiedea lydgatei* on Molokai, is apparently pollinated by native, night-flying moths). A series of self-pollinations, within population crosses, and crosses among populations have demonstrated that *Schiedea hookeri* experiences moderately strong inbreeding depression. These results indicate that reductions in population size could result in expression of inbreeding depression among progeny, with deleterious consequences for the long-term persistence of this species. Individuals of *Schiedea hookeri* appear to be long-lived, but there is no evidence of reproduction from seed under field conditions. Seedlings of *Schiedea* occurring in mesic or wet sites are apparently consumed by introduced slugs and snails, which have been observed feeding on *Schiedea membranacea*, another mesic forest species that occurs on Kauai. In contrast to mesic-forest species, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because the drier sites have fewer alien consumers. *Schiedea hookeri* differs considerably through its range in potential for clonal growth. Plants from Kaluakauila Gulch are upright, and show little potential for

clonal spread. In contrast, clonal growth has been detected for individuals at Kaluaa Gulch, where the growth form is decumbent and plants apparently root at the nodes (Service 1999; HINHP Database 2001; Weller and Sakai, unpublished data).

Historically, *Schiedea hookeri* was known from the Waianae Mountains of Oahu and from a single fragmentary collection from Haleakala on Maui that may represent *Schiedea menziesii* rather than *Schiedea hookeri*. Currently, this species is known from 17 populations on Oahu containing between 328 and 378 individuals in East Makaleha, Makaha-Waianae Kai Ridge, Kaluakauila Gulch, between Kalaulula and Kanewai Streams, Kaluaa Gulch, north of Puu Ku Makalii, Waianae Kai, Makua-Makaha Ridge, between Kolekole Pass and Puu Hapapa, southwest of Puu Kaua, Palikea Gulch, Makaha, Kamaileunu Ridge, and Kahanahaiki on Federal, State, city, county, and private lands (HINHP Database 2001; GDSI 2001; EDA Database 2001; Service 1999).

*Schiedea hookeri* on Oahu is usually found on slopes, cliffs and cliff bases, rock walls, and ledges in diverse mesic or dry lowland forest, often with *Metrosideros polymorpha*, *Diospyros sandwicensis*, or *Diospyros hillebrandii* dominant, and at elevations between 208 and 978 m (682 and 3,208 ft). Associated plants species include *Carex wahuensis*, *Psydrax odorata*, *Acacia koa*, *Bidens torta*, *Alyxia oliviformis*, *Pouteria sandwicensis*, *Hibiscus* sp., *Charpentiera tomentosa*, *Styphelia tameiameia*, *Sida fallax*, *Pisonia sandwicensis*, *Lipochaeta tenuis*, *Stenogyne* sp., *Antidesma pulvinatum*, *Elaeocarpus bifidus*, *Dodonaea viscosa*, *Artemisia australis*, *Carex meyenii*, or *Eragrostis grandis* (Service 1999).

The primary threats to *Schiedea hookeri* on Oahu are habitat degradation and/or destruction by feral goats and pigs; competition with the alien plants species *Schinus terebinthifolius*, *Kalanchoe pinnata*, *Blechnum occidentale*, *Passiflora suberosa*, *Clidemia hirta*, *Heliocarpus popayanensis*, *Psidium cattleianum*, *Ageratina riparia*, *Thelypteris parasitica*, *Toona ciliata*, *Melia azedarach*, *Grevillea robusta*, *Aleurites moluccana*, *Syzygium cumini*, *Panicum maximum*, *Hyptis pectinata*, *Lantana camara*, *Ageratina adenophora*, *Adiantum hispidulum*, *Melinis minutiflora*, *Pimenta dioica*, *Psidium guajava*, and *Cordyline fruticosa*; and predation by introduced slugs and snails. The Kaluakauila Gulch population is also potentially threatened by fire and military activities (Service 1999).

#### *Schiedea nuttallii* (NCN)

*Schiedea nuttallii*, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, smaller leaves, smaller flowers, and smaller seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii*. Based on field and greenhouse observations, it is hermaphroditic (flowers contain both sexes). Plants located close to the Makua rim on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless pollinated, suggesting that this species requires insects for pollination. Seedlings of *Schiedea* occurring in mesic or wet sites are apparently consumed by introduced slugs and snails. These have been observed feeding on *Schiedea membranacea*, another mesic forest species occurring on Kauai. In contrast to mesic forest species, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because there are fewer alien predators in drier sites. Fruits and flowers are abundant in the wet season but can be found throughout the year. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically *Schiedea nuttallii* was known from scattered locations on southeastern Kauai, Oahu, Molokai, and Maui. Currently, known populations occur on Kauai, Oahu, and Molokai. On Oahu, five populations with 49 individuals are found on Pahole-Makua Ridge, Pahole-Kahanahaiki Ridge, Ekahanui Gulch Kahanahaiki Valley, and Pahole Gulch, on Federal, State, and private lands (HINHP Database 2001; GDSI 2001; EDA Database 2001; Service 1999).

*Schiedea nuttallii* on Oahu typically grows on rock walls, forested slopes, and steep walls in *Acacia koa*-*Metrosideros polymorpha* lowland mesic forest and *Metrosideros polymorpha*-*Dodonaea viscosa* forest at elevations between 436 and 1185 m (1,430 and 3,887 ft). Associated native plant species include *Alyxia oliviformis*, *Bidens torta*, *Psydrax odorata*, *Cibotium chamissoi*, *Hedyotis terminalis*, *Perrottetia sandwicensis*, *Ilex anomala*, *Coprosma* sp., *Peperomia* sp., *Machaerina* sp., *Pipturis* sp., *Antidesma*

*platyphyllum*, or the endangered *Cyanea longiflora*, (HINHP Database 2001; EDA, *in litt.*, 2001).

*Schiedea nuttallii* on Oahu is seriously threatened by competition with the alien plant species *Psidium cattleianum*, *Paspalum conjugatum*, *Clidemia hirta*, *Melinis minutiflora*, *Grevillea robusta*, and *Andropogon virginicus*; predation by the black twig borer, slugs, and snails; habitat degradation by feral pigs; and a risk of extinction from naturally occurring events (e.g., landslides) and/or reduced reproductive vigor due to the small number of individuals (Service 1999; 61 FR 53108; HINHP Database 2001).

#### *Sesbania tomentosa* (Ohai)

*Sesbania tomentosa*, a short lived perennial and a member of the pea family (Fabaceae), is typically a sprawling shrub but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon tinged with yellow, orange-red, scarlet or rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *Sesbania sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). It is no longer extant on Niihau and Lanai. On Oahu, *Sesbania tomentosa* is known from three populations of 54 to 55 wild and approximately 200 outplanted individuals on State-owned land within the Kaena Point NAR and from Keawaula on State and private lands (HINHP Database 2001; GDSI 2001; 59 FR 56333; Service 1999).

On Oahu, *Sesbania tomentosa* is found on cliff faces, broken basalt, and

sand dunes with rock outcrops in *Scaevola sericea* coastal dry shrubland and *Sporobolus virginicus* (aki aki), mixed grasslands between sea level and 152 m (499 ft) elevation. Associated plant species include *Heliotropium* sp. (ahinahina), *Jacquemontia sandwicensis*, *Myoporum sandwicense*, or *Sida fallax*, *Lipochaeta* sp., (HINHP Database 2001; Service 1999).

The primary threats to *Sesbania tomentosa* on Oahu are competition with the alien plant species *Leucana leucocephala* and *Lantana camara*; lack of adequate pollination; seed predation by rats, mice and, potentially, non-native insects; and destruction by random environmental events (e.g., fire); hikers; and motorcycles and other all terrain vehicles (59 FR 56333; Service 1999; HINHP Database 2001).

#### *Silene lanceolata* (NCN)

*Silene lanceolata*, a member of the pink family, is an upright, perennial plant with stems 15 to 50 cm (6 to 20 in) long, which are woody at the base. The narrow leaves are smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters. The flowers are white with deeply-lobed, clawed petals. The capsule opens at the top to release reddish-brown seeds. This species is distinguished from *Silene alexandri*, the only other member of the genus found on Molokai, by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.* 1999).

Currently, no life history information is available for *Silene lanceolata* (Service 1996d).

The historical range of *Silene lanceolata* includes five Hawaiian Islands Kauai, Oahu, Molokai, Lanai, and the island of Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and Hawaii. On Oahu, there are two populations with 62 individuals located in Koiahi Gulch and Waianae Kai on Federal and State lands (GDSI 2001; HINHP Database 2001; EDA Database 2001).

On Oahu, *Silene lanceolata* grows on cliff faces and ledges of gullies in dry to mesic shrubland and cliff communities at elevations of about 351 to 978 m (1,151 to 3,208 ft). Associated native plant species include *Artemisia australis*, *Dodonaea viscosa*, *Schiedea manni*, *Bidens* sp., *Carex* sp., *Osteomeles anthyllidifolia*, *Chamaesyce* sp., *Lysimachia* sp. or the endangered *Tetramolopium filiforme* (pamakani) (HINHP Database 2001).

The threats to *Silene lanceolata* on Oahu are habitat destruction by feral goats and pigs; wildfires; and competition with the alien plant species

*Ageratina riparia*, *Schinus terebinthifolius*, *Lantana camara*, *Melinis repens*, *Melinis minutiflora*, and *Erigeron karvinskianus* (HINHP Database 2001; 57 FR 46325; Service 1996d).

*Solanum sandwicense* (Popolo aiakeakua)

*Solanum sandwicense*, a member of the nightshade family (Solanaceae), is a large sprawling shrub. The younger branches are more densely hairy than older branches and the oval leaves usually have up to four lobes along the margins. This short-lived perennial species differs from others of the genus in having dense hairs on young plant parts, a greater height, and its lack of prickles (Symon 1999).

Little is known about the life history of *Solanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b).

Historically, *Solanum sandwicense* was known from both Oahu and Kauai. Currently, this species is only known from Kauai (Joan Yoshioka, TNCH, pers. comm., 2000; HINHP Database 2001; GDSI Database 2001; 65 FR 66808 59 FR 09304; Service 1995b).

*Solanum sandwicense* on Oahu was found on talus slopes and in streambeds in open, sunny areas at elevations between 131 and 1,006 m (430 and 3,300 ft). Associated plant species included *Pisonia* sp. or *Psychotria* sp. (59 FR 09304; Service 1995b; HINHP Database 2001).

The major threats to populations of *Solanum sandwicense* on Oahu were habitat degradation by feral pigs; and competition with alien the plant species *Passiflora suberosa*, *Psidium* sp., and *Schinus terebinthifolius*; fire; landslides; and a risk of extinction from naturally occurring events and reduced reproductive vigor due to the small number of existing individuals (59 FR 09304; Service 1995b; HINHP Database 2001).

#### *Spermolepis hawaiiensis* (NCN)

*Spermolepis hawaiiensis*, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native

members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically and currently, *Spermolepis hawaiiensis* is known from Kauai, Oahu, Lanai and the island of Hawaii. On Oahu, there are two known populations totaling between 110 and 910 individuals, on Makua-Keaau Ridge and near the entrance of Diamond Head on State, Federal, city, and county lands (HINHP Database 2001; GDSI 2001; EDA Database 2001).

*Spermolepis hawaiiensis* on Oahu typically grows on steep-vertical cliffs or at the base of cliffs and ridges in coastal dry cliff vegetation at elevations of 25 to 839 m (82 to 2,752 ft). Associated plant species include *Dodonaea viscosa*, *Artemisia australis*, *Bidens* sp., *Santalum ellipticum*, *Waltheria indica*, *Heteropogon contortus*, or *Doryopteris* sp. (HINHP Database 2001; EDA, *in litt.*, 2001).

The primary threats to *Spermolepis hawaiiensis* on Oahu are habitat degradation by feral goats; competition with various alien plant species such as *Melinis minutiflora*, *Lantana camara*, and grasses; and habitat destruction and extinction due to natural environmental events such as erosion, landslides, and rockslides due to natural weathering (HINHP Database 2001; 59 FR 56333; Service 1999).

#### *Tetramolopium lepidotum* ssp. *lepidotum* (NCN)

*Tetramolopium lepidotum* ssp. *lepidotum*, a member of the aster family (Asteraceae), is an erect shrub 12 to 36 cm (4.7 to 14 in) tall, branching near the ends of the stems. Leaves of this taxon are lance-shaped, wider at the leaf tip, and measure 25 to 45 mm (1.0 to 1.8 in) long and 1 to 7 mm (0.04 to 0.3 in) wide. Flower heads are arranged in groups of six to 12. The involucre is bell-shaped and less than 4 mm (0.2 in) high. Florets are either female or bisexual, with both occurring on the same plant. There are 21 to 40 white to pinkish lavender ray florets 1 to 2 mm (0.04 to 0.08 in) long on the periphery of each head. In the center of each head there are four to eleven maroon to pale salmon disk florets. The fruits are achenes, 1.6 to 2.5 mm (0.06 to 0.1 in) long and 0.5 to 0.8 mm (0.02 to 0.03 in) wide. This taxon can be distinguished from the other extant species on Oahu by its hermaphroditic (having both male and female flowers) disk flowers and its

inflorescence of six to 12 heads (Lowrey 1999).

*Tetramolopium lepidotum* ssp. *lepidotum* is a short-lived perennial that has been observed producing fruit and flowers from April through July. No further other information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (59 FR 09304; Service 1995b).

Historically, *Tetramolopium lepidotum* ssp. *lepidotum* was known from nearly the entire length of the Waianae Mountains, from Makua Valley to Cachexia Ridge, as well as from the island of Lanai. On Oahu, a total of four populations of approximately 15 individual plants are currently known from Federal, State, and private lands on Mauna Kapu, Ekahanui-Lualualei summit, Waianae Kai, and Puu Hapapa. TNCH has outplanted three individuals in a fenced enclosure within Honouliuli Preserve. These individuals have since died, yet two healthy *Tetramolopium lepidotum* ssp. *lepidotum* have sprouted near the enclosure (56 FR 55770; Lowrey 1999; Service 1998b; HINHP 2001; GDSI 2001; EDA Database 2001).

*Tetramolopium lepidotum* ssp. *lepidotum* typically grows on grassy ridge tops, slopes, or cliffs in windblown dry forests at elevations of

330 to 1,157 m (1,082 to 3,795 ft). Associated species include *Eragrostis* sp., *Carex wahuensis*, *Bidens* sp., or *Metrosideros polymorpha* (HINHP Database 2001).

The major threats to *Tetramolopium lepidotum* ssp. *lepidotum* on Oahu are competition from the alien plant species *Schinus terebinthifolius*, *Melinis minutiflora*, and *Andropogon virginicus*; habitat degradation and predation by goats and pigs; fire; and the small number of populations (Service 1998b; 56 FR 55770; HINHP Database 2001).

*Vigna o-wahuensis* (NCN)

*Vigna o-wahuensis*, a member of the pea family (Fabaceae), is a slender twining perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain seven to 15 gray to black seeds. This species differs from others in the genus by its thin

yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and Maui. Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. There are no currently known populations on Niihau or Oahu. The last collection on Oahu was made in 1938 on the Mokulua Islets and North Islet (HINHP Database 2001).

*Vigna o-wahuensis* on Oahu occurred on open dry fossil reef, climbing over shrubs and grasses on limestone deposit and on fairly steep slopes from sea level to 609 m (0 to 1,998 ft) in elevation. The associated native plant species for this plant are unknown for Oahu (HINHP Database 2001).

The threats for this species are unknown for Oahu.

A summary of populations and landownership for these 101 plant species reported from Oahu is given in Table 2.

TABLE 2.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON OAHU, AND LANDOWNERSHIP FOR 101 SPECIES REPORTED FROM OAHU

Species	Number of current populations	Landownership/jurisdiction		
		Federal	State	Private
<i>Abutilon sandwicense</i> .....	16	X <sup>26</sup>	X	X
<i>Adenophorus periens</i> .....	0			
<i>Alectryon macrococcus</i> .....	34	X <sup>126</sup>	X	X
<i>Alsinidendron obovatum</i> .....	5	X <sup>1</sup>	X	
<i>Alsinidendron trinerve</i> .....	3	X <sup>2</sup>	X	
<i>Bonamia menziesii</i> .....	16	X <sup>16</sup>	X	X
<i>Cenchrus agrimonioides</i> .....	8	X <sup>12</sup>	X	X
<i>Centaurium sebaeoides</i> .....	3		X	X
<i>Chamaesyce celastroides</i> var. <i>kaenana</i> .....	13	X <sup>1</sup>	X	
<i>Chamaesyce deppeana</i> .....	1		X	
<i>Chamaesyce herbstii</i> .....	4		X	X
<i>Chamaesyce kuwaleana</i> .....	4	X <sup>6</sup>	X	
<i>Chamaesyce rockii</i> .....	16	X <sup>238</sup>	X	X
<i>Colubrina oppositifolia</i> .....	5		X	X
<i>Ctenitis squamigera</i> .....	4	X <sup>12</sup>	X	X
<i>Cyanea acuminata</i> .....	22	X <sup>238</sup>	X	X
<i>Cyanea crispa</i> .....	11	X <sup>3</sup>	X	X
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> .....	6	X <sup>2</sup>	X	X
<i>Cyanea grimesiana</i> ssp. <i>obatae</i> .....	6		X	X
<i>Cyanea humboltiana</i> .....	8	X <sup>3,8</sup>	X	X
<i>Cyanea koolauensis</i> .....	25	X <sup>2348</sup>	X	X
<i>Cyanea longiflora</i> .....	4		X	X
<i>Cyanea pinnatifida</i> .....	0			
<i>Cyanea st.-johnii</i> .....	6	X <sup>3</sup>	X	X
<i>Cyanea superba</i> .....	1	X <sup>1</sup>	X	
<i>Cyanea truncata</i> .....	1		X	X
<i>Cyperus trachysanthos</i> .....	6	X <sup>7</sup>	X	
<i>Cyrtandra crenata</i> .....	0			
<i>Cyrtandra dentata</i> .....	8	X <sup>13</sup>	X	
<i>Cyrtandra polyantha</i> .....	1		X	X
<i>Cyrtandra subumbellata</i> .....	2	X <sup>28</sup>	X	X

TABLE 2.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON OAHU, AND LANDOWNERSHIP FOR 101 SPECIES REPORTED FROM OAHU—Continued

Species	Number of current populations	Landownership/jurisdiction		
		Federal	State	Private
<i>Cyrtandra viridiflora</i> .....	8	X <sup>3 8</sup>	X	X
<i>Delissea subcordata</i> .....	18	X <sup>1 2</sup>	X	X
<i>Diellia erecta</i> .....	1		X	X
<i>Diellia falcata</i> .....	29	X <sup>1 2 6</sup>	X	X
<i>Diellia unisora</i> .....	4		X	X
<i>Diplazium molokaiense</i> .....	0			
<i>Dubautia herbstobatae</i> .....	4	X <sup>1</sup>	X	
<i>Eragrostis fosbergii</i> .....	4	X <sup>2</sup>	X	
<i>Eugenia koolauensis</i> .....	10	X <sup>3 4</sup>	X	X
<i>Euphorbia haeleeleana</i> .....	6	X <sup>1</sup>	X	X
<i>Flueggea neowawraea</i> .....	19	X <sup>1 2 6</sup>	X	X
<i>Gardenia mannii</i> .....	31	X <sup>2 3 4 8</sup>	X	X
<i>Gouania meyenii</i> .....	3		X	X
<i>Gouania vitifolia</i> .....	2		X	X
<i>Hedyotis coriacea</i> .....	0			
<i>Hedyotis degeneri</i> .....	5	X <sup>1</sup>	X	
<i>Hedyotis parvula</i> .....	5	X <sup>1 6</sup>	X	
<i>Hesperomannia arborescens</i> .....	23	X <sup>3 4 8</sup>	X	X
<i>Hesperomannia arbuscula</i> .....	6		X	X
<i>Hibiscus brackenridgei</i> .....	6	X <sup>1 6</sup>	X	X
<i>Isodendron laurifolium</i> .....	5		X	X
<i>Isodendron longifolium</i> .....	4	X <sup>2</sup>	X	X
<i>Isodendron pyrifolium</i> .....	0			
<i>Labordia cyrtandrae</i> .....	9		X	X
<i>Lepidium arbuscula</i> .....	10	X <sup>1 2 6</sup>	X	
<i>Lipochaeta lobata</i> var. <i>leptophylla</i> .....	5	X <sup>2 6</sup>	X	
<i>Lipochaeta tenuifolia</i> .....	12	X <sup>1 2 6</sup>	X	
<i>Lobelia gaudichaudii</i> ssp. <i>koolauensis</i> .....	4	X <sup>2 3 8</sup>	X	X
<i>Lobelia monostachya</i> .....	1		X	X
<i>Lobelia niihauensis</i> .....	21	X <sup>1 2 6</sup>	X	
<i>Lobelia oahuensis</i> .....	10	X <sup>1 2 3 8</sup>	X	X
<i>Lysimachia filifolia</i> .....	1		X	
<i>Mariscus pennatifolius</i> .....	0			
<i>Marsilea villosa</i> .....	4	X <sup>6</sup>	X	X
<i>Melicope lydgatei</i> .....	4	X <sup>3</sup>	X	X
<i>Melicope pallida</i> .....	1		X	X
<i>Melicope saint-johnii</i> .....	5	X <sup>6</sup>		X
<i>Myrsine juddii</i> .....	3	X <sup>3</sup>	X	
<i>Neraudia angulata</i> .....	5	X <sup>1 2 6</sup>	X	X
<i>Nototrichium humile</i> .....	21	X <sup>1 2 6</sup>	X	X
<i>Peucedanum sandwicense</i> .....	4		X	
<i>Phlegmariurus nutans</i> .....	5	X <sup>2 3 8</sup>	X	
<i>Phyllostegia hirsuta</i> .....	23	X <sup>2 3 6 8</sup>	X	X
<i>Phyllostegia kaalaensis</i> .....	4		X	X
<i>Phyllostegia mollis</i> .....	8	X <sup>2</sup>	X	
<i>Phyllostegia parviflora</i> .....	2	X <sup>3</sup>	X	X
<i>Plantago princeps</i> .....	6	X <sup>1 2 3 6</sup>	X	X
<i>Platanthera holochila</i> .....	0			
<i>Pritchardia kaalae</i> .....	6	X <sup>1 2</sup>	X	
<i>Pteris lidgatei</i> .....	5	X <sup>2 3 8</sup>	X	X
<i>Sanicula mariversa</i> .....	4	X <sup>1 6</sup>	X	
<i>Sanicula purpurea</i> .....	4	X <sup>2 3 8</sup>	X	X
<i>Schiedea hookeri</i> .....	17	X <sup>1 2 6</sup>	X	X
<i>Schiedea kaalae</i> .....	8		X	X
<i>Schiedea kealiae</i> .....	4	X <sup>5</sup>	X	X
<i>Schiedea nuttallii</i> .....	5	X <sup>1 2</sup>	X	X
<i>Sesbania tomentosa</i> .....	3		X	X
<i>Silene lanceolata</i> .....	2	X <sup>1</sup>	X	
<i>Silene perlmanni</i> .....	0			
<i>Solanum sandwicense</i> .....	0			
<i>Spermolepis hawaiiensis</i> .....	2	X <sup>1</sup>	X	
<i>Stenogyne kanehoana</i> .....	1			X
<i>Tetramolopium filiforme</i> .....	6	X <sup>1 6</sup>	X	
<i>Tetramolopium lepidotum</i> ssp. <i>lepidotum</i> .....	4	X <sup>2 6</sup>	X	X
<i>Tetraplasandra gymnocarpa</i> .....	20	X <sup>2 3 4 8</sup>	X	X
<i>Trematalobelia singularis</i> .....	3		X	X
<i>Urera kaalae</i> .....	11	X <sup>2 6</sup>	X	X
<i>Vigna o-wahuensis</i> .....	0			
<i>Viola chamissoniana</i> ssp. <i>chamissoniana</i> .....	5	X <sup>1 2 6</sup>	X	

TABLE 2.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON OAHU, AND LANDOWNERSHIP FOR 101 SPECIES REPORTED FROM OAHU—Continued

Species	Number of current populations	Landownership/jurisdiction		
		Federal	State	Private
<i>Viola oahuensis</i> .....	9	X <sup>2 3 8</sup>	X	X

- <sup>1</sup> Makua Military Reservation.
- <sup>2</sup> Schofield Barracks Military Reservation/Schofield Barracks East Range.
- <sup>3</sup> Kawaioloa Training Area.
- <sup>4</sup> Kahuku Training Area.
- <sup>5</sup> Dillingham Military Reservation.
- <sup>6</sup> Naval Magazine Pearl Harbor Lualualei Branch and Naval Computer and Telecommunication Area Master Station Pacific Transmitting Facility at Lualualei.
- <sup>7</sup> Hawaii Army National Guard.
- <sup>8</sup> Oahu Forest National Wildlife Refuge.

**Previous Federal Action**

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Abutilon sandwicense* (as *Abutilon sandwicense* var. *sandwicense*), *Adenophorus periens*, *Alectryon macrococcus* (as *Alectryon macrococcus* var. *macrococcus* and *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hesperomannia arbuscula*, *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. “from Hawaii”), *Lipochaeta lobata* var. *leptophylla*, *Lobelia gaudichaudii* ssp. *koolauensis* (as *Lobelia gaudichaudii* var. *koolauensis*), *Lobelia niihauensis*, *Lobelia oahuensis*, *Marsilea villosa*, *Melicope lydgatei* (as *Pelea descendens* and *Pelea lydgatei*), *Melicope pallida* (as *Pelea leveillei* and *Pelea pallida*), *Melicope saint-johnii* (as *Pelea saint-johnii* var. *elongata*), *Neraudia angulata*, *Nototricium humile*, *Peucedanum sandwicense*, *Phyllostegia mollis*, *Plantago princeps* (as *Plantago princeps* var. *elata*, var. *laxifolia*, var. *princeps*), *Lipochaeta lobata* var. *leptophylla*, *Lobelia gaudichaudii* ssp. *koolauensis* (as *Lobelia gaudichaudii* var. *koolauensis*), *Lobelia niihauensis*, *Lobelia oahuensis*, *Marsilea villosa*, *Pritchardia kaalae* (as *Pritchardia*

*kaalae* var. *kaalae* and var. *minima*), *Schiedea kaalae*, *Schiedea kealiae*, *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Silene lanceolata*, *Solanum sandwicense* (as *Solanum hillebrandii* and *Solanum kauaiense*), *Tetramolopium lepidotum* ssp. *lepidotum*, *Tetraplasandra gymnocarpa* (as *Tetraplasandra gymnocarpa* var. *pupuensis*), *Urera kaalae*, *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), *Viola chamissoniana* ssp. *chamissoniana* (as *Viola chamissoniana*), and *Viola oahuensis* were considered endangered; *Diellia erecta*, *Diellia unisora*, *Huperzia nutans* (as *Lycopodium nutans*), *Lipochaeta tenuifolia*, *Lobelia monostachya* (as *Lobelia hillebrandii* var. *monostachya*), *Lysimachia filifolia*, and *Phyllostegia hirsuta* (as *Phyllostegia hirsuta* var. *hirsuta* and var. *laxior*) were considered threatened; and, *Chamaesyce deppeana* (as *Euphorbia deppeana*), *Ctenitis squamigera*, *Diplazium molokaiense*, *Eugenia koolauensis* (as *Eugenia molokaiana*), *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis cookiana*, *Hedyotis coriacea*, *Isodendron pyriformium*, *Plantago princeps* (as *Plantago princeps* var. *acaulis*, var. *denticulata*, and var. *queleniana*), *Pteris lidgatei*, and *Tetramolopium filiforme*, were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa

named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa considered to be endangered or thought to be extinct; *Diellia erecta* was also included in the 1976 document. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), February 28, 1996 (61 FR 7596). A summary of the status categories for these 101 plant species in the 1980–1996 notices of review can be found in Table 3(a). We listed the 101 species as endangered or threatened between 1991 and 1996. A summary of the listing actions can be found in Table 3(b).

TABLE 3(a).—SUMMARY OF CANDIDACY STATUS FOR 101 PLANT SPECIES FROM OAHU

Species	Federal Register notice of review			
	12/15/80	9/27/85	2/20/90	9/30/93
<i>Abutilon sandwicense</i> .....	C1	C1	C1	
<i>Adenophorus periens</i> .....	C1	C1	C1	

TABLE 3(a).—SUMMARY OF CANDIDACY STATUS FOR 101 PLANT SPECIES FROM OAHU—Continued

Species	Federal Register notice of review			
	12/15/80	9/27/85	2/20/90	9/30/93
<i>Alectryon macrococcus</i>	C1	C1	C1	
<i>Alsinidendron obovatum</i>	C1	C1	C1	
<i>Alsinidendron trinerve</i>	C1	C1	C1	
<i>Bonamia menziesii</i>	C1	C1	C1	
<i>Cenchrus agrimonioides</i>				
<i>Centaurium sebaeoides</i>			C1	
<i>Chamaesyce celastroides</i> var. <i>kaenana</i>				
<i>Chamaesyce deppeana</i>	C1	C1	C1	
<i>Chamaesyce herbstii</i>			C1	
<i>Chamaesyce kuwaleana</i>	C1	C1	C1	
<i>Chamaesyce rockii</i>	3A	3A	C1	
<i>Colubrina oppositifolia</i>				
<i>Ctenitis squamigera</i>	C1	C1	C1	
<i>Cyanea acuminata</i>				
<i>Cyanea crispa</i>	C1	C1	C1	
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i>	C1*	C1*	C1*	
<i>Cyanea grimesiana</i> ssp. <i>obatae</i>	C1	C1		C2
<i>Cyanea humboltiana</i>			C2	
<i>Cyanea koolauensis</i>	C1	C1	3C	
<i>Cyanea longiflora</i>				
<i>Cyanea pinnatifida</i>	C1	C1		
<i>Cyanea st.-johnii</i>	C1	C1	C1	
<i>Cyanea superba</i>	C1	C1	3C	
<i>Cyanea truncata</i>	C1	C1	C1	
<i>Cyperus trachysanthos</i>			C1	
<i>Cyrtandra crenata</i>				C2
<i>Cyrtandra dentata</i>	C1	C1	C1	
<i>Cyrtandra polyantha</i>			3C	
<i>Cyrtandra subumbellata</i>	C1	C1	C1	
<i>Cyrtandra viridiflora</i>	C1	C1	C2	C2
<i>Delissea subcordata</i>				C2
<i>Diellia erecta</i>	3C	3C		
<i>Diellia falcata</i>	C1	C1	C1	
<i>Diellia unisora</i>	C1	C1	C1	
<i>Diplazium molokaiense</i>	C1	C1	C1*	
<i>Dubautia herbstobatae</i>	C1*	C1*	C1	
<i>Eragrostis fosbergii</i>	C1	C1	C1	
<i>Eugenia koolauensis</i>	C1	C1	C1*	C2*
<i>Euphorbia haeleeleana</i>	C1	C1	C1	
<i>Flueggea neowawraea</i>	C1	C1	C1	
<i>Gardenia mannii</i>				
<i>Gouania meyenii</i>	3A	3A	C1	
<i>Gouania vitifolia</i>	C1*	C1*	C1*	
<i>Hedyotis coriacea</i>	3A	3A	C1	
<i>Hedyotis degeneri</i>	C1	C1	C1	
<i>Hedyotis parvula</i>	C1	C1	C1	
<i>Hesperomannia arborescens</i>	C1	C1	C1	
<i>Hesperomannia arbuscula</i>	C1	C1	C1	
<i>Hibiscus brackenridgei</i>	C1	C1	C1	
<i>Isodendron laurifolium</i>	C1	C1	C1	
<i>Isodendron longifolium</i>	C1	C1	C1	C2
<i>Isodendron pyrifolium</i>	C1	C1	C1	3C
<i>Labordia cyrtandrae</i>	C1*	C1*	3A	
<i>Lepidium arbuscula</i>			C2	C2
<i>Lipochaeta lobata</i> var. <i>leptophylla</i>		C1*	C2	C2
<i>Lipochaeta tenuifolia</i>	C1	C1	C1	
<i>Lobelia gaudichaudii</i> ssp. <i>koolauensis</i>	C1	C1	C1	
<i>Lobelia monostachya</i>	C1	C1	3B	
<i>Lobelia niihauensis</i>		C1	3A	
<i>Lobelia oahuensis</i>	C1	C1	C1	
<i>Lysimachia filifolia</i>	C1	C1	C1	
<i>Mariscus pennatifolius</i>	C2	C2	C1	
<i>Marsilea villosa</i>			C1	
<i>Melicope lydgatei</i>				C2
<i>Melicope pallida</i>		C1	C1	
<i>Melicope saint-johnii</i>	C1	C1	C1	
<i>Myrsine juddii</i>	C1	C1	C1*	
<i>Neraudia angulata</i>			C1*	
<i>Nototrichium humile</i>	C1	C1	3C	
<i>Peucedanum sandwicense</i>	C1	C1	C1	



TABLE 3(a).—SUMMARY OF CANDIDACY STATUS FOR 101 PLANT SPECIES FROM OAHU—Continued

Species	Federal Register notice of review			
	12/15/80	9/27/85	2/20/90	9/30/93
<i>Phlegmariurus nutans</i>	C1	C1	C1	
<i>Phyllostegia hirsuta</i>	C2	C2	C2	
<i>Phyllostegia kaalaensis</i>	C1	C2	3C	
<i>Phyllostegia mollis</i>				
<i>Phyllostegia parviflora</i>	C1	C1	C1	
<i>Plantago princeps</i>				
<i>Platanthera holochila</i>	C2	C2	C1	
<i>Pritchardia kaalae</i>	C1	C1	C1	C2
<i>Pteris lidgatei</i>	3C	3C		
<i>Sanicula mariveresa</i>			C1	
<i>Sanicula purpurea</i>			C1	
<i>Schiedea hookeri</i>				C2
<i>Schiedea kaalae</i>	C1	C1	C1	
<i>Schiedea kealiae</i>	3C	3C		
<i>Schiedea nuttallii</i>				C2
<i>Sesbania tomentosa</i>	C1*	C1*	C1	
<i>Silene lanceolata</i>	C1	C1	C1	
<i>Silene perlmanii</i>			C1	
<i>Solanum sandwicense</i>	C1*	C1*	C1	
<i>Spermolepis hawaiiensis</i>			C1	
<i>Stenogyne kanehoana</i>	C1	C1	C1	
<i>Tetramolopium filiforme</i>	C1	C1	C1	
<i>Tetramolopium lepidotum</i> ssp. <i>lepidotum</i>	C1	C1	C1	
<i>Tetraplasandra gymnocarpa</i>	3B	3B	C1	
<i>Trematalobelia singularis</i>			C2	C2
<i>Urera kaalae</i>	C1	C1	C1	
<i>Vigna o-wahuensis</i>	C1	C1	C1	
<i>Viola chamissoniana</i> ssp. <i>chamissoniana</i>	C1	C1	C1	
<i>Viola oahuensis</i>	C1	C1	C2	C2

**Key:**

C: Taxa for which the Service has on file sufficient information on the biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. (The 1996 Notice of Review discontinued the use of different categories of candidates (as described below; candidates were redefined as species meeting the definition of former C1 species.)

C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

C1\*: Taxa of known vulnerable status in the recent past that may already have become extinct.

C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

3B: Names that, on the basis of current taxonomic understanding (usually as represented in published revisions and monographs), do not represent distinct taxa meeting the Act's definition of "species". Such supposed entities could be reevaluated in the future on the basis of new information.

3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat. If further research or changes in habitat conditions indicate a significant decline in any of these taxa, they may be reevaluated for possible inclusion in categories 1 or 2.

**Federal Register Notices of Review:**

- 1980: 45 FR 82479
- 1985: 50 FR 39525
- 1990: 55 FR 6183
- 1993: 58 FR 51144
- 1996: 61 FR 7596

TABLE 3(b).—SUMMARY OF LISTING ACTIONS FOR 101 PLANT SPECIES FROM OAHU

Species	Federal status	Proposed rule		Final rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
<i>Abutilon sandwicense</i>	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Adenophorus periens</i>	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						01/28/02	67 FR 3939
						03/04/02	67 FR 9806
						04/05/02	67 FR 16492
<i>Alectryon macrococcus</i>	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/29/00	65 FR 83158
						01/28/02	67 FR 3939
						04/03/02	67 FR 15856
						04/05/02	67 FR 16492
<i>Alsiniidendron obovatum</i>	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Alsiniidendron trinerve</i>	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		

TABLE 3(b).—SUMMARY OF LISTING ACTIONS FOR 101 PLANT SPECIES FROM OAHU—Continued

Species	Federal status	Proposed rule		Final rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
<i>Bonamia menziesii</i> .....	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00 12/18/00 12/27/00 01/28/02 04/03/02 03/04/02	65 FR 66808 65 FR 79192 65 FR 82086 67 FR 3939 67 FR 15856 67 FR 9806
<i>Cenchrus agrimonoides</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00 04/03/02 03/04/02	65 FR 79192 67 FR 15856 67 FR 9806
<i>Centaurium sebaeoides</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00 12/18/00 12/27/00 12/29/00 01/28/02 04/03/02 03/04/02 04/05/02	65 FR 66808 65 FR 79192 65 FR 82086 65 FR 83158 67 FR 3939 67 FR 15856 67 FR 9806 67 FR 16492
<i>Chamaesyce celastroides</i> var. <i>kaenana</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Chamaesyce deppeana</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Chamaesyce herbstii</i> .....	E	10/02/95	55 FR 51398	10/10/96	61 FR 53089		
<i>Chamaesyce kuwaleana</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Chamaesyce rockii</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Colubrina oppositifolia</i> .....	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/18/00 04/03/02 05/28/02	65 FR 79192 67 FR 15856 HI PR
<i>Ctenitis squamigera</i> .....	E	06/24/93	58 FR 34231	09/26/94	59 FR 49025	12/18/00 12/27/00 01/28/02 04/03/02 03/04/02 04/05/02 05/28/02	65 FR 79192 65 FR 82086 67 FR 3939 67 FR 15856 67 FR 9806 67 FR 16492 HI PR
<i>Cyanea acuminata</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Cyanea crispa</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00 12/27/00 12/29/00 04/03/02 03/04/02 04/05/02	65 FR 79192 65 FR 82086 65 FR 83158 67 FR 15856 67 FR 9806 67 FR 16492
<i>Cyanea grimesiana</i> ssp. <i>obatae</i> .....	E	12/14/92	57 FR 59066	06/27/94	59 FR 32932		
<i>Cyanea humboltiana</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Cyanea koolauensis</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Cyanea longiflora</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Cyanea pinnatifida</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Cyanea st.-johnii</i> .....	E	10/02/95	60 FR 51389	10/10/96	61 FR 53089		
<i>Cyanea superba</i> .....	E	07/17/90	55 FR 29072	09/11/91	56 FR 46235		
<i>Cyanea truncata</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Cyperus trachysanthos</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00 01/28/02 03/04/02	65 FR 66808 67 FR 3939 67 FR 9806
<i>Cyrtandra crenata</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Cyrtandra dentata</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Cyrtandra polyantha</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Cyrtandra subumbellata</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Cyrtandra viridiflora</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Delissea subcordata</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Diellia erecta</i> .....	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00 12/29/00 01/28/02 04/03/02 03/04/02 04/05/02 05/28/02	65 FR 79192 65 FR 83158 67 FR 3939 67 FR 15856 67 FR 9806 67 FR 16492 HI PR
<i>Diellia falcata</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Diellia unisora</i> .....	E	12/14/92	57 FR 39066	06/27/94	59 FR 32932		

TABLE 3(b).—SUMMARY OF LISTING ACTIONS FOR 101 PLANT SPECIES FROM OAHU—Continued

Species	Federal status	Proposed rule		Final rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
<i>Diplazium molokaiense</i> .....	E	06/24/93	58 FR 34231	09/26/94	59 FR 49025	12/18/00 01/28/02 04/03/02 03/04/02 04/05/02	65 FR 79192 67 FR 3939 67 FR 15856 67 FR 9806 67 FR 16492
<i>Dubautia herbstobatae</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Eragrostis fosbergii</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Eugenia koolauensis</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482	04/05/02	67 FR 16492
<i>Euphorbia haeleleana</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00 01/28/02 11/07/00	65 FR 66808 67 FR 3939 65 FR 66808
<i>Flueggea neowawraea</i> .....	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00 01/28/02 04/03/02 04/05/02 05/28/02	65 FR 79192 67 FR 3939 67 FR 15856 67 FR 16492 HI PR
<i>Gardenia mannii</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Gouania meyenii</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00 01/28/02	65 FR 66808 67 FR 3939
<i>Gouania vitifolia</i> .....	E	12/14/92	57 FR 59066	06/27/94	59 FR 32932		
<i>Hedyotis coriacea</i> .....	E	05/24/91	56 FR 23772	05/15/92	56 FR 20772	12/18/00 04/03/02 05/28/02	65 FR 79192 67 FR 15856 HI PR
<i>Hedyotis degeneri</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Hedyotis parvula</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Hesperomannia arborescens</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482	12/18/00 12/29/00 04/03/02 03/04/02 04/05/02	65 FR 79192 65 FR 83158 67 FR 15856 67 FR 9806 67 FR 16492
<i>Hesperomannia arbuscula</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	12/18/00 04/03/02	65 FR 79192 67 FR 15856
<i>Hibiscus brackenridgei</i> .....	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00 12/27/00 01/28/02 04/03/02 03/04/02 04/05/02 05/28/02	65 FR 79192 65 FR 82086 67 FR 3939 67 FR 15856 67 FR 9806 67 FR 16492 HI PR
<i>Isodendron laurifolium</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00 01/28/02	65 FR 66808 67 FR 3939
<i>Isodendron longifolium</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00 01/28/02	65 FR 66808 67 FR 3939
<i>Isodendron pyrifolium</i> .....	T	12/17/92	57 FR 59951	03/04/94	59 FR 10305		
<i>Labordia cyrtandrae</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Lepidium arbuscula</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Lipochaeta lobata</i> var. <i>leptophylla</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Lipochaeta tenuifolia</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Lobelia gaudichaudii</i> ssp. <i>koolauensis</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Lobelia monostachya</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Lobelia niihauensis</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00 01/28/02	65 FR 66808 67 FR 3939
<i>Lobelia oahuensis</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Lysimachia filifolia</i> .....	E	10/30/91	56 FR 55862	02/25/94	59 FR 09304	11/07/00 01/28/02	65 FR 66808 67 FR 3939
<i>Mariscus pennatifolius</i> .....	E	09/14/93	58 FR 58012	11/10/94	59 FR 56333	12/18/00 01/28/02 04/03/02 05/14/02 05/28/02	65 FR 79192 67 FR 3939 67 FR 15856 67 FR 34522 HI PR
<i>Marsilea villosa</i> .....	E	02/15/91	56 FR 6349	06/22/92	57 FR 27863	12/29/00 04/05/02	65 FR 83158 67 FR 16492
<i>Melicope lydgatei</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Melicope pallida</i> .....	E	10/30/91	56 FR 55862	2/25/94	59 FR 09304	11/07/00 01/28/02	65 FR 66808 67 FR 3939
<i>Melicope saint-johnii</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Myrsine juddii</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Neraudia angulata</i> .....	E	9/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Nototrichium humile</i> .....	E	9/28/90	55 FR 39664	10/29/91	56 FR 55770		

TABLE 3(b).—SUMMARY OF LISTING ACTIONS FOR 101 PLANT SPECIES FROM OAHU—Continued

Species	Federal status	Proposed rule		Final rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
<i>Peucedanum sandwicense</i> .....	E	10/30/91	56 FR 55862	02/25/94	59 FR 09304	11/07/00 12/18/00 12/29/00 01/28/02 04/03/02 04/05/02	65 FR 66808 65 FR 79192 65 FR 83158 67 FR 3939 67 FR 15856 67 FR 16492
<i>Phlegmariurus nutans</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Phyllostegia hirsuta</i> .....	T	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Phyllostegia kaalaensis</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Phyllostegia mollis</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	12/18/00 04/03/02 04/05/02	65 FR 79192 67 FR 15856 67 FR 16492
<i>Phyllostegia parviflora</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108		
<i>Plantago princeps</i> .....	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00 12/18/00 01/28/02 04/03/02 04/05/02	65 FR 66808 65 FR 79192 67 FR 3939 67 FR 15856 67 FR 16492
<i>Platanthera holochila</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00 12/18/00 12/29/00 01/28/00 04/03/02 04/05/02	65 FR 66808 65 FR 79192 65 FR 83158 67 FR 3939 67 FR 15856 67 FR 16492
<i>Pritchardia kaalae</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Pteris lidgatei</i> .....	E	06/24/93	58 FR 34231	09/26/94	59 FR 49025	12/18/00 04/03/02 04/05/02	65 FR 79192 67 FR 15856 67 FR 16492
<i>Sanicula marivera</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Sanicula purpurea</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00 04/03/02	65 FR 79192 67 FR 15856
<i>Schiedea hookeri</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108		
<i>Schiedea kaalae</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Schiedea kealiae</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Schiedea nuttallii</i> .....	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00 12/29/00 04/05/02	65 FR 66808 65 FR 83158 67 FR 16492
<i>Sesbania tomentosa</i> .....	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00 12/18/00 12/29/00 01/28/02 04/03/02 03/04/02 04/05/02 05/14/02 05/28/02	65 FR 66808 65 FR 79192 65 FR 83158 67 FR 3939 67 FR 15856 67 FR 9806 67 FR 16492 67 FR 34522 HI PR
<i>Silene lanceolata</i> .....	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00 01/28/02 04/05/02 05/28/02	65 FR 83158 67 FR 3939 67 FR 16492 HI PR
<i>Silene perlmanii</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Solanum sandwicense</i> .....	E	10/30/91	56 FR 55862	02/25/94	59 FR 09304	11/07/00 01/28/02 11/07/00	65 FR 66808 67 FR 3939 65 FR 66808
<i>Spermolepis hawaiiensis</i> .....	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00 12/27/00 12/29/00 01/28/02 04/03/02 03/04/02 04/05/02 05/28/02	65 FR 79192 65 FR 82086 65 FR 83158 67 FR 3939 67 FR 15856 67 FR 9806 67 FR 16492 HI PR
<i>Stenogyne kanehoana</i> .....	E	01/23/91	56 FR 2493	05/13/92	57 FR 20592		
<i>Tetramolopium filiforme</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Tetramolopium lepidotum</i> ssp. <i>lepidotum</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Tetraplasandra gymnocarpa</i> .....	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482		
<i>Trematalobelia singularis</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
<i>Urera kaalae</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		

TABLE 3(b).—SUMMARY OF LISTING ACTIONS FOR 101 PLANT SPECIES FROM OAHU—Continued

Species	Federal status	Proposed rule		Final rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
<i>Vigna o-wahuensis</i> .....	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00 12/29/00 01/28/02 04/03/02 03/04/02 04/05/02 05/28/02	65 FR 79192 65 FR 83158 67 FR 3939 67 FR 15856 67 FR 9806 67 FR 16492 HI PR
<i>Viola chamissoniana</i> ssp. <i>chamissoniana</i> .....	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
<i>Viola oahuensis</i> .....	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		

**Key:** E = Endangered.  
T = Threatened.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary will find that critical habitat designation is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including these 101 species reported from Oahu. Among other things, the court held that, in most cases, we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated

that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the Division of Forestry and Wildlife (DOFAW), county

governments, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for 76 Kauai and Niihau plants (65 FR 66808). The prudency determinations and proposed critical habitat designations for Maui and Kahoolawe plants were published December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83157). All of these proposed rules had been sent to the **Federal Register** on or by November 30, 2000, as required by the court's order. In those proposals, we determined that critical habitat was prudent for 45

species (*Adenophorus periens*, *Alectryon macrococcus*, *Bonamia menziesii*, *Cenchrus agrimonoides*, *Centaurium sebaeoides*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Diellia erecta*, *Diplazium molokaiense*, *Eugenia koolauensis*, *Euphorbia haeleeleana*, *Flueggea neowawraea*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyriformis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Marsilea villosa*, *Melicope pallida*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Tetramolopium lepidotum* ssp. *lepidotum*, and *Vigna o-wahuensis*) that are reported from Oahu as well as on Kauai, Niihau, Maui, Kahoolawe, Lanai, or Molokai.

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. In the revised proposed rules published on January 28, 2002 (67 FR 3939), March 4, 2002 (67 FR 9806), April 3, 2002 (67 FR 15856), and April 5, 2002 (67 FR 16492), we proposed that designation of critical habitat was prudent for *Eugenia koolauensis*, *Gouania vitifolia*, *Isodendron pyriformis*, *Nototrichium humile*, *Phlegmariurus nutans*, *Phyllostegia parviflora*, *Schiedea hookeri*, and *Tetramolopium lepidotum* ssp. *lepidotum*, eight species reported from Oahu as well as Kauai, Maui, Molokai, and Lanai. The designation of critical habitat is proposed for all of these species on Oahu.

On May 14, 2002, we published the prudency determinations and proposed critical habitat designations for the Northwestern Hawaiian Islands plants (67 FR 34522) and in this issue of the **Federal Register** we are publishing the

prudency determinations and proposed critical habitat designations for the Hawaii Island plants. Publication of this proposal for plants from Oahu is consistent with the August 10, 1998, court order.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

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 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have

been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, “The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.”

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not

include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

#### A. Prudency Redeterminations

In other proposals (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3939, 67 FR 9806, 67 FR 15856, 67 FR 16492), we proposed that designation of critical habitat was prudent for 45 plants that are reported from Oahu as well as from Kauai, Niihau, Lanai, Maui, Kahoolawe, and Molokai. These 45 species are: *Adenophorus periens*, *Alectryon macrococcus*, *Bonania menziesii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Diellia erecta*, *Diplazium molokaiense*, *Eugenia koalaensis*, *Euphorbia haeleeleana*, *Flueggea neowawraea*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyriformis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Marsilea villosa*, *Melicope pallida*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Tetramolopium lepidotum* ssp. *lepidotum*, and *Vigna o-wahuensis*.

To determine whether critical habitat would be prudent for each of the 56 species for which a prudency determination has not been made previously, we analyzed the potential threats and benefits for each species in accordance with the court's order. These 56 plants were listed as endangered species under the Act between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We examined the evidence currently available for each of these species and found specific evidence of vandalism, disturbance, and/or the threat of unrestricted collection for one species of *Pritchardia*, the native palm. At the time of listing, we determined that designation of critical habitat was not prudent for *Pritchardia kaalae* because it would increase the degree of threat from vandalism or collecting, and would provide no benefit (61 FR 53108). Recently, we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, Service, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia*. Seven of these species are federally protected, including *Pritchardia kaalae*. In light of this information, we believe that designation of critical habitat would likely increase the threat from vandalism or collection to this species of *Pritchardia* on the island of Oahu. These plants are easy to identify, and they are attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). We believe that the evidence shows that these species of palm may be attractive to such collectors. The final listing rule for this species contained only general information on its distribution, but the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this species more vulnerable to incidents of vandalism or collection, and, therefore, contribute to the decline of these species and make recovery more difficult.

We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for *Pritchardia kaalae*, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats

from vandalism or collection. Given the above considerations, we propose that designation of critical habitat for *Pritchardia kaalae* is not prudent.

One species, *Cyrtandra crenata*, endemic to the island of Oahu, is no longer extant in the wild. *Cyrtandra crenata* was last collected in 1932 from Waikane Valley (HINHP Database 2001). In addition, this species is not known to be in storage or under propagation. Under these circumstances, we propose that designation of critical habitat for *Cyrtandra crenata* is not prudent because such designation would be of no benefit to this species. If this species is rediscovered, we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

We examined the evidence available for the other 54 taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 54 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include (1) triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of these 54 plant species there would be some benefit to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Thirty-nine of these species are reported from federally owned lands or lands under Federal jurisdiction (*Abutilon sandwicense*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea*

*crispa*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyrtandra dentata*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Gardenia mannii*, *Hedyotis degeneri*, *Hedyotis parvula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia oahuensis*, *Melicope lydgatei*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Phyllostegia hirsuta*, *Sanicula marivera*, *Schiedea kealiae*, *Tetramolopium filiforme*, *Tetraplasandra gymnocarpa*, *Urea kaalae*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*) (see Table 2), where most actions would be subject to section 7. While some of the species are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would be unlikely to change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements, particularly for *Cyanea pinnatifida* and *Silene perlmannii*, two species currently only in propagation. Therefore, we propose that designation of critical habitat is prudent for 54 plant species: *Abutilon sandwicense*, *Alsindendron obovatum*, *Alsindendron trinerve*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce deppeana*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea pinnatifida*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyanea truncata*, *Cyperus trachysanthos*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia falcata*, *Diellia unisora*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Flueggea neowawraea*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyrifolium*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Marsilea villosa*, *Melicope pallida*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Nototrichium humile*, *Pelea lydgatei*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia*

*Hedyotis parvula*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia oahuensis*, *Melicope lydgatei*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Sanicula marivera*, *Schiedea kaalae*, *Schiedea kealiae*, *Silene perlmannii*, *Stenogyne kanehoana*, *Tetramolopium filiforme*, *Tetraplasandra gymnocarpa*, *Trematalobelia singularis*, *Urea kaalae*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*.

#### B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Abutilon sandwicense*, *Adenophorus perieni*, *Alectryon macrococcus*, *Alsindendron obovatum*, *Alsindendron trinerve*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce deppeana*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea pinnatifida*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyanea truncata*, *Cyperus trachysanthos*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia erecta*, *Diellia falcata*, *Diellia unisora*, *Diplazium molokaiense*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Flueggea neowawraea*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyrifolium*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Marsilea villosa*, *Melicope pallida*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Nototrichium humile*, *Pelea lydgatei*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia*

*hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Sanicula marivera*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kealiae*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Silene perlmannii*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne kanehoana*, *Tetramolopium filiforme*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Tetraplasandra gymnocarpa*, *Trematalobelia singularis*, *Urea kaalae*, *Vigna o-wahuensis*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages, (e.g. vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 99 species; recent biological surveys and reports; our recovery plans for these 99 species; discussions with botanical experts; and recommendations from the Hawaii Pacific Plants Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999; J. Lau *et al.*, pers. comm., 2001).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC



in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the 99 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendation but also habitat that was not identified as essential in those recommendations.

### C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary consistent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

In previous proposals (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3939, 67 FR 9806, 67 FR 15856, 67 FR 16492), we determined that designation of critical habitat was prudent for 45 plants (*Adenophorus periens*, *Alectryon macrococcus*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Diellia erecta*, *Diplazium molokaiense*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Flueggea neowawraea*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyriformis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatififormis*, *Marsilea*

*villosa*, *Melicope pallida*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum sandwicense*, *Spermelepis hawaiiensis*, *Tetramolopium lepidotum* ssp. *lepidotum*, and *Vigna o-wahuensis*) that are reported from Oahu as well as from Kauai, Niihau, Maui, Kahoolawe, Lanai, and/or Molokai.

In this proposal, we have determined that designation of critical habitat is prudent for 54 plants (*Abutilon sandwicense*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce deppeana*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea pinnatifida*, *Cyanea st-johnii*, *Cyanea superba*, *Cyanea truncata*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia falcata*, *Diellia unisora*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Gardenia mannii*, *Hedyotis degeneri*, *Hedyotis parvula*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia oahuensis*, *Melicope lydgatei*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Sanicula mariversa*, *Schiedea kaalae*, *Schiedea kealiae*, *Silene perlmanii*, *Stenogyne kanehoana*, *Tetramolopium filiforme*, *Tetraplasandra gymnocarpa*, *Trematalobelia singularis*, *Urera kaalae*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*) reported only from Oahu.

Ten of the 99 species (*Adenophorus periens*, *Cyanea pinnatifida*, *Diplazium molokaiense*, *Hedyotis coriacea*, *Isodendron pyriformis*, *Mariscus pennatififormis*, *Platanthera holochila*, *Silene perlmanii*, *Solanum sandwicense*, and *Vigna o-wahuensis*) no longer occur on Oahu. Eight of these species (*Adenophorus periens*, *Diplazium molokaiense*, *Hedyotis coriacea*, *Isodendron pyriformis*, *Mariscus pennatififormis*, *Platanthera holochila*, *Solanum sandwicense*, and *Vigna o-wahuensis*) occur on one or more other Hawaiian Islands. *Cyanea pinnatifida* and *Silene perlmanii* are currently extant only in propagation. Based on the information available at

this time, we have identified the physical and biological features that are considered essential to the conservation of all ten species on Oahu. Therefore, we were able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Adenophorus periens*, *Cyanea pinnatifida*, *Diplazium molokaiense*, *Hedyotis coriacea*, *Isodendron pyriformis*, *Mariscus pennatififormis*, *Platanthera holochila*, *Silene perlmanii*, *Solanum sandwicense*, and *Vigna o-wahuensis*.

All areas proposed as critical habitat are within the historical range of one or more of the 99 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

As described in the discussions for each of the 99 species for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas in which the plant species are reported from, as described by the type of plant community, associated native plant species, locale information (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale provides information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the *Supplementary Information-Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on Oahu.

### D. Criteria Used To Identify Critical Habitat

Based on the comments received during the public comment periods following publication of the four proposals to designate critical habitat for Hawaiian plants on Kauai and Niihau (65 FR 66808), Maui and Kahoolawe (65 FR 79192), Lanai (65 FR 82086), and Molokai (65 FR 83158), we have reevaluated the manner in which

we delineated proposed critical habitat. In addition, we met with members of the HPPRCC, and State and Federal agencies to discuss criteria and methods to delineate critical habitat units for these Hawaiian plants.

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (e.g., population viability analysis) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used the best available information, including expert scientific opinion to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 99 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes the following components: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennials, 300 mature individuals per population for short-lived perennials, and 500 mature individuals per population for annuals. There are some specific exceptions to this general recovery goal of 8 to 10 populations for multi-island species (see discussion below on *Marsilea villosa*) and for species that are believed to be very narrowly distributed on a single island, and the proposed critical habitat designations reflect this exception for

these species. To be considered recovered, each population of a species endemic to the island of Oahu should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated, and influenced by the same small-scale events (such as landslides), and containing 100, 300, or 500 mature individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

*Marsilea villosa*, a short-lived perennial aquatic fern, was historically known from six populations on three different islands, Molokai, Oahu, and Niihau. This species is now extant only on Oahu and Molokai. Delisting objectives for this species include protection and stabilization of at least six (rather than 8 to 10) geographically distinct, self-sustaining populations (either three on Oahu and three on Molokai or three on Oahu, two on Molokai, and one on Niihau), stable or increasing population sizes, no active management needed, and self-maintenance of each population through two successive floods resulting in sexual reproduction. Delisting objectives for *Marsilea villosa* do not include a specific number of mature individuals per population because of its clonal nature (it is extremely difficult to distinguish between individuals in clonal plant species) (Service 1996c).

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis that could destroy a large percentage of the species at any one time may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995;

Luijten *et al.* 2000; Meffe and Carroll 1997; Menges 1990; Murphy *et al.* 1990; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik, range from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals. Many aspects of species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of the afore-mentioned characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 mature individuals per population for short-lived perennial species, and 500 mature individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach nevertheless

employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the whole listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1997; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1997). This basic conservation principle of redundancy applies to Hawaiian plants. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to 10 viable populations on one or more islands(s) within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as hurricanes, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat will help give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each

plant species, with the exceptions discussed above. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and non-native species introductions) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994).

In this proposal, we have defined the primary constituent elements on the basis of the habitat features of the areas in which the plants are reported from such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of one or more of the 99 plant species.

We have delineated proposed critical habitat units in the following manner:

1. We focused on designating units representative of the known current and historical geographic and elevational range of each species;
2. Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and
3. Critical habitat boundaries were delineated in such a way that areas with overlapping occupied or potentially suitable unoccupied habitat could be depicted clearly (multi-species units).

We began by creating rough models for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto a digital map of the island's elevation range and vegetation types.

The resulting shape files (delineating historic range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of potentially suitable habitat were further evaluated.

Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for full recovery would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were designated as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996).

Using the above criteria, we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data we then eliminated areas that did not contain the appropriate vegetation, associated native plant species, or features such as cultivated agriculture fields, housing developments or other areas that are unlikely to contribute to the conservation of one or more of the 99 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries. We also used watershed delineations to dissect very large proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Within the critical habitat boundaries, adverse modification under section 7 generally would occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In defining critical habitat boundaries, we made an attempt to avoid areas, such as towns and other similar lands that are unlikely to contribute to the

conservation of the 99 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, for most of these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. These areas are our best estimation of the habitat necessary to provide for the recovery of these 99 species.

#### E. Managed Lands

Currently occupied or historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 99 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections." Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain

or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and, (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; Loope 1998).

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, deer, and pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit and flower eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport affected by non-native insects, pathogens and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant

invasions altering wildfire regimes, feral ungulates vectoring weeds and disturbing vegetation and soils thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Howarth 1985; Smith 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Mack 1992; D'Antonio and Vitousek 1992; Tunison *et al.* 1992; Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999; Bruegmann *et al.* 2001).

(2) The recommendations from the HPPRCC in their 1998 report to us ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes.

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 99 species (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999), in the 1998 HPPRCC report to us (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1994, 1995a, 1995b, 1996a, 1996b, 1996c, 1996d, 1997, 1998a, 1998b, 1999). It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the

location(s) of the individual plants; feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access.

As shown in Table 2, the proposed critical habitat designations for 99 species of plants are found on Federal, State, and private lands on the island of Oahu. Information received in response to our public notices, meetings, and information in our files indicated that there is some on-going conservation management action for these plants, as noted below. However, without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

#### Federal Lands

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs 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. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current

INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

#### Lands Under U.S. Army Jurisdiction

The Army has six installations under its jurisdiction on Oahu—Dillingham Military Reservation (DMR), Kawaihoa Training Area (KLOA), Kahuku Training Area (KTA), Makua Military Reservation (MMR), Schofield Barracks Military Reservation (SBMR) and Schofield Barracks East Range (SBER). All of these lands are administered by the Army Garrison, Hawaii for various types of routine military training. The Army has written an Integrated Natural Resources Management Plan (INRMP) for all of the Oahu training areas (Army 2001b), Ecosystem Management Plan (Army 1998), an Endangered Species Management Plan (Research Corporation of Hawaii (RCUH) 1998), a Wildland Fire Management Plan (which is finalized only for MMR at this time) (Army 2000), monthly summary reports (Col. W.E. Ryan III, Army, *in litt.* 2000–2002), and annual reports on the natural resources management projects performed under the Ecosystems Management Program for all of these installations (RCUH 1998, 1999, and 2000). These documents indicate that some of the management actions identified in these plans, including their 2001 INRMP, have been implemented and have proven beneficial to populations of some species. However, current management is not sufficient to address the on-going threats to the listed plant species on these lands. In addition, there is currently no guarantee of long-term funding for management actions that are ongoing or future management actions. The Army is currently engaged in or will begin discussions with the Service to identify training-related impacts to the listed plant species at SBMR, SBER, KLOA, KTA, and DMR and develop measures that avoid, minimize and offset those impacts. However, more comprehensive management documents have not been completed at this time. Therefore, we can not, at this time, find that management on these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat.

#### Dillingham Military Reservation

Four species, *Cyperus trachysanthos*, *Hibiscus brackenridgei* ssp. *mokuleianus*, *Nototrichium humile*, and *Schiedea kealiae* are reported from the Army's Dillingham Military Reservation, though only *Schiedea kealiae* is currently known to occur on this land (Army 2001b; HINHP Database 2001). We believe this land is needed for the recovery of one or more of these four species. Currently, the Army is not implementing any management actions for these listed species at the Dillingham Military Reservation (HINHP Database 2001; Army 2001b). In addition, proposed management actions identified for *Schiedea kealiae* in the 2001 INRMP are "subject to available funding". We do not believe that appropriate conservation management strategies have been adequately funded or effectively implemented. Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for the listed plant species reported from Dillingham Military Reservation, and provides for their long-term conservation and assurances that it will be completed and implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

#### Kahuku Training Area

Ten species, *Adenophorus periens*, *Chamaesyce rockii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Eugenia koolauensis*, *Gardenia mannii*, *Hesperomannia arborescens*, *Phyllostegia hirsuta*, and *Tetraplasandra gymnocarpa*, are reported from the Army's Kahuku Training Area though only *Cyanea koolauensis*, *Eugenia koolauensis*, *Gardenia mannii*, *Hesperomannia arborescens*, and *Tetraplasandra gymnocarpa* are currently known to occur on this land (HINHP Database 2001; Army 2001b). We believe this land is needed for the recovery of one or more of these 10 species. Currently, management actions for listed plants at Kahuku Training Area consists of weed control around known populations of *Eugenia koolauensis* and collection of

propagules for propagation and eventual outplanting (Army 2001b). Proposed management actions identified for listed plant species in the 2001 INRMP are "subject to available funding". We do not believe that there are sufficient assurances that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for the listed plant species reported from Kahuku Training Area, and provides for their long-term conservation and assurances that it will be completed and implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

#### Kawailoa Training Area

Twenty-nine species, *Adenophorus periens*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea st.-johnii*, *Cyrtandra dentata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Eugenia koolauensis*, *Gardenia mannii*, *Hesperomannia arborescens*, *Labordia cyrtandrae*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia oahuensis*, *Melicope lydgatei*, *Myrsine juddii*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Sanicula purpurea*, *Tetraplasandra gymnocarpa*, and *Viola oahuensis*, are reported from the Army's Kawailoa Training Area, and 23 of the 29 plant species (*Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea st.-johnii*, *Cyrtandra dentata*, *Cyrtandra viridiflora*, *Eugenia koolauensis*, *Gardenia mannii*, *Hesperomannia arborescens*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia oahuensis*, *Melicope lydgatei*, *Myrsine juddii*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia parviflora*, *Plantago princeps*, *Pteris lydgatei*, *Sanicula purpurea*, *Tetraplasandra gymnocarpa*, and *Viola oahuensis*) are currently known to occur on this land

(HINHP Database 2001; Army 2001b). We believe this land is needed for the recovery of one or more of these 29 species. Currently, management for listed plant species at Kawailoa Training area includes monitoring to examine population health, the collection of propagules for ex-situ propagation, and the identification of threats to these populations. The populations of *Cyanea st.-johnii* and *Cyrtandra viridiflora* have been intensely monitored since 1999. The Army plans to construct a fenced enclosure around the *Cyrtandra viridiflora* population to protect the individuals from browsing by feral ungulates. *Gardenia mannii* has been actively monitored for threats and competition from exotic plants but no fences have been erected to prevent browsing from feral pigs (Army 2001b). Proposed management actions identified for listed plant species in the 2001 INRMP are "subject to available funding". We do not believe that the current management measures are sufficient to address the primary threats to these species, nor do we believe that there are appropriate assurances that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for the listed plant species reported from Kawailoa Training Area, and provides for their long-term conservation and assurances that it will be implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

#### Makua Military Reservation

Thirty-one species, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Chamaesyce celastroides* var. *keanana*, *Ctenitis squamigera*, *Cyanea superba*, *Cyrtandra dentata*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Euphorbia haeleeleana*, *Flueggea neowawraea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hibiscus brackenridgei*, *Lepidium arbuscula*, *Lipochaeta tenuifolia*, *Lobelia niihauensis*, *Lobelia oahuensis*,

*Neraudia angulata*, *Nototrichium humile*, *Plantago princeps*, *Sanicula marivera*, *Schiedea hookeri*, *Schiedea nuttallii*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium filiforme*, *Tetramolopium lepidotum* ssp. *lepidotum*, and *Viola chamissoniana* ssp. *chamissoniana*, are reported from the Army's Makua Military Reservation, and all but *Tetramolopium lepidotum* ssp. *lepidotum* are currently known to occur on this land (HINHP Database 2001; Army 2001b). We believe this land is needed for the recovery of one or more of these 31 species. Currently, management for listed plant species at Makua Military Reservation includes monitoring to examine population health, the collection of propagules for ex-situ propagation, and the identification of threats to these populations. Seeds of *Alectryon macrococcus*, *Alsinidendron obovatum*, *Cenchrus agrimonioides*, *Cyanea superba* ssp. *superba*, *Hedyotis degeneri*, *Hedyotis parvula*, *Sanicula marivera*, *Silene lanceolata*, and *Viola chamissoniana* ssp. *chamissoniana* have been collected and propagated for future reintroduction into protected habitat. Slug control has been initiated on populations of *Alsinidendron obovatum* and intensive rat control has been implemented for *Euphorbia haeleeleana*. Erosion barriers have been constructed to protect *Sanicula marivera* populations. Fenced enclosures have been constructed around populations of *Cenchrus agrimonioides*, *Cyanea superba* ssp. *superba*, *Cyrtandra dentata*, *Delissea subcordata*, and *Diellia falcata* to protect them from browsing by feral ungulates. Fenced enclosures for some species are not possible due to unexploded ordnance hazards near individual plants, for example, of *Flueggea neowawraea* (Army 2001b). While we believe that some of these species specific actions may control threats in the short term, we do not believe that these measures are sufficient to address the primary threats to all of the species reported from Makua Military Reservation at this time. The Army has completed a programmatic section 7 consultation with the Service for Makua Military Reservation. We issued a biological opinion of no jeopardy for the Army's routine training on June 23, 1999. Part of the Army's proposed action included the development and implementation of an Implementation Plan (IP) to outline detailed steps needed to stabilize the species impacted by Army training. The IP is still in the development phase and may not be completed for another year.

If the implementation plan addresses the maintenance and improvement of the essential elements for the listed plant species reported from Makua Military Reservation, and provides for their long-term conservation and assurances that it will be implemented, we will reassess the critical habitat boundaries in light of the Implementation Plan. However, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. In addition, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

#### Schofield Barracks East Range

Seventeen species, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea st.johnii*, *Cyrtandra subumbellata*, *Gardenia mannii*, *Hesperomannia arborescens*, *Isodendron laurifolium*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia oahuensis*, *Plegmariurus nutans*, *Phyllostegia hirsuta*, *Pteris lidgatei*, *Sanicula pupurea*, *Tetraplasandra gymnocarpa*, and *Viola oahuensis*, are reported from the Army's Schofield Barracks East Range, and all but *Cyanea longiflora*, *Cyanea st.johnii*, and *Lobelia oahuensis* are currently known to occur on this land (HINHP Database 2001; Army 2001b). We believe this land is needed for the recovery of one or more of these 17 species. Currently, management for listed plant species at Schofield Barracks East Range includes monitoring of some plant populations, the collection of propagules for ex-situ propagation, and the identification of threats to the rare plant populations. *Phlegmariurus nutans* is the only species at Schofield Barracks East Range that has been collected for ex-situ propagation and results have been unsuccessful (Army 2001b). Proposed management actions identified for listed plant species in the 2001 INRMP are "subject to available funding". We do not believe that the current management measures are sufficient to address the primary threats to these species, nor do we believe that there are sufficient assurances that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However,

if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for the listed plant species reported from Schofield Barracks East Range, and provides for their long-term conservation and assurances that it will be implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

#### Schofield Barracks Military Reservation

Thirty-four species, *Abutilon sandwicense*, *Alectryon macrococcus*, *Alsinidendron trinerve*, *Cenchrus agriminoides*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea superba*, *Delissea subcordata*, *Diellia falcata*, *Diplazium molokaiense*, *Eragrostis fosbergii*, *Flueggea neowawraea*, *Gardenia mannii*, *Isodendron longifolium*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Neraudia angulata*, *Nototrichium humile*, *Phyllostegia hirsuta*, *Phyllostegia mollis*, *Plantago princeps*, *Schiedea hookeri*, *Schiedea nuttalii*, *Solanum sandwicense*, *Stenogyne kanehoana*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana*, are reported from the Army's Schofield Barracks Military Reservation and 23 of the 34 plant species are currently known to occur on this land (HINHP Database 2001; Army 2001b). Eleven species, *Cenchrus agriminoides*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea superba*, *Diplazium molokaiense*, *Eragrostis fosbergii*, *Neraudia angulata*, *Nototrichium humile*, *Schiedea nuttalii*, *Solanum sandwicense*, and *Stenogyne kanehoana* are only known from historical records. We believe this land is needed for the recovery of one or more of these 34 species. Currently, management for listed plant species at Schofield Barracks Military Reservation includes rare plant surveys and the identification and monitoring of threats to the rare plant species. Propagules of *Alectryon macrococcus*, *Flueggea neowawraea*, *Gardenia mannii*, *Phyllostegia hirsuta*, *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana* have been collected and are being propagated for

outplanting into protected habitat. Propagated individuals of *Flueggea neowawraea*, and *Urera kaalae* have already been outplanted into habitat that is protected by ungulate enclosure fences and is regularly monitored for alien plant species. Monitoring for many of the rare plants at Schofield Barracks Military Reservation is restricted due to unexploded ordnance hazards (Army 2001b). Proposed management actions identified for listed plant species in the 2001 INRMP are "subject to available funding". We do not believe that the current management measures are sufficient to address the primary threats to these species, nor do we believe that there are sufficient assurances that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for the listed plant species reported from Schofield Barracks Military Reservation, and provides for their long-term conservation and assurances that it will be implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

#### Hawaii Army National Guard

One plant species, *Cyperus trachysanthos*, occurs on HIARNG lands at Diamond Head Crater (HINHP Database 2001). We conducted surveys and prepared management plans for all HIARNG lands in Hawaii, including Diamond Head Crater (Service 1998c and 2001). Current management on HIARNG lands at Diamond Head include rare plant seed collection for off-site propagation, fire control, some weed control, and some habitat restoration. However, these actions are not sufficient to address the on-going threats to this species on this land. In addition, currently there is no guarantee that appropriate conservation management strategies will be adequately funded or effectively implemented. Therefore, we cannot, at this time, find that management on these lands is adequate to preclude a proposed designation of critical habitat.

**Naval Magazine Pearl Harbor Lualualei Branch and Naval Computer and Telecommunication Area Master Station Pacific Transmitting Facility at Lualualei**

The U.S. Navy (Navy) owns or leases much of Lualualei Valley, which is operated as a naval magazine and transmitting facility. One species, *Marsilea villosa*, occurs on land at the Naval Computer and Telecommunications Area Master Station Pacific Radio Transmitting Facility at Lualualei and we believe this land is needed for the recovery of this species. Some management actions to protect and maintain the population are included in the 2001 INRMP but these actions have not been adequately funded or effectively implemented (HINHP Database 2001; Navy 2001a). Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for *Marsilea villosa*, and provides for its long-term conservation and assurances that it will be implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude this military land under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the area within critical habitat, provided the exclusion will not result in extinction of the species.

Twenty-three species, *Abutilon sandwicense*, *Alectryon macrococcus*, *Bonamia menziesii*, *Chamaesyce kuwaleana*, *Diellia falcata*, *Flueggea neowawraea*, *Hedyotis parvula*, *Lepidium arbuscula*, *Lipochaeta lobata*, *Lipochaeta tenuifolia*, *Lobelia niihauensis*, *Marsilea villosa*, *Melicope saint-johnii*, *Neraudia angulata*, *Nototrichium humile*, *Phyllostegia hirsuta*, *Plantago princeps*, *Sanicula mariversa*, *Schiedea hookeri*, *Tetramolopium filiforme*, *Tetramolopium lepidotum*, *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana*, are reported from the Naval Magazine Pearl Harbor Lualualei Branch land and we believe this land is needed for the recovery of one or more of these 23 species (HINHP Database 2001; Navy 2001b). One fenced enclosure at the Halona management area has been erected to protect *Abutilon sandwicense* from feral ungulates, and another enclosure at Puu Hapapa protects *Abutilon sandwicense*, *Bonamia menziesii*, *Flueggea*

*neowawraea*, *Lipochaeta lobata* var. *leptophylla*, and *Nototrichium humile* from browsing by feral ungulates. Other management actions include some monitoring of rare plants, surveying for rare plants and controlling some invasive plants in rare plant habitats (The Traverse Group 1988; Navy 1997, 2001a, 2001b). We do not believe that these measures are sufficient to address the primary threats to these species on this land, nor do we believe that appropriate conservation management strategies have been adequately funded or effectively implemented. Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for these plant species, and provides for their long-term conservation and assurances that it will be implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude this military land under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the area within critical habitat, provided the exclusion will not result in extinction of the species.

**Oahu Forest National Wildlife Refuge**

The Oahu Forest National Wildlife Refuge was established to protect and manage a portion of some of the best remaining native forest in the northern Koolau Mountains of Oahu. The southern portion of the refuge is owned by the Service, while the northern portion is private land leased by the Army as part of Schofield Barracks Military Reservation and included as an overlay refuge. Sixteen plant species (*Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea koolauensis*, *Cyanea humboldtiana*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Gardenia mannii*, *Hesperomannia arborescens*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia oahuensis*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Pteris lydgatei*, *Sanicula purpurea*, *Tetraplasandra gymnocarpa*, and *Viola oahuensis*) are reported from the refuge lands (HINHP Database 2001). The refuge was established in December 2000 and no management plan has been developed yet. We have included this area within the critical habitat proposal.

**State of Hawaii Lands**

The State lands on the island of Oahu include ceded and leased lands, and those that are administered by the

Department of Hawaiian Home Lands (DHHL), the Division of State Parks, and the Department of Land and Natural Resources (DLNR). Eighty-six plants are reported from State lands (*Abutilon sandwicense*, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce deppeana*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyanea truncata*, *Cyperus trachysanthos*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia erecta*, *Diellia falcata*, *Diellia unisora*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Flueggea neowawraea*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Lysimachia filifolia*, *Marsilea villosa*, *Melicope lydgatei*, *Melicope pallida*, *Myrsine juddii*, *Neraudia angulata*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia parviflora*, *Plantago princeps*, *Pteris lydgatei*, *Sanicula mariversa*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kealiae*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium filiforme*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Tetraplasandra gymnocarpa*, *Trematolobelia singularis*, *Urera kaalae*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*). DLNR lands on Oahu are made up of Forest Reserves, Game Hunting Units, and Natural Area Reserves (NAR). Within DLNR, DOFAW administers all of these lands.

Many of DLNR's programs provide beneficial effects to endangered species and their habitat. Hawaii DOFAW



management actions on Oahu include fences that have been built to exclude feral ungulates from rare plant sites, propagation and dissemination of native tree species that help restore native plant assemblages around the island, participation in a cooperative watershed management partnership with other Federal and State agencies and private land owners, and administration of programs that either directly or indirectly benefit endangered species and their habitats.

DOFAW has four fenced areas on Oahu for the protection of rare plants. An area of approximately 101 ha (250 ac) is fenced in Pahole Gulch within Pahole NAR for the protection of numerous endangered plant species and the endangered land snail *Achatinella mustelina*. DOFAW is currently seeking funding for an additional large fence within Pahole NAR in adjacent Kapuna Gulch. In addition, DOFAW has constructed three other, small rare plant exclosures for the protection of extant rare plant populations and reintroduction of propagated material (Marie Bruegmann, Service, pers. comm., 2001).

DOFAW's Natural Area Reserves System (NARS) was established in 1970 with the intent to preserve and maintain unique Hawaiian ecosystems and geological features. The island of Oahu has three NARs that encompass a total of 728 ha (1,799 ac). All three of these NARs harbor endangered species and are managed primarily to maintain the native ecosystems that support these species. Management plans have been developed for these NARs and intensive management actions that have occurred in the NARs include construction of feral ungulate exclosure fences around particularly unique plant communities and endangered species; treatment of endangered tree species for invasive alien insects, physical and chemical control of alien plant populations, rat baiting, and feral cat trapping (DLNR 1988a and b, 1990).

The other DOFAW-administered program on the island that has indirect benefits to endangered plant species is the Hawaii Forest Stewardship Program (FSP). Forest Stewardship projects are designed to be implemented over a 1-year period where private landowners are provided funds to establish forestry projects over a 4-year period and maintain these projects over the subsequent 10 years. Projects can be variable in nature and use native and non-native species. A few of these projects that have focused on native forest habitat restoration in areas that harbor endangered plant species have demonstrated success in restoring native

forest habitat suitable for the maintenance and recovery of endangered plant species. We believe that private landowners in this program have the potential to contribute to the recovery of endangered plant species. However, no FSP projects have been implemented on Oahu to date (Vickie Caraway, DOFAW, pers. comm., 2001).

Numerous efforts by the State of Hawaii on Oahu contribute to the conservation of listed plant species, including their rare plant management activities and administration of the NARs. However, these programs do not adequately address the threats to the listed plant species on their lands. In addition, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands, no updated detailed reports on management actions conducted, and no assurances that management actions will be implemented. Therefore, we cannot, at this time, find that management on these State lands is adequate to preclude a proposed designation of critical habitat.

#### Partnership (Federal-State-Private) Lands

##### Koolau Mountains Watershed Partnership

Thirty-five species (*Bonamia menziesii*, *Chamaesyce deppeana*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea st.-johnii*, *Cyanea truncata*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Diellia erecta*, *Eugenia koolauensis*, *Gardenia mannii*, *Hesperomannia arborescens*, *Isodendron longifolium*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia oahuensis*, *Lysimachia filifolia*, *Melicope lydgatei*, *Myrsine juddii*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia parviflora*, *Plantago princeps*, *Pteris lidgatei*, *Sanicula purpurea*, *Schiedea kaalae*, *Tetraplasandra gymnocarpa*, *Trematolobelia singularis*, and *Viola oahuensis*) are reported from the Koolau Mountains Watershed Management lands owned by State, Federal, and private entities on Oahu (GDSI Database 2001; HINHP Database 2001). In an effort to better protect native biological resources, landowners and other interested parties established a voluntary partnership to cooperatively manage some of the lands within the Koolau Mountains. The partnership cooperative agreement, signed in 1999,

indicates the shared interest in the joint management of threats shared by the landowners involved. The partnership is completing a natural resources management plan that will include, feral animal and alien plant control measures, collaborative research projects, and habitat protection and restoration (Craig Rowland, Service, pers. comm., 2001). Because no management plan is developed yet, management has been implemented only in small areas, and there is no long-term commitment of funding, we cannot, at this time, find that management on these lands is adequate to preclude a proposed designation of critical habitat.

##### Opaulea Watershed Protection Project

The partners in this effort are Kamehameha Schools, the Army, DOFAW, and the Service. The project, located on land owned by Kamehameha Schools in the Koolau Mountains, entails construction of an ungulate exclusion fence and removal of ungulates from within the 61 ha (150 ac) enclosure. The wet summit crest shrubland and forest within the enclosure contains four of the 99 species: *Chamaesyce rockii*, *Cyrtandra viridiflora*, *Myrsine juddii*, and *Viola oahuensis* (C. Rowland, pers. comm., 2002). Because there is no management plan and no long-term commitment of funding, we cannot, at this time, find that management on this land is adequate to preclude a proposed designation of critical habitat.

##### Waianae Mountains Feral Goat Management Group

The Waianae Mountains Feral Goat Management Group is a voluntary group composed of 12 Federal, State, and county agencies and private organizations with the mission of “\* \* \* working together cooperatively to manage feral goats for the protection of Hawaiian plants, animals, watersheds, and ecosystems.” The group has developed short-term goals and has ongoing projects regarding feral goat control in the Waianae Mountains, but has no detailed plan and no long-term funding, or jurisdiction other than on the lands of each participating agency or organization. In addition, the group is only addressing one of the many threats to endangered plants in the Waianae Mountains. Therefore, we cannot, at this time, find that management on these lands is adequate to preclude a proposed designation of critical habitat.

**Private Lands**

*Honouliuli Preserve*

The Honouliuli Preserve is a 1,494 ha (3,692 ac) preserve managed by TNCH through a long-term lease with the landowner, the Estate of James Campbell. Several rare native plant communities and endangered animals, along with 25 plant species (*Abutilon sandwicense*, *Alectryon macrococcus*, *Cenchrus agrimonioides*, *Chamaesyce herbstii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Delissea subcordata*, *Diellia falcata*, *Diellia unisora*, *Flueggea neowawraea*, *Gardenia mannii*, *Hesperomannia arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Melicope saint-johnii*, *Neraudia angulata*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Schiedea hookeri*, *Schiedea kaalae*, *Stenogyne kanehoana*, *Tetramolopium lepidotum* ssp. *lepidotum*, and *Urera kaalae*). TNCH has developed a management plan for the preserve that includes ungulate control, rodent control, weed control, fire control, and reintroduction of endangered and other rare plant species (TNCH 1997). Some of the management actions identified have been implemented and have proven beneficial to populations of some species, and a new plan is currently being developed to incorporate more rare plant management and reintroduction actions (TNCH, *in litt.* 2000; Trae Menard, TNCH, pers. comm., 2001). However, these actions do not adequately address the on-going threats to the listed plant species on this land. In addition, there is currently no guarantee of long-term funding for ongoing or future management actions.

Therefore, we cannot, at this time, find that management on these private lands is adequate to preclude a proposed designation of critical habitat.

*Ihihilauakea Preserve*

TNCH also manages the Ihihilauakea Preserve on Oahu, through a conservation agreement with the City and County of Hawaii. This preserve harbors one endangered species, *Marsilea villosa*. There is an existing management plan for the site (TNCH 1990), and a new site restoration plan is being developed that will involve turning the preserve over to a local community group for volunteer management. TNCH has conducted periodic weed control efforts at this site, but there is no long-term commitment of funds for adequate management (T. Menard, pers. comm., 2001). Therefore, for these reasons we cannot, at this time, find that management on these lands is adequate to preclude a proposed designation of critical habitat.

If we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of the 99 listed species at issue in this proposed designation, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat.

In addition, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or agreements that may promote the conservation and recovery of

endangered and threatened plant species on the island of Oahu. We support these efforts and provide technical assistance whenever possible. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.*, Habitat Conservation Plans, Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands and, if so, by what mechanism.

The proposed critical habitat units described below constitute our best assessment of the physical and biological features needed for the conservation of the 99 plant species, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we may have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court order requires us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 4.

TABLE 4.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, HONOLULU COUNTY, OAHU<sup>1</sup>.

Unit name	State/local	Private	Federal	Total
Oahu A .....	5,778 ha (14,278 ac) .....	1,901 ha (4,698 ac) ...	824 ha (2,036 ac) .....	8,503 ha (21,013 ac)
Oahu B .....	34 ha (83 ac) .....	.....	.....	34 ha (83 ac)
Oahu C .....	14 ha (35 ac) .....	.....	.....	14 ha (35 ac)
Oahu D .....	110 ha (271 ac) .....	.....	.....	110 ha (271 ac)
Oahu E .....	38 ha (94 ac) .....	.....	.....	38 ha (94 ac)
Oahu F .....	44 ha (109 ac) .....	.....	37 ha (91 ac) .....	81 ha (200 ac)
Oahu G .....	.....	.....	16 ha (40 ac) .....	16 ha (40 ac)
Oahu H .....	.....	.....	28 ha (68 ac) .....	28 ha (68 ac)
Oahu I .....	1,138 ha (2,813 ac) ...	3,056 ha (7,552 ac) ...	914 ha (2,258 ac) .....	5,109 ha (12,623 ac)
Oahu J .....	.....	.....	10 ha (25 ac) .....	10 ha (25 ac)
Oahu K .....	.....	.....	7 ha (18 ac) .....	7 ha (18 ac)
Oahu L .....	7,938 ha (19,617 ac) .....	21,170 ha (52,313 ac)	960 ha (2,371 ac) .....	30,068 ha (74,301 ac)
Oahu M .....	<1 ha (<1 ac) .....	99 ha (245 ac) .....	.....	100 ha (246 ac)
Oahu N .....	5 ha (12 ac) .....	.....	.....	5 ha (12 ac)
Oahu O .....	184 ha (455 ac) .....	247 ha (611 ac) .....	.....	431 ha (1,066 ac)
Oahu P .....	2 ha (3 ac) .....	.....	.....	2 ha (3 ac)

TABLE 4.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, HONOLULU COUNTY, OAHU<sup>1</sup>.—Continued

Unit name	State/local	Private	Federal	Total
Oahu Q .....	1 ha (3 ac) .....	.....	.....	1 ha (3 ac)
Oahu R .....	6 ha (15 ac) .....	.....	.....	6 ha (15 ac)
Oahu S .....	4 ha (12 ac) .....	.....	.....	4 ha (12 ac)
Oahu T .....	4 ha (9 ac) .....	.....	.....	4 ha (9 ac)
Oahu U .....	27 ha (67 ac) .....	.....	.....	27 ha (67 ac)
Oahu V .....	4 ha (10 ac) .....	.....	.....	4 ha (10 ac)
Oahu W .....	339 ha (839 ac) .....	<1 ha (<1 ac) .....	.....	340 ha (840 ac)
Oahu X1 .....	117 ha (290 ac) .....	.....	.....	117 ha (290 ac)
Oahu X2 .....	8 ha (21 ac) .....	.....	.....	8 ha (21 ac)
Total .....	15,797 ha (39,037 ac)	26,474 ha (65,420 ac)	2,796 ha (6,907 ac) ...	45,067 ha (111,364 ac)

<sup>1</sup> Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or differences due to rounding.

Proposed critical habitat includes habitat for 99 species under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including lands managed by the Department of Defense and the Service. Lands proposed as critical habitat have been divided into 25 units (Oahu A through Oahu X) on the island of Oahu. A brief description of each unit is presented below.

#### Descriptions of Critical Habitat Units

##### Oahu A

The proposed unit Oahu A provides occupied habitat for 58 species: *Abutilon sandwicense*, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Bonamia menzeisii*, *Cenchrus agrimonioides*, *Centaureum sebaeoides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce herbstii*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea longiflora*, *Cyanea superba*, *Cyperus trachysanthos*, *Cyrtandra dentata*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haeleeleana*, *Fluggea neowawraea*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia niihauensis*, *Melicope pallida*, *Neraudia angulata*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Plantago princeps*, *Sanicula mariversa*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kealiae*, *Schiedea nuttallii*, *Sesbania tomentosa*,

*Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium filiforme*, *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Oahu and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Alectryon macrococcus*, *Colubrina oppositifolia*, *Fluggea neowawraea*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Melicope pallida*, *Schiedea nuttallii*, and *Vigna o-wahuensis*; or 300 mature individuals per population for *Abutilon sandwicense*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Bonamia menzeisii*, *Cenchrus agrimonioides*, *Centaureum sebaeoides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce herbstii*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea longiflora*, *Cyanea superba*, *Cyperus trachysanthos*, *Cyrtandra dentata*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haeleeleana*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia niihauensis*, *Neraudia angulata*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Plantago princeps*, *Sanicula mariversa*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kealiae*, *Sesbania tomentosa*, *Silene lanceolata*, *Tetramolopium filiforme*, *Urera kaalae*, and *Viola chamissoniana* ssp.

*chamissoniana*; or 500 mature individuals per population for *Spermolepis hawaiiensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for seven species: *Diplazium molokaiense*, *Isodendron pyriforme*, *Mariscus pennatifolius*, *Solanum sandwicense*, *Stenogyne kaneohoana*, *Tetramolopium lepidotum* ssp. *lepidotum*, and *Vigna o-wahuense*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 100 mature individuals per population for *Vigna o-wahuense*, or 300 mature individuals per population for *Diplazium molokaiense*, *Isodendron pyriforme*, *Mariscus pennatifolius*, *Solanum sandwicense*, *Stenogyne kaneohoana*, and *Tetramolopium lepidotum* ssp. *lepidotum*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu A).

This unit contains a total of 8,503 ha (21,013 ac) on State (Kuaokala Game Management Area, Kaena Point Natural Area Reserve and State Park, Kaala Natural Area Reserve, Waianae Kai Forest Reserve, Makua Keauu Forest Reserve, Mokuleia Forest Reserve, and Pahole Natural Area Reserve), Federal (Makua Military Reservation, Schofield Barracks Military Reservation, and Dillingham Military Reservation), and private lands. The natural features found in this unit are Kaneana Cave, Manini Pali, Alei Pali, Kauhao Pali, Mahoe Pali, Peacock Flat, Kamaileunu

Ridge, Kaala, Kamaile Heiau summit, Kaupakuhale summit, Puu Pueo, Puu Iki, Puu Pane, Kamaohanui summit, Puu Kamaileunu, Puu Kawiwi, Puu Kepauala, Puu Keaau, Alau Gulch, Haili Gulch, Uluhulu Gulch, and Nihoa Gulch.

The following key should be used for critical habitat units Oahu A through Oahu X tables:

Key:

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.

2. Island endemic.

3. Multi-island species with current locations on other islands.

4. Multi-island species with no current locations on other islands.

5. Current locations do not necessarily represent viable populations with the required number of mature individuals.

6. Several current locations may be affected by one naturally occurring, catastrophic event.

7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.

8. Not all currently occupied habitat was determined to be essential to the recovery of the species.

9. Life history, long-lived perennial—100 mature, reproducing individuals per population.

10. Life history, short-lived perennial—300 mature, reproducing individuals per population.

11. Life history, annual—500 mature, reproducing individuals per population.

12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.

13. Species has extremely restricted, specific habitat requirements.

14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

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Notes			*Species is wide ranging, each island was probably one large, population.	*Not enough suitable habitat for 8 to 10 pops	*Not enough suitable habitat for 8 to 10 pops	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	X					
13. Restricted habitat requirements						
12. Narrow endemic.					X	
11. Annual-500/pop.						
10. Short-livedperennial-300/pop.	X			X	X	X
9. Long-lived perennial-100/pop.		X				
8. Not all occupied habitat needed	X	X				X
7. Species with variable habitats.	X	X		X	X	X
6. Several occ. vulnerable to destruction	X	X		X	X	
5. Non-viable populations.	X	X		X	X	X
4. Multi-island/no current other islands.						
3. Multi-island/current other islands.		X				X
2. Island endemic.	X			X	X	
1. 8-10 pop. guidelines	X	X *		X *	X *	X *
Species	<u>Abutilon sandwicense</u>	<u>Alectryon macrococcus</u>		<u>Alsinidendron obovatum</u>	<u>Alsinidendron trinerve</u>	<u>Bonamia menziesii</u>

Table for Oahu A

<u>Cenchrus agrimonoides</u>	X *							X											*Species is wide ranging, each island was probably one large, population.
<u>Centaurium seabacoides</u>	X *							X											*Species is wide ranging, each island was probably one large, population. **volcanic or clay soils
<u>Chamaesyce celastroides</u> var. <u>kaenana</u>	X *						X	X											*Not enough suitable habitat for 8 to 10 pops
<u>Chamaesyce herbstii</u>	X *						X	X											*Not enough suitable habitat for 8 to 10 pops
<u>Colubrina oppositifolia</u>	X *						X	X		X									*Species is wide ranging, each island was probably one large, population.
<u>Ctenitis squamigera</u>	X *						X	X											*Species is wide ranging, each island was probably one large, population.
<u>Cyanea acuminata</u>	X						X	X		X									
<u>Cyanea grimesiana</u> ssp. <u>obatae</u>	X						X	X											
<u>Cyanea longiflora</u>	X						X	X											
<u>Cyanea superba</u>	X *						X	X											*Not enough suitable habitat for 8 to 10 pops



<u>Eugenia koolauensis</u>	X *														X					*Species is wide ranging, each island was probably one large, population.
<u>Euphorbia haelealeana</u>	X *	X							X						X					*Species is wide ranging, each island was probably one large, population.
<u>Flueggea neowawraea</u>	X *	X							X						X					*Species is wide ranging, each island was probably one large, population.
<u>Gardenia mannii</u>	X *	X							X						X					*Species is wide ranging, each island was probably one large, population.
<u>Gouania meyenii</u>	X								X						X					
<u>Gouania vitifolia</u>	X *	X							X						X					*Species is wide ranging, each island was probably one large, population.
<u>Hedyotis degeneri</u>	X *	X							X						X					*Not enough suitable habitat for 8 to 10 pops **Ridge crests.
<u>Hedyotis parvula</u>	X	X							X						X					*On and at the base of cliff faces, rock outcrops, and ledges.
<u>Hesperomannia arborescens</u>	X *	X							X						X					*Species is wide ranging, each island was probably one large, population.











*Oahu B*

The proposed unit Oahu B provides occupied habitat for three species: *Bonamia menzeisii*, *Euphorbia haeleleana*, and *Nototrichium humile*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for these species throughout their known

historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for four species: *Gouania vitifolia*, *Hibiscus brackenridgei*, *Isodendrion pyrifolium*, and *Neraudia angulata*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more

additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 300 mature individuals per population throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu B).

This unit contains a total of 34 ha (83 ac) on State lands (Kuaokala Forest Reserve and Kaena Point State Park). The natural features found in this unit are the cliffs below Kuaokala Ridge.

Table for Oahu B

Species	<u>Bonamia menziesii</u>	<u>Euphorbia haelealeana</u>	<u>Gouania vitifolia</u>	<u>Hibiscus brackenridgei</u>	<u>Isodendron pyrifolium</u>	<u>Neraudia angulata</u>	<u>Nototrichium humile</u>
Notes	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	*Historical on Oahu		
14. Hybridization is possible.							
13. Restricted habitat requirements							
12. Narrow endemic.							
11. Annual-500/pop.							
10. Short-livedperennial-300/pop.	X	X	X	X	X	X	X
9. Long-lived perennial-100/pop.							
8. Not all occupied habitat needed	X					X	X
7. Species with variable habitats.	X	X	X	X	X	X	X
6. Several occ. vulnerable to destruction		X	X	X			X
5. Non-viable populations.	X	X	X	X	X *	X	X
4. Multi-island/no current other islands.							X
3. Multi-island/current other islands.	X	X	X	X	X*		
2. Island endemic.						X	
1. 8-10 pop. guidelines	X *	X *	X *	X *	X	X	X

*Oahu C*

The proposed unit Oahu C provides occupied habitat for one species: *Bonamia menzeisii*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation

on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Bonamia menzeisii*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this

species (see the discussion of conservation requirements in Section D, and in the table for Oahu C).

This unit contains a total of 14 ha (35 ac) on State lands (Kuaokala Forest Reserve and Kuaokala Game Management Area).

Table for Oahu C

Notes	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	
13. Restricted habitat requirements	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-livedperennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	X
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction	
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines	X *
Species	<u>Bonamia menziesii</u>

Oahu D

The proposed unit Oahu D provides occupied habitat for five species:

*Bonamia menzeisii*, *Euphorbia haeleleana*, *Neraudia angulata*, *Nototrichium humile*, and *Schiedea*

*hookeri*. It is proposed for designation because it contains the physical and biological features that are considered



essential for their conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for these species throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for four species: *Chamaesyce celastroides* var. *kaenana*, *Hibiscus brackenridgei*, *Isodendrion pyriformium*, and *Gouania*

*vitifolia*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 300 mature individuals per population for these species throughout their known

historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu D).

This unit contains a total of 110 ha (271 ac) on State (Kuaokala Forest Reserve and Kaena Point State Park) and Federal (Makua Military Reservation) lands. The natural features found in this unit are Kaluakauila Stream and Punapohaku Stream.

Table for Oahu D

Notes	*Species is wide ranging, each island was probably one large, population.	*Not enough suitable habitat for 8 to 10 pops	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.				
13. Restricted habitat requirements				
12. Narrow endemic.				
11. Annual-500/pop.				
10. Short-livedperennial-300/pop.	X	X	X	X
9. Long-lived perennial-100/pop.				
8. Not all occupied habitat needed	X	X		
7. Species with variable habitats.	X	X	X	X
6. Several occ. vulnerable to destruction		X	X	X
5. Non-viable populations.	X	X	X	X
4. Multi-island/no current other islands.				
3. Multi-island/current other islands.	X		X	X
2. Island endemic.		X		
1. 8-10 pop. guidelines	X *	X *	X *	X *
Species	<u>Bonamia menziesii</u>	<u>Chamaesyce celastroides</u> var. <u>kaenana</u>	<u>Euphorbia haeleleana</u>	<u>Gouania vitifolia</u>



*Oahu E*

The proposed unit Oahu E provides occupied habitat for one species: *Chamaesyce kuwaleana*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation

on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of the species (see the

discussion of conservation requirements in Section D, and in the table for Oahu E).

This unit contains a total of 38 ha (94 ac) on State land. The natural features found in this unit are Mauna Kuwale and Paheehee Ridge.

Table for Oahu E

Notes	*Not enough suitable habitat for 8 to 10 pops
14. Hybridization is possible.	
13. Restricted habitat requirements	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-livedperennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	
2. Island endemic.	X
1. 8-10 pop. guidelines	X *
Species	<u>Chamaesyce kuwaleana</u>

*Oahu F*

The proposed unit Oahu F provides occupied habitat for one species: *Chamaesyce kuwaleana*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known

historical range considered by the recovery plan to be necessary for the conservation of the species. This unit also provides unoccupied habitat for one species: *Isodendron pyrifolium*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Oahu, and provides habitat to support one or more additional populations necessary to

meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu F).

This unit contains a total of 81 ha (200 ac) on State (Waianae Kai Forest Reserve) and Federal (Lualualei Naval Magazine) lands. The natural feature found in this unit is Kauaopuu.

Table for Oahu F

Notes	*Not enough suitable habitat for 8 to 10 pops	*Historical on Oahu
14. Hybridization is possible.		
13. Restricted habitat requirements		
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-livedperennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed		
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction	X	
5. Non-viable populations.	X	X *
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		X*
2. Island endemic.	X	
1. 8-10 pop. guidelines	X *	X
Species	<u>Chamaesyce kuwaleana</u>	<u>Isodendrion pyriform</u>

*Oahu G*

The proposed unit Oahu G provides occupied habitat for two species: *Tetramolopium filiforme* and *Viola chamissoniana* ssp. *chamissoniana*. It is proposed for designation because it contains the physical and biological features that are considered essential for

their conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for these species throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements

in Section D, and in the table for Oahu G).

This unit contains a total of 16 ha (40 ac) on Federal land (Lualualei Naval Magazine and Schofield Barracks Military Reservation). The natural feature found in this unit is Puu Ku Makalii.



Table for Oahu G

Notes	*Not enough suitable habitat for 8 to 10 pops	
14. Hybridization is possible.	X	
13. Restricted habitat requirements		
12. Narrow endemic.		
11. Annual–500/pop.		
10. Short-livedperennial–300/pop.	X	X
9. Long-lived perennial–100/pop.		
8. Not all occupied habitat needed	X	X
7. Species with variable habitats.		X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		
2. Island endemic.	X	X
1. 8–10 pop. guidelines	X *	X
Species	<u>Tetramolopium filiforme</u>	<u>Viola chamissoniana</u> ssp. <u>chamissoniana</u>

*Oahu H*

The proposed unit Oahu H provides occupied habitat for one species: *Chamaesyce kuwaleana*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation

on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of the species (see the

discussion of conservation requirements in Section D, and in the table for Oahu H).

This unit contains a total of 28 ha (68 ac) on Federal land (Lualualei Naval Magazine). The natural feature found in this unit is Puu Kailio.

Table for Oahu H

Notes	*Not enough suitable habitat for 8 to 10 pops
14. Hybridization is possible.	
13. Restricted habitat requirements	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-lived perennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	
2. Island endemic.	X
1. 8-10 pop. guidelines	X *
Species	<u>Chamaesyce kuwaleana</u>

*Oahu I*

The proposed unit Oahu I provides occupied habitat for 32 species: *Abutilon sandwicense*, *Alectryon macrococcus*, *Bonamia menzeisii*, *Cenchrus agrimonioides*, *Chamaesyce herbstii*, *Cyanea grimesiana* ssp. *obatae*, *Cyrtandra dentata*, *Delissea subcordata*, *Diellia falcata*, *Diellia unisora*, *Fluggea neowawraea*, *Gardenia mannii*, *Hedyotis parvula*, *Hesperomannia arbuscula*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lobelia niihauensis*, *Melicope saint-johnii*, *Neraudia angulata*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Sanicula mariversa*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea nuttallii*, *Stenogyne kanehoana*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Alectryon macrococcus*, *Flueggea neowawraea*, *Hesperomannia arbuscula*, *Melicope saint-johnii*, and

*Schiedea nuttallii*; or 300 mature individuals per population for *Abutilon sandwicense*, *Bonamia menzeisii*, *Cenchrus agrimonioides*, *Chamaesyce herbstii*, *Cyanea grimesiana* ssp. *obatae*, *Cyrtandra dentata*, *Delissea subcordata*, *Diellia falcata*, *Diellia unisora*, *Gardenia mannii*, *Hedyotis parvula*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lobelia niihauensis*, *Neraudia angulata*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Sanicula mariversa*, *Schiedea hookeri*, *Schiedea kaalae*, *Stenogyne kanehoana*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 10 species: *Alsinidendron obovatum*, *Chamaesyce kuwaleana*, *Cyanea pinnatifida*, *Gouania meyenii*, *Hedyotis coriacea*, *Hibiscus brackenridgei*, *Isondendron pyriformium*, *Melicope pallida*, *Silene perlmanii*, and *Solanum sandwicense*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered

essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 100 mature individuals per population for *Melicope pallida*; or 300 mature individuals per population for *Alsinidendron obovatum*, *Chamaesyce kuwaleana*, *Cyanea pinnatifida*, *Gouania meyenii*, *Hedyotis coriacea*, *Hibiscus brackenridgei*, *Isondendron pyriformium*, *Silene perlmanii*, and *Solanum sandwicense*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu I).

This unit contains a total of 5,109 ha (12,623 ac) on State (Nanakuli Forest Reserve), Federal (Lualualei Naval Magazine and Schofield Barracks Military Reservation), City and County of Honolulu, and private (Honouliuli Preserve) lands. The natural features found in this unit are Pohakea Pass, Akupu, Palehua, Palikea Ridge, Maunauna summit, Palikea summit, Mauna Kapu, Puu Heleakala, Puu Kaua, Puu Hapapa, Puu Kuua, Puu Kanehoa, Puu Manawahua, Puu Poulihale, and Puu Moopuna.

Table for Oahu I

Species	Notes				
			*Species is wide ranging, each island was probably one large, population.	*Not enough suitable habitat for 8 to 10 pops	*Species is wide ranging, each island was probably one large, population.
	14. Hybridization is possible.	X			
	13. Restricted habitat requirements				
	12. Narrow endemic.				
	11. Annual-500/pop.				
	10. Short-livedperennial-300/pop.	X		X	X
	9. Long-lived perennial-100/pop.		X		
	8. Not all occupied habitat needed	X	X		X
	7. Species with variable habitats.	X	X	X	X
	6. Several occ. vulnerable to destruction	X	X	X	X
	5. Non-viable populations.	X	X	X	X
	4. Multi-island/no current other islands.				
	3. Multi-island/current other islands.		X		X
	2. Island endemic.	X		X	
	1. 8-10 pop. guidelines	X	X *	X *	X *
<u>Abutilon sandwicense</u>					
<u>Alectryon macrococcus</u>					
<u>Alsinidendron obovatum</u>					
<u>Bonamia menziesii</u>					
<u>Cenchrus agrimonioides</u>					

<u>Chamaesyce herbstii</u>	X *	X				X	X	X	X	X	X	X				X	*Not enough suitable habitat for 8 to 10 pops
<u>Chamaesyce kuwaleana</u>	X *	X				X	X	X	X	X	X	X					*Not enough suitable habitat for 8 to 10 pops
<u>Cyanea grimesiana ssp. obatae</u>	X	X				X	X	X	X	X	X	X					
<u>Cyanea pinnatifida</u>	X *	X				X	X	X	X	X	X	X					*Not enough suitable habitat for 8 to 10 pops **Extirpated in wild but genetic material available
<u>Cyrtandra dentata</u>	X	X				X	X	X	X	X	X	X				X	
<u>Delissea subcordata</u>	X	X				X	X	X	X	X	X	X					
<u>Diellia falcata</u>	X *	X				X	X	X	X	X	X	X				X	*Species is wide ranging, each island was probably one large, population.
<u>Diellia unisora</u>	X *	X				X	X	X	X	X	X	X				X	*Species is wide ranging, each island was probably one large, population.
<u>Flueggea neowawraea</u>	X *		X			X	X	X	X	X	X	X					*Species is wide ranging, each island was probably one large, population.
<u>Gardenia mannii</u>	X *	X				X	X	X	X	X	X	X				X	*Species is wide ranging, each island was probably one large, population.
<u>Gouania meyenii</u>	X		X			X	X	X	X	X	X	X					

<u>Hedyotis coriacea</u>	X									X				X*		*Historical on Oahu **Steep, rocky, slopes.
<u>Hedyotis parvula</u>	X	X				X				X				X*		*On and at the base of cliff faces, rock outcrops, and ledges.
<u>Hesperomannia arbuscula</u>	X*					X			X							*Species is wide ranging, each island was probably one large, population.
<u>Hibiscus brackenridgei</u>	X*					X			X							*Species is wide ranging, each island was probably one large, population.
<u>Isodendron pyriformium</u>	X					X*			X							*Historical on Oahu
<u>Lepidium arbuscula</u>	X	X				X			X					X*		*Exposed ridge tops and cliff faces.
<u>Lipochaeta lobata</u> var. <u>leptophylla</u>	X	X				X			X							
<u>Lobelia niuhauensis</u>	X*					X			X				X	X*		*Species is wide ranging, each island was probably one large, population. **Exposed mesic or dry cliffs and ledges.
<u>Melicope pallida</u>	X					X			X					X*		*Steep rock faces.
<u>Melicope saint-johnii</u>	X*	X				X			X				X			*Species is wide ranging, each island was probably one large, population.
<u>Neraudia angulata</u>	X	X				X			X							





*Oahu J*

The proposed unit Oahu J provides occupied habitat for one species: *Marsilea villosa*. It is proposed for designation because it contains the physical and biological features that are

considered essential for its conservation on Oahu, and provides habitat to support one or more of the 6 populations throughout its known historical range considered by the recovery plan to be necessary for the conservation of the species (see the

discussion of conservation requirements in Section D, and in the table for Oahu J).

This unit contains a total of 10 ha (25 ac) on Federal land (Lualualei Naval Magazine).

Notes	<p>*Recovery goal is 6 populations                  **Seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands.</p>
14. Hybridization is possible.	
13. Restricted habitat requirements	X* *
12. Narrow endemic.	
11. Annual-500/pop.	X
10. Short-livedperennial-300/pop.	
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	
7. Species with variable habitats.	
6. Several occ. vulnerable to destruction	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines	X* *
Species	<p><u>Marsilea villosa</u></p>

Table for Oahu J

*Oahu K*

The proposed unit Oahu K provides occupied habitat for one species: *Marsilea villosa*. It is proposed for designation because it contains the physical and biological features that are

considered essential for its conservation on Oahu, and provides habitat to support one or more of the 6 populations throughout its known historical range considered by the recovery plan to be necessary for the conservation of the species (see the

discussion of conservation requirements in Section D, and in the table for Oahu K).

This unit contains a total of 7 ha (18 ac) on Federal land (Lualualei Naval Magazine).

Table for Oahu K

Notes	<p>*Recovery goal is 6 populations.                  **Seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands.</p>
14. Hybridization is possible.	
13. Restricted habitat requirements	X* *
12. Narrow endemic.	
11. Annual-500/pop.	X
10. Short-livedperennial-300/pop.	
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	
7. Species with variable habitats.	
6. Several occ. vulnerable to destruction	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines	X* *
Species	<p><u>Marsilea villosa</u></p>

*Oahu L*

The proposed unit Oahu L provides occupied habitat for 35 species: *Bonamia menzeisii*, *Chamaesyce deppeana*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea humbotiana*, *Cyanea koolauensis*, *Cyanea st.-johnii*, *Cyanea truncata*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Diellia erecta*, *Eugenia koolauensis*, *Gardenia mannii*, *Hesperomannia arborescens*, *Isodendron longifolium*, *Labordia cyrtandrae*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lysimachia filifolia*, *Melicope lydgatei*, *Myrsine juddii*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia parviflora*, *Plantago princeps*, *Pteris lydgatei*, *Sanicula purpurea*, *Schiedea kaalae*, *Tetraplasandra gymnocarpa*, *Trematalobelia singularis*, and *Viola oahuensis*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Hesperomannia arborescens*, *Melicope lydgatei*, and *Tetraplasandra gymnocarpa*; or 300 mature individuals per population for *Bonamia menzeisii*, *Chamaesyce deppeana*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp.

*grimesiana*, *Cyanea humbotiana*, *Cyanea koolauensis*, *Cyanea st.-johnii*, *Cyanea truncata*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Diellia erecta*, *Eugenia koolauensis*, *Gardenia mannii*, *Isodendron longifolium*, *Labordia cyrtandrae*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lysimachia filifolia*, *Myrsine juddii*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia parviflora*, *Plantago princeps*, *Pteris lydgatei*, *Sanicula purpurea*, *Schiedea kaalae*, *Trematalobelia singularis*, and *Viola oahuensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 10 species: *Adenophorus periens*, *Chamaesyce celastroides* var. *kaenana*, *Cyanea longiflora*, *Cyanea superba*, *Delissea subcordata*, *Hedyotis coriacea*, *Isodendron laurifolium*, *Lobelia oahuensis*, *Platanthera holochila*, and *Solanum sandwicense*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 300 mature individuals per population for these species throughout their known

historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu L).

This unit contains a total of 30,068 ha (74,301 ac) on State (Pupukea-Paumalu Forest Reserve, Hauula Forest Reserve, Sacred Falls State Park, Kaipapau Forest Reserve, Kahana Valley State Park, Ewa Forest Reserve, Waiahole Forest Reserve, Kaneohe Forest Reserve, Keaiwa Heiau State Recreation Area, Honolulu Watershed Forest Reserve, Kuliouou Forest Reserve, and Waahila Ridge State Park), Federal (Fort Shafter, Oahu Forest National Wildlife Refuge, Schofield Barracks Military Reservation, Kawaihoa Training Area, and Kahuku Training Area), City and County of Honolulu, and private lands. The natural features found in this unit are Nuuanu Pali, Kaau Crater, Waipuhia Falls, Sacred Falls, Manoa Falls, Pauoa Flats, Waahila Ridge, Kulepiamo Ridge, Mauumae Ridge, Kaumala Ridge, Wiliwilinui Ridge, Waiakeakua Stream, Naniuapo Stream, Waaloa Stream, Luaalaea Stream, Konahuanui summit, Mount Kawela, Kainawaaunui summit, Nanaikaalaea summit, Napuumaia summit, Puu Kaaumakua, Palikea summit, Puu Kainapuaa, Puu Kamana, Puu Kapu, Puu Kawipoo, Puu Keahia Kahoe, Puu Lanihuli, Puu Lanipo, Puu Nukohe, Puu o Kona, Puu Pauao, Puu Peahinaia, Puu Pia, Puu Uau, Puu Kahuauli, Eleao summit, Ulimakoli summit, Mount Olympus, and Laulaupoe Gulch.

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Notes	*Species is wide ranging, each island was probably one large, population. **Historical on Oahu ***epiphytically on trees	*Species is wide ranging, each island was probably one large, population.	*Not enough suitable habitat for 8 to 10 pops	*Not enough suitable habitat for 8 to 10 pops
14. Hybridization is possible.				
13. Restricted habitat requirements	X* **			
12. Narrow endemic.				
11. Annual-500/pop.				
10. Short-livedperennial-300/pop.	X	X	X	X
9. Long-lived perennial-100/pop.				
8. Not all occupied habitat needed		X	X	
7. Species with variable habitats.		X	X	X
6. Several occ. vulnerable to destruction			X	X
5. Non-viable populations.	X **	X	X	X
4. Multi-island/no current other islands.				
3. Multi-island/current other islands.	X* *	X		
2. Island endemic.			X	X
1. 8-10 pop. guidelines	X *	X *	X *	X *
Species	<u>Adenophorus periens</u>	<u>Bonamia menziesii</u>	<u>Chamaesyce celastroides</u> var. <u>kaenana</u>	<u>Chamaesyce deppeana</u>

Table for Oahu L



<u>Diellia erecta</u>	X *		X						X											*Species is wide ranging, each island was probably one large, population.
<u>Eugenia koolauensis</u>	X *		X					X												*Species is wide ranging, each island was probably one large, population.
<u>Gardenia mannii</u>	X *		X					X												*Species is wide ranging, each island was probably one large, population.
<u>Hedyotis coriacea</u>	X							X*												*Historical on Oahu **Steep, rocky, slopes.
<u>Hesperomannia arborescens</u>	X *							X												*Species is wide ranging, each island was probably one large, population.
<u>Isodendron laurifolium</u>	X							X												
<u>Isodendron longifolium</u>	X							X												
<u>Labordia cyrtandrae</u>	X																			
<u>Lobelia gaudichaudii</u> ssp. <u>koolauensis</u>	X																			
<u>Lobelia monostachya</u>	X																			*Steep, sparsely vegetated cliffs in mesic shrubland.
<u>Lysimachia filifolia</u>	X							X												*Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams.







*Oahu M*

The proposed unit Oahu M provides unoccupied habitat for two species: *Centaurium sebaeoides* and *Sesbania tomentosa*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are

considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 300 mature individuals per population throughout their known historical range (see the discussion of conservation

requirements in Section D, and in the table for Oahu M).

This unit contains a total of 100 ha (246 ac) on State (Malaekahana State Recreation Area), Federal (James Campbell National Wildlife Refuge), and private lands. The natural feature found in this unit is the coastline from Kahuku Point to Makahoa Point.

Notes	*Species is wide ranging, each island was probably one large, population. **volcanic or clay soils	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.		
13. Restricted habitat requirements	X* *	
12. Narrow endemic.		
11. Annual-500/pop.	X	
10. Short-livedperennial-300/pop.		X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed		X
7. Species with variable habitats.		X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines	X* *	X* *
Species	<u>Centaurium seabacoides</u>	<u>Sesbania tomentosa</u>

Table for Oahu M

*Oahu N*

The proposed unit Oahu N provides unoccupied habitat for two species: *Centaurium sebaeoides* and *Sesbania tomentosa*. Designation of this unit is essential to the conservation of these species because it contains the physical

and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 300 mature individuals per population

throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu N).

This unit contains a total of 5 ha (12 ac) on State lands. This unit is the Mokuauia Island State Seabird Sanctuary.

Table for Oahu N

Notes	*Species is wide ranging, each island was probably one large, population. **volcanic or clay soils	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.		
13. Restricted habitat requirements	X*	
12. Narrow endemic.		
11. Annual-500/pop.	X	
10. Short-livedperennial-300/pop.		X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed		X
7. Species with variable habitats.		X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X
2. Island endemic.		
1. 8-10 pop. guidelines	X*	X*
Species	<u>Centaurium sebaeoides</u>	<u>Sesbania tomentosa</u>

*Oahu O*

The proposed unit Oahu O provides occupied habitat for three species: *Cyanea crispa*, *Cyanea truncata*, and *Schiedea kaalae*. It is proposed for designation because it contains the physical and biological features that are considered essential for their

conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for each species throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the

discussion of conservation requirements in Section D, and in the table for Oahu O).

This unit contains a total of 431 ha (1,066 ac) on State (Kahana Valley State Park) and private lands. The natural features found in this unit are Puu Manamana and Secret Valley.

Notes			
	14. Hybridization is possible.		
	13. Restricted habitat requirements		
	12. Narrow endemic.		
	11. Annual-500/pop.		
	10. Short-livedperennial-300/pop.	X	X
	9. Long-lived perennial-100/pop.		
	8. Not all occupied habitat needed	X	X
	7. Species with variable habitats.	X	X
	6. Several occ. vulnerable to destruction	X	X
	5. Non-viable populations.	X	X
	4. Multi-island/no current other islands.		
	3. Multi-island/current other islands.		
	2. Island endemic.	X	X
1. 8-10 pop. guidelines	X	X	
Species	<u>Cyanea crispa</u>	<u>Cyanea truncata</u>	<u>Schiedea kaalae</u>

Table for Oahu O

Oahu P

The proposed unit Oahu P provides occupied habitat for three species: *Bonamia menzeisii*, *Euphorbia*

*haeleeleana*, and *Nototrichium humile*. It is proposed for designation because it contains the physical and biological features that are considered essential for

their conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for



each species throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for three species: *Gouania vitifolia*, *Hibiscus brackenridgei*, and *Isodendrion pyriformium*. Designation of this unit is essential to the conservation of these

species because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 300 mature individuals per population

throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu P).

This unit contains a total of 2 ha (3 ac) on City and County of Honolulu land. This unit is Mokolii Island (Chinaman's Hat), part of Kualoa Regional Park.

Table for Oahu P

Notes	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population.	*Historical on Oahu	
14. Hybridization is possible.						
13. Restricted habitat requirements						
12. Narrow endemic.						
11. Annual-500/pop.						
10. Short-livedperennial-300/pop.	X	X	X	X	X	X
9. Long-lived perennial-100/pop.						
8. Not all occupied habitat needed	X					X
7. Species with variable habitats.	X	X	X	X	X	X
6. Several occ. vulnerable to destruction		X	X	X		X
5. Non-viable populations.	X	X	X	X	X *	X
4. Multi-island/no current other islands.						X
3. Multi-island/current other islands.	X	X	X	X	X*	
2. Island endemic.						
1. 8-10 pop. guidelines	X *	X *	X *	X *	X	X
<u>Bonamia menziesii</u>						
<u>Euphorbia haeleeleana</u>						
<u>Gouania vitifolia</u>						
<u>Hibiscus brackenridgei</u>						
<u>Isodendron pyriformum</u>						
<u>Nototrichium humile</u>						

*Oahu Q*

The proposed unit Oahu Q provides unoccupied habitat for one species: *Sesbania tomentosa*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are

considered essential for its conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for *Sesbania tomentosa* of 8 to 10 populations and 300 mature individuals per population throughout its known historical range

(see the discussion of conservation requirements in Section D, and in the table for Oahu Q).

This unit contains a total of 1 ha (3 ac) on State land. This unit is a portion of the Moku Manu State Seabird Sanctuary.

Notes	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	
13. Restricted habitat requirements	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-livedperennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	X
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines	X *
Species	<u>Sesbania tomentosa</u>

Table for Oahu Q

*Oahu R*

The proposed unit Oahu R provides unoccupied habitat for two species: *Chamaesyce kuwaleana* and *Sesbania tomentosa*. Designation of this unit is essential to the conservation of these species because it contains the physical

and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 300 mature individuals per population

throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu R).

This unit contains a total of 6 ha (15 ac) on State land. This unit is a portion of the Moku Manu State Seabird Sanctuary.

Table for Oahu R

Notes	*Not enough suitable habitat for 8 to 10 pops	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.		
13. Restricted habitat requirements		
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-livedperennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed		X
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		X
2. Island endemic.	X	
1. 8-10 pop. guidelines	X *	X *
Species	<u>Chamaesyce kuwaleana</u>	<u>Sesbania tomentosa</u>

*Oahu S*

The proposed unit Oahu S provides unoccupied habitat for two species: *Sesbania tomentosa* and *Vigna o-wahuense*. Designation of this unit is essential to the conservation of these species because it contains the physical

and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 300 mature individuals per population

throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu S).

This unit contains a total of 4 ha (12 ac) on State land. This unit is one of the Mokulua Islands State Seabird Sanctuary.

Table for Oahu S

Notes	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population. **Historical on Oahu ***Open dry fossil reef, climbing over shrubs and grasses on limestone deposit and on fairly steep slopes.
14. Hybridization is possible.		
13. Restricted habitat requirements		X* **
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-livedperennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed	X	
7. Species with variable habitats.	X	
6. Several occ. vulnerable to destruction	X	
5. Non-viable populations.	X	X**
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X* *
2. Island endemic.		
1. 8-10 pop. guidelines	X*	X*
Species	<u>Sesbania tomentosa</u>	<u>Vigna o-wahuensis</u>



*Oahu T*

The proposed unit Oahu T provides unoccupied habitat for two species: *Sesbania tomentosa* and *Vigna o-wahuense*. Designation of this unit is essential to the conservation of these species because it contains the physical

and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for each species of 8 to 10 populations and 300 mature individuals per population

throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu T).

This unit contains a total of 4 ha (9 ac) on State land. This unit is one of the Mokulua Islands State Seabird Sanctuary.

Table for Oahu T

Notes	*Species is wide ranging, each island was probably one large, population.	*Species is wide ranging, each island was probably one large, population. **Historical on Oahu ***Open dry fossil reef, climbing over shrubs and grasses on limestone deposit and on fairly steep slopes.
14. Hybridization is possible.		
13. Restricted habitat requirements		X* **
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-livedperennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed	X	
7. Species with variable habitats.	X	
6. Several occ. vulnerable to destruction	X	
5. Non-viable populations.	X	X**
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.	X	X* *
2. Island endemic.		
1. 8-10 pop. guidelines	X*	X*
Species	<u>Sesbania tomentosa</u>	<u>Vigna o-wahuensis</u>

*Oahu U*

The proposed unit Oahu U provides unoccupied habitat for three species: *Chamaesyce kuwaleana*, *Sesbania tomentosa*, and *Vigna o-wahuense*. Designation of this unit is essential to the conservation of these species because it contains the physical and

biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 100 mature individuals per population of *Vigna o-wahuense*, or 300 mature individuals per population of

*Chamaesyce kuwaleana* and *Sesbania tomentosa*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu U).

This unit contains a total of 27 ha (67 ac) on State land. This unit is the Manana Island State Seabird Sanctuary.

Table for Oahu U

Notes	*Not enough suitable habitat for 8 to 10 pops	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.		
13. Restricted habitat requirements		
12. Narrow endemic.		
11. Annual-500/pop.		
10. Short-livedperennial-300/pop.	X	X
9. Long-lived perennial-100/pop.		
8. Not all occupied habitat needed		X
7. Species with variable habitats.	X	X
6. Several occ. vulnerable to destruction	X	X
5. Non-viable populations.	X	X
4. Multi-island/no current other islands.		
3. Multi-island/current other islands.		X
2. Island endemic.	X	
1. 8-10 pop. guidelines	X *	X *
Species	<u>Chamaesyce kuwaleana</u>	<u>Sesbania tomentosa</u>

<u>Vigna o-wahuensis</u>	X	*	<p>*Species is wide ranging, each island was probably one large, population.</p> <p>**Historical on Oahu</p> <p>***Open dry fossil reef, climbing over shrubs and grasses on limestone deposit and on fairly steep slopes.</p>
	X	**	
	X	**	
	X*	*	
	X	*	

*Oahu V*

The proposed unit Oahu V provides unoccupied habitat for one species: *Sesbania tomentosa*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are

considered essential for its conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals per population throughout its known historical range (see the

discussion of conservation requirements in Section D, and in the table for Oahu V).

This unit contains a total of 4 ha (10 ac) on State land. This unit is the Kaohikaipu Island State Seabird Sanctuary.

Notes	*Species is wide ranging, each island was probably one large, population.
14. Hybridization is possible.	
13. Restricted habitat requirements	
12. Narrow endemic.	
11. Annual-500/pop.	
10. Short-livedperennial-300/pop.	X
9. Long-lived perennial-100/pop.	
8. Not all occupied habitat needed	X
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X
2. Island endemic.	
1. 8-10 pop. guidelines	X *
Species	<u>Sesbania tomentosa</u>

Table for Oahu V

*Oahu W*

The proposed unit Oahu W provides occupied habitat for two species: *Centaurium sebaeoides* and *Marsillea villosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Centaurium sebaeoides*, or one or more

of the 6 populations for *Marsilea villosa*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for one species: *Cyperus trachysanthos*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Oahu, and provides habitat to support one or more additional

populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 300 mature individuals throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu W).

This unit contains a total of 340 ha (840 ac) on private and City and County of Honolulu lands. The natural features found in this unit are portions of Koko Head, Nonoula, Ihiihilaūakea, Kuamoo Kane, and Puu Mai.



Notes			
		*Species is wide ranging, each island was probably one large, population. **wet sites (mud flats, wet clay soil, seasonal ponds, or wet cliff seeps) on coastal cliffs or talus slopes	*Recovery goal is 6 populations. **Seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands.
14. Hybridization is possible.	X *		X **
13. Restricted habitat requirements		X* *	
12. Narrow endemic.	X		
11. Annual-500/pop.	X		X
10. Short-livedperennial-300/pop.		X	
9. Long-lived perennial-100/pop.			
8. Not all occupied habitat needed			
7. Species with variable habitats.			
6. Several occ. vulnerable to destruction	X		X
5. Non-viable populations.	X	X	X
4. Multi-island/no current other islands.			
3. Multi-island/current other islands.	X	X	X
2. Island endemic.			
1. 8-10 pop. guidelines		X *	X *
Species	<u>Centaurium sebaeoides</u>	<u>Cyperus trachysanthos</u>	<u>Marsilea villosa</u>

Table for Oahu W

*Oahu X*

The proposed unit Oahu X (X1 and X2) provides occupied habitat for two species: *Cyperus trachysanthos* and *Spermolepis hawaiiensis*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Cyperus trachysanthos*, or 500 mature individuals for *Spermolepis*

*hawaiiensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for two species: *Gouania meyenii* and *Marsilea villosa*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Oahu, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these

species of 8 to 10 populations and 300 mature individuals for *Gouania meyenii*, or one or more of the 6 populations for *Marsilea villosa*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Oahu X).

This unit contains a total of 125 ha (290 ac) on State land and land leased to the Hawaii Army National Guard. This unit contains units X1 and X2. This unit is a portion of the Diamond Head State Monument and includes the Kuilei Cliffs portion of the crater.

Table for Oahu X

Notes				
	*Species is wide ranging, each island was probably one large, population. **wet sites (mud flats, wet clay soil, seasonal ponds, or wet cliff seeps) on coastal cliffs or talus slopes			*Recovery goal is 6 populations. **Seasonal wetlands in cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, and lowland grasslands.
14. Hybridization is possible.				X *
13. Restricted habitat requirements	X*		X*	*
12. Narrow endemic.				X
11. Annual-500/pop.			X	X
10. Short-livedperennial-300/pop.	X	X		
9. Long-lived perennial-100/pop.				
8. Not all occupied habitat needed				
7. Species with variable habitats.		X		
6. Several occ. vulnerable to destruction		X	X	X
5. Non-viable populations.	X	X	X	X
4. Multi-island/no current other islands.				
3. Multi-island/current other islands.	X	X	X	X
2. Island endemic.				
1. 8-10 pop. guidelines	X *	X	X *	
Species	<u>Cyperus trachysanthos</u>	<u>Gouania meyenii</u>	<u>Marsilea villosa</u>	<u>Spermolepis hawaiiensis</u>

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund,

authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the

value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on

Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into formal consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs

associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferring with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect critical habitat of one or more of the 99 plant species will require Section 7 consultation. 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 (Corps) 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 some other Federal action, including funding (e.g. from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA)), permits from the Department of Housing and Urban Development, activities funded by the Environmental Protection Agency (EPA), Department of Energy, or any other Federal agency; regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communication Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to:

overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of non-native plant species; and

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, OR 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

#### *Relationship to Habitat Conservation Plans and Other Planning Efforts*

Currently, there are no HCPs that include any of the plant species discussed in this proposal as covered species. In the event that future HCPs covering any of the discussed plant species are developed within the boundaries of designated critical habitat, we will work with applicants to encourage them to provide for protection and management of habitat areas essential to the conservation of the species. This could be accomplished by either directing development and habitat modification to nonessential

areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular areas by these plant species. If an HCP that addresses one or more of the 99 plant species as covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We intend to undertake this review when the HCP is approved, but funding and priority constraints may influence the timing of such a review.

#### *Economic and Other Relevant Impacts*

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

We will conduct an analysis of the economic impact of designating these areas as critical habitat and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n v. U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits of the critical habitat designation regardless of whether the costs are coextensive with listing, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with critical habitat designation. When completed, we will announce the availability of the revised draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and re-open the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and the public hearing, if requested, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of

critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

#### **Public Comments Solicited**

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threats to these listed species.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Oahu. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (e.g., HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these

species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for the 99 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (e.g., hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs);

(7) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(8) The effects of critical habitat designation on military lands, and how it would affect military activities, particularly military lands at Makua Military Reservation, Schofield Barracks East Range, Schofield Barracks Military Reservation, Kawaihoa Training Area, Kahuku Training Area, Dillingham Military Reservation, Naval Magazine Pearl Harbor Lualualei Branch and Naval Computer Telecommunication Area Master Station Pacific Transmitting Facility at Lualualei, Hawaii Army National Guard lands at Diamond Head; whether there will be a significant impact on military readiness or national security if we designate critical habitat on these facilities; and whether these facilities should be excluded from the designation under section 4(b)(2) of the Act.

If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850-0001.

(2) You may send comments by electronic mail (e-mail) to: [oahucrithabplants@r1.fws.gov](mailto:oahucrithabplants@r1.fws.gov). If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any

form of encryption. Please also include "Attn: RIN 1018-A124" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541-3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address under (1) above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The comment period closes on July 29, 2002. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule.

#### Public Hearing

The Act provides for a public hearing on this proposal, if requested. Requests for public hearings must be made within 45 days of the date of publication of this proposal in the **Federal Register**.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to the Service. For additional information on public hearings see the **ADDRESSES** section.

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

#### Taxonomic Changes

At the time we listed *Hibiscus brackenridgei*, *Phyllostegia parviflora*, and *Mariscus pennatifloris*, we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii*. Subsequent to the final listings for these three species, we became aware of new taxonomic treatments for these species (See Discussion of Plant Taxa). Due to the

court-ordered deadlines, we are required to publish this proposal to designate critical habitat on Oahu before we can prepare and publish a notice of taxonomic changes for these three species. We propose to publish a taxonomic change notice for these three species after we have published the final critical habitat designations on Oahu.

#### Required Determinations

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing an economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 99 plant species were listed as threatened or endangered can be found in Table 3(b). Consequently, and as needed, we conduct formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 5).

TABLE 5.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 99 PLANTS FROM OAHU

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation <sup>1</sup>
Federal Activities Potentially Affected <sup>2</sup> .	Activities conducted by the Federal Government (e.g., Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of the Interior) or that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (e.g. edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected <sup>3</sup> .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

<sup>1</sup> This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

<sup>2</sup> Activities initiated by a Federal agency.

<sup>3</sup> Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as “jeopardy” under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in areas currently unoccupied by the listed species), may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who

do not have a Federal nexus with their actions are not restricted by the designation of critical habitat.

(b) We do not expect this rule to create inconsistencies with other agencies’ actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the 99 plant species since their listing between 1991 and 1996. For the reasons discussed above, the prohibition against adverse modification of critical habitat would be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) We do not expect this proposed rule, if made final, to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement,

grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

#### Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today’s rule, we are certifying that the rule will not have a significant effect on

a substantial number of small entities. However, should our economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 99 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that

may affect *Abutilon sandwicense*, *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce deppeana*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboltiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea pinnatifida*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyanea truncata*, *Cyperus trachysanthos*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia erecta*, *Diellia falcata*, *Diellia unisora*, *Diplazium molokaiense*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haeleeleana*, *Flueggea neowawraea*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyriformis*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Marsilea villosa*, *Melicope pallida*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Nototrichium humile*, *Pelea lydgatei*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Sanicula marivera*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kealiae*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Silene perlmanii*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne kanehoana*, *Tetramolopium filiforme*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Tetraplasandra gymnocarpa*, *Trematalobelia singularis*, *Urera kaalae*, *Vigna o-wahuensis*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe

this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 99 plant species were listed (between 1991 and 1996), there have been two formal consultations, and we have conducted 23 informal consultations, in addition to consultations on Federal grants to State wildlife programs, which would not affect small entities. Two formal consultations were conducted on behalf of the Army, for review of the "Biological Assessment for Programmatic Section 7 Consultation on Routine Military Training at Makua Military Reservation, and Makua Endangered Species Mitigation Plan". Thirty-nine of the 99 species, *Alectryon macrococcus*, *Abutilon sandwicense*, *Alsinidendron obovatum*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce herbstii*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea longiflora*, *Cyanea superba*, *Cyrtandra dentata*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Euphorbia haeleeleana*, *Flueggea neowawraea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Lepidium arbuscula*, *Lipochaeta tenuifolia*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Neraudia angulata*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phyllostegia kaalaensis*, *Plantago princeps*, *Sanicula marivera*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea nuttallii*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium filiforme*, and *Viola chamissoniana* ssp. *chamissoniana*, were reported from the action area.

One informal consultation was conducted on behalf of the Army for a flood control study, who requested information on the candidate, proposed, or listed threatened or endangered species within the vicinity of the project area. One of the 99 species, *Cyanea superba* was reported historically from the project area. One informal



consultation was conducted on behalf of U.S. Air Force for the Kaena Point Tracking Station site, who requested a list of the endangered, threatened, and proposed species that occur on or in the vicinity of the site. Two of the 99 species, *Chamaesyce celastroides* var. *kaenana* and *Nototrichium humile* were reported from the vicinity of the site. One informal consultation was conducted on behalf of the Navy in regard to Lualualei Naval Magazine, who requested comments on the July 11, 1995 "Work Plan for the Implementation of Priority Conservation Measures to Protect Rare and Endangered Biological Resources at Naval Magazine Lualualei, Headquarters, Oahu, Hawaii". Six of the 99 species, *Abutilon sandwicense*, *Flueggea neowawraea*, *Hedyotis parvula*, *Lipochaeta lobata* var. *leptophylla*, *Neraudia angulata* var. *dentata*, and *Viola chamissoniana* ssp. *chamissoniana* were reported from the project area. Two informal consultations were conducted on behalf of the Army, who requested comments on the November 1995 Preliminary Draft Endangered Species Management Plan (ESMP) for the Oahu Training Areas (OTA) and review of revisions to the plan. Fifty-eight of the 99 species, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce herbstii*, *Chamaesyce rockii*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboltiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea superba*, *Cyrtandra dentata*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Flueggea neowawraea*, *Gardenia mannii*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Neraudia angulata*, *Nototrichium humile*, *Pelea lydgatei*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Plantago princeps*, *Pteris lidgatei*, *Sanicula mariversa*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kealii*, *Schiedea nuttallii*, *Silene lanceolata*, *Tetramolopium filiforme*, *Tetraplasandra gymnocarpa*, *Urera*

*kaalae*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*, were reported from the project area. Two informal consultations were conducted on behalf of the FAA, for the effects of relocation and demolition of the FAA's Diamond Head facility. One of the 99 species, *Schiedea adamantis* was reported from the project area. Two informal consultations were conducted on behalf of the Department of Transportation, who requested a list of the proposed and listed threatened and endangered species in the vicinity of the proposed corridor for the North-South Road Project and our concurrence with the project. Two of the 99 species, *Centaurium sebaeoides* and *Marsillea villosa* were reported from the project area. One informal consultation was conducted on behalf of the U.S. Coast Guard, for the effects of lowering of antenna spans at the Haiku Valley Omega Station. Two of the 99 species, *Tetraplasandra gymnocarpa* and *Trematalobelia singularis* were reported from the project area. One informal consultation was conducted on behalf of the Navy, for the effect of cattle removal on endangered plant species. Five of the 99 species, *Abutilon sandwicense*, *Bonamia menziesii*, *Flueggea neowawraea*, *Lobelia niihauensis*, and *Neraudia angulata* were reported from the vicinity of the project area. One informal consultation was conducted on behalf of the Department of Land and Natural Resources Division of State Parks, for review of the Ka Iwi shoreline project categorical exclusion document. Two of the 99 species, *Cyperus trachysanthos* and *Marsillea villosa* was reported from the project area. Two informal consultations were conducted on behalf of the Army, for review of effects of prescribed burns at Schofield Barracks West Range. Three of the 99 species, *Delissea subcordata*, *Isodendron longifolium*, and *Neraudia angulata* var. *angulata* were reported from the vicinity of the project area. One informal consultation was conducted on behalf of the Army, who requested we review the effects of insecticidal treatment on one of the 99 species, *Flueggea neowawraea*. Two informal consultations were conducted on behalf of the Hawaii Army National Guard, who requested we review the effects of training activities and road improvements on listed threatened and endangered species. Two of the 99 species, *Schiedea adamantis* and *Cyperus trachysanthos* were reported from the project area. One informal consultation was conducted on behalf of the Army, who requested we review

their "Makua Propagation and Outplanting Plans for Endangered Plants". Four of the 99 species, *Cyanea superba*, *Alsinidendron obovatum*, *Cenchrus agrimonioides*, and *Delissea subcordata* were addressed in the plan. Two informal consultations were conducted on behalf of the U.S. Department of Agriculture Animal and Plant Health Inspection Service, who requested we review their determination that establishing and monitoring transects to determine feral pig activity is categorically excluded under National Environmental Policy Act, and that radio tagging and releasing feral pigs for research in Kuaokala game management area is also categorically excluded under NEPA. Forty-eight of the 99 species, *Abutilon sandwicense*, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyrtandra dentata*, *Cyrtandra subumbellata*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Flueggea neowawraea*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arbuscula*, *Hesperomannia arborescens*, *Isodendron laurifolium*, *Isodendron longifolium*, *Lepidium arbuscula*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia niihauensis*, *Myrsine juddii*, *Neraudia angulata*, *Nototrichium humile*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Pteris lydgatei*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea nuttallii*, *Tetraplasandra gymnocarpa*, and *Viola oahuensis* were reported from the project area. One informal consultation was conducted on behalf of the Army, who requested we review the effects of fencing in the upper reaches of Opaepala drainage in Kawailoa Training Area on listed endangered or threatened species. Four of the 99 species, *Cyrtandra viridiflora*, *Chamaesyce rockii*, *Myrsine juddii*, and *Viola oahuensis*, were reported from the project area. One informal consultation was conducted on behalf of the Army, who requested we review and comment on the "redraft Biological Assessment for routine military training at Makua Military Reservation, Oahu, Hawaii". Thirty-five of the 99 species, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Bonamia menziesii*, *Cenchrus*

*agrimonioides*, *Chamaesyce herbstii*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea longiflora*, *Cyanea superba*, *Cyrtandra dentata*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Euphorbia haeleeleana*, *Flueggea neowawraea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arbuscula*, *Lepidium arbuscula*, *Lipochaeta tenuifolia*, *Lobelia niuhauensis*, *Lobelia oahuensis*, *Neraudia angulata*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phyllostegia kaalaensis*, *Plantago princeps*, *Sanicula mariversa*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea nuttallii*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium filiforme*, and *Viola chamissoniana* ssp. *chamissoniana*, were reported from the project area. One informal consultation was conducted on behalf of the Service, for review of the effects of fencing of the south Ekahanui Gulch on listed endangered or threatened species. Nine of the 99 species, *Alectryon macrococcus*, *Chamaesyce herbstii*, *Diellia falcata*, *Diellia unisora*, *Melicope saint-johnii*, *Phyllostegia kaalaensis*, *Plantago princeps*, *Schiedea kaalae*, and *Urera kaalae* were reported from the project area. One informal consultation was conducted on behalf of the Army as a reminder of the contingency placed upon the Army in the "Biological Opinion for routine military training at Makua Military Reservation, Oahu, Hawaii" that the Army would start to implement priority stabilization measures for listed endangered and threatened species within one year of the opinion. One informal consultation was conducted on behalf of the Army, who requested we review the "Draft Integrated Natural Resources Management Plan for 2002–2006 at Oahu Army Installations, Hawaii". Fifty-four of the 99 species, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce rockii*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea humboltiana*, *Cyanea koolauensis*, *Cyanea superba*, *Cyanea st.-johnii*, *Cyrtandra dentata*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia falcata*, *Dubautia herbstobatae*, *Eugenia koolauensis*, *Euphorbia haeleeleana*, *Flueggea neowawraea*, *Gardenia manni*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hibiscus brackenridgei*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia*

*niuhauensis*, *Neraudia angulata*, *Nototrichium humile*, *Pelea lydgatei*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia mollis*, *Phyllostegia parvilifera*, *Plantago princeps*, *Pteris lidgatei*, *Sanicula mariversa*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kealiae*, *Schiedea nuttallii*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium filiforme*, *Tetraplasandra gymnocarpa*, *Urera kaalae*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*, were reported from the project area. One informal consultation was conducted on behalf of the Navy, who requested we review and comment on their "Naval Computer and Telecommunications Area Master Station Pacific Integrated Natural Resources Management Plan". One of the 99 species, *Marsillea villosa* was reported from the project area. One informal consultation was conducted on behalf of the U.S. Department of Energy, for review of the effects of a proposed telecommunications radio shack at Mauna Kapu on listed endangered and threatened species. One of the 99 species, *Tetramolopium lepidotum* ssp. *lepidotum* was reported from the project area.

None of these consultations affected or concerned small entities. In 22 of the 23 informal consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. For both formal consultations, we concurred that routine military training at Makua Military Reservation, which included an in depth list of conservation measures the Army would carry out in the action area, was not likely to jeopardize listed species. None of these consultations affected or concerned small entities, and only the routine military training exercises conducted on Army training installations are ongoing. As a result, the requirement to reinstate consultation for ongoing projects will not affect a substantial number of small entities on Oahu.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. We are aware of relatively few private activities in the proposed critical habitat areas for these 99 plants that have Federal involvement, and thus, would require consultation or reinstitution of already completed consultations for on-going projects. As mentioned above, we have conducted 23 informal consultations and two formal consultations under section 7 involving many of the species none of which involved small entities. We

cannot, at this time, easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the RFA, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Oahu, approximately, 6 percent of the designations are on Federal lands, 35 percent are on State or County lands, and 59 percent are on private lands. Nearly all of the land within the critical habitat units is unsuitable for development, many land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. The majority of this land (90 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 10 percent of this land is within the State Agricultural District, and less than 1 percent is within the State Urban District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in State parks and communications and tracking facilities; ranching; road improvements; recreational use such as hiking, camping, picnicking, game hunting, fishing; botanical gardens; and, crop farming. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by Natural Resources Conservation Service. However, the Natural Resources Conservation Service restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are uncommon, and would likely affect only a small percentage of the small entities within these proposed critical habitat designations.

Lands that are within the State Urban District are located within undeveloped coastal areas and areas adjacent to Forest Reserves (State Conservation District). The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may

require permits from the Department of Housing and Urban Development, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require Federal permitting or authorization in these coastal areas. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a limited consultation history for these 99 species from Oahu, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rules and in this proposed critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D-4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Approximately 35 percent of the lands proposed as critical habitat are on State of Hawaii lands. The State of Hawaii is not a small entity. Approximately 59 percent of the lands proposed as critical habitat are on private lands. Many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private and State parcels within the proposed designation are

currently being used for recreational and agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by Natural Resources Conservation Service. These consultations would likely occur on only a subset of the total number of parcels and therefore not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the following species: *Abutilon sandwicense*, *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce deppeana*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Cyanea acuminata*, *Cyanea crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboltiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea pinnatifida*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyanea truncata*, *Cyperus trachysanthos*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Diellia erecta*, *Diellia falcata*, *Diellia unisora*, *Diplazium molokaiense*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Flueggea neowawraea*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus*

*brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyrifolium*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Lysimachia filifolia*, *Mariscus pennatifolius*, *Marsilea villosa*, *Melicope pallida*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Nototrichium humile*, *Pelea lydgatei*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Pteris lidgatei*, *Sanicula marivera*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kealiae*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Silene perlmanii*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne kanehoana*, *Tetramolopium filiforme*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Tetraplasandra gymnocarpa*, *Trematalobelia singularis*, *Urera kaalae*, *Vigna o-wahuensis*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the revised economic analysis of this rule indicate otherwise, we will revisit this determination.

#### Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. *et seq.*):

(a) We believe this rule, as proposed, will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency

ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector 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.

#### Takings

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for the 99 species from Oahu in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

#### Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 99 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because 17 of the 25 proposed critical habitat areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and

the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

#### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 99 plant species.

#### Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

#### Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951) Executive Order 13175 and 512 DM 2, we readily acknowledge our responsibility to

communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 99 plant species. Therefore, designation of critical habitat for these 99 species has not been proposed on Tribal lands.

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Office (see ADDRESSES section).

**Author(s)**

The primary authors of this notice are Michelle Stephens and Christa Russell (see ADDRESSES section).

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

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

**Proposed Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

2. In § 17.12(h) revise the entries for *Abutilon sandwicense*, *Alectryon macrococcus*, *Alsinidendron obovatum*, *Alsinidendron trinerve*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Chamaesyce celastroides* var. *kaenana*, *Chamaesyce deppeana*, *Chamaesyce herbstii*, *Chamaesyce kuwaleana*, *Chamaesyce rockii*, *Colubrina oppositifolia*, *Cyanea acuminata*, *Cyanea (-Rollandia) crispa*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea grimesiana* ssp. *obatae*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea pinnatifida*, *Cyanea st.-johnii*, *Cyanea superba*, *Cyanea truncata*, *Cyperus trachysanthos*, *Cyrtandra dentata*, *Cyrtandra polyantha*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Dubautia herbstobatae*, *Eragrostis fosbergii*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Flueggea neowawraea*, *Gardenia mannii*, *Gouania meyenii*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hedyotis degeneri*, *Hedyotis parvula*, *Hesperomannia arborescens*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Isodendron laurifolium*, *Isodendron longifolium*, *Isodendron pyrifolium*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lipochaeta tenuifolia*,

*Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Lobelia niihauensis*, *Lobelia oahuensis*, *Lysimachia filifolia*, *Mariscus pennatififormis*, *Melicope lydgatei*, *Melicope pallida*, *Melicope saint-johnii*, *Myrsine juddii*, *Neraudia angulata*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Phyllostegia mollis*, *Phyllostegia parviflora*, *Plantago princeps*, *Platanthera holochila*, *Sanicula mariversa*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kaalae*, *Schiedea kealiae*, *Schiedea nuttallii*, *Sesbania tomentosa*, *Silene lanceolata*, *Silene perlmanii*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne kanehoana*, *Tetramolopium filiforme*, *Tetramolopium lepidotum* ssp. *lepidotum*, *Tetraplasandra gymnocarpa*, *Trematalobelia singularis*, *Urera kaalae*, *Vigna o-wahuensis*, *Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis* under “FLOWERING PLANTS” and *Adenophorus periens*, *Ctenitis squamigera*, *Diellia erecta*, *Diellia falcata*, *Diellia unisora*, *Diplazium molokaiense*, *Lycopodium (-Phlegmariurus) nutans*, *Marsilea villosa*, and *Pteris lidgatei*, under “FERNS AND ALLIES” to read as follows:

**§ 17.12 Endangered and threatened plants.**  
 \* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Abutilon sandwicense</i> .	* No common name ..	* U.S.A. (HI) .....	* Malvaceae .....	* E	* 448	* 17.96(a)	* NA
* <i>Alectryon macrococcus</i> .	* Mahoe .....	* U.S.A. (HI) .....	* Sapindaceae .....	* E	* 467	* 17.96(a)	* NA
* <i>Alsinidendron obovatum</i> .	* No common name ..	* U.S.A. (HI) .....	* Caryophyllaceae .....	* E	* 448	* 17.96(a)	* NA
* <i>Alsinidendron trinerve</i> .	* No common name ..	* U.S.A. (HI) .....	* Caryophyllaceae .....	* E	* 448	* 17.96(a)	* NA
* <i>Bonamia menziesii</i> ..	* No common name ..	* U.S.A. (HI) .....	* Convolvulaceae .....	* E	* 559	* 17.96(a)	* NA
* <i>Cenchrus agrimonioides</i> .	* Kamanomano .....	* U.S.A. (HI) .....	* Poaceae .....	* E	* 592	* 17.96(a)	* NA
* <i>Centaurium sebaeoides</i> .	* Awiwi .....	* U.S.A. (HI) .....	* Gentianaceae .....	* E	* 448	* 17.96(a)	* NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Chamaesyce celastroides</i> var. <i>kaenana</i> .	Akoko	U.S.A. (HI)	Euphorbiaceae	E	448	17.96(a)	NA
<i>Chamaesyce deppeana</i> .	Akoko	U.S.A. (HI)	Euphorbiaceae	E	536	17.96(a)	NA
<i>Chamaesyce herbstii</i>	Akoko	U.S.A. (HI)	Euphorbiaceae	E	591	1796(a)	NA
<i>Chamaesyce kuwaleana</i> .	Akoko	U.S.A. (HI)	Euphorbiaceae	E	448	17.96(a)	NA
<i>Chamaesyce rockii</i>	Akoko	U.S.A. (HI)	Euphorbiaceae	E	591	17.96(a)	NA
<i>Colubrina oppositifolia</i> .	Kauila	U.S.A. (HI)	Rhamnaceae	E	532	17.96(a)	NA
<i>Cyanea acuminata</i>	Haha	U.S.A. (HI)	Campanulaceae	E	591	17.96(a)	NA
<i>Cyanea (Rollandia) crispa</i> .	Haha	U.S.A. (HI)	Campanulaceae	E	536	17.96(a)	NA
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> .	Haha	U.S.A. (HI)	Campanulaceae	E	592	17.96(a)	NA
<i>Cyanea grimesiana</i> ssp. <i>obatae</i> .	Haha	U.S.A. (HI)	Campanulaceae	E	541	17.96(a)	NA
<i>Cyanea humboldtiana</i> .	Haha	U.S.A. (HI)	Campanulaceae	E	591	17.96(a)	NA
<i>Cyanea koolauensis</i>	Haha	U.S.A. (HI)	Campanulaceae	E	591	17.96(a)	NA
<i>Cyanea longiflora</i>	Haha	U.S.A. (HI)	Campanulaceae	E	591	17.96(a)	NA
<i>Cyanea pinnatifida</i>	Haha	U.S.A. (HI)	Campanulaceae	E	448	17.96(a)	NA
<i>Cyanea st.-johnii</i>	Haha	U.S.A. (HI)	Campanulaceae	E	591	17.96(a)	NA
<i>Cyanea superba</i>	Haha	U.S.A. (HI)	Campanulaceae	E	434	17.96(a)	NA
<i>Cyanea truncata</i>	Haha	U.S.A. (HI)	Campanulaceae	E	536	17.96(a)	NA
<i>Cyperus trachysanthos</i> .	Puukaa	U.S.A. (HI)	Cyperaceae	E	592	17.96(a)	NA
<i>Cyrtandra dentata</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	591	17.96(a)	NA
<i>Cyrtandra polyantha</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	536	17.96(a)	NA
<i>Cyrtandra subumbellata</i> .	Haiwale	U.S.A. (HI)	Gesneriaceae	E	591	17.96(a)	NA
<i>Cyrtandra viridiflora</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	591	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
	*	*	*	*	*		*
<i>Delissea subcordata</i>	No common name ..	U.S.A. (HI) .....	Campanulaceae .....	E	591	17.96(a)	NA
	*	*	*	*	*		*
<i>Dubautia herbstobatae.</i>	Naenae .....	U.S.A. (HI) .....	Asteraceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Eragrostis fosbergii</i> ..	No common name ..	U.S.A. (HI) .....	Poaceae .....	E	591	17.96(a)	NA
	*	*	*	*	*		*
<i>Eugenia koolauensis</i>	Nioi .....	U.S.A. (HI) .....	Myrtaceae .....	E	536	17.96(a)	NA
	*	*	*	*	*		*
<i>Euphorbia haeleleana.</i>	Akoto .....	U.S.A. (HI) .....	Euphorbiaceae .....	E	592	17.96(a)	NA
	*	*	*	*	*		*
<i>Flueggea neowawraea.</i>	Mehamehame .....	U.S.A. (HI) .....	Euphorbiaceae .....	E	559	17.96(a)	NA
	*	*	*	*	*		*
<i>Gardenia mannii</i> .....	Nanu .....	U.S.A. (HI) .....	Rubiaceae .....	E	591	17.96(a)	NA
	*	*	*	*	*		*
<i>Gouania meyenii</i> .....	No common name ..	U.S.A. (HI) .....	Rhamnaceae .....	E	448	17.96(a)	NA
<i>Gouania vitifolia</i> .....	No common name ..	U.S.A. (HI) .....	Rhamnaceae .....	E	541	17.96(a)	NA
	*	*	*	*	*		*
<i>Hedyotis coriacea</i> ....	Kioele .....	U.S.A. (HI) .....	Rubiaceae .....	E	467	17.96(a)	NA
<i>Hedyotis degeneri</i> ....	No common name ..	U.S.A. (HI) .....	Rubiaceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Hedyotis parvula</i> .....	No common name ..	U.S.A. (HI) .....	Rubiaceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Hesperomannia arborescens.</i>	No common name ..	U.S.A. (HI) .....	Asteraceae .....	E	536	17.96(a)	NA
<i>Hesperomannia arbuscula.</i>	No common name ..	U.S.A. (HI) .....	Asteraceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Hibiscus brackenridgei.</i>	Mao hau hele .....	U.S.A. (HI) .....	Malvaceae .....	E	559	17.96(a)	NA
	*	*	*	*	*		*
<i>Isodendron laurifolium.</i>	Aupaka .....	U.S.A. (HI) .....	Violaceae .....	E	592	17.96(a)	NA
<i>Isodendron longifolium.</i>	Aupaka .....	U.S.A. (HI) .....	Violaceae .....	T	592	17.96(a)	NA
<i>Isodendtion pyriform.</i>	Wahine none kula ..	U.S.A. (HI) .....	Violaceae .....	E	532	17.96(a)	NA
	*	*	*	*	*		*
<i>Labordia cyrtandrae</i>	Kamakahala .....	U.S.A. (HI) .....	Longaniaceae .....	E	591	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
	*	*	*	*	*		*
<i>Lepidium arbuscula</i>	Anaunau .....	U.S.A. (HI) .....	Brassicaceae .....	E	591	17.96(a)	NA
	*	*	*	*	*		*
<i>Lipochaeta lobata</i> var. <i>leptophylla</i> .	Nehe .....	U.S.A. (HI) .....	Asteraceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Lipochaeta tenuifolia</i>	Nehe .....	U.S.A. (HI) .....	Asteraceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Lobelia gaudichaudii</i> ssp. <i>koolauensis</i> .	No common name ..	U.S.A. (HI) .....	Campanulaceae .....	E	591	17.96(a)	NA
<i>Lobelia monostachya</i>	No common name ..	U.S.A. (HI) .....	Campanulaceae .....	E	591	17.96(a)	NA
<i>Lobelia niihauensis</i> ..	No common name ..	U.S.A. (HI) .....	Campanulaceae .....	E	448	17.96(a)	NA
<i>Lobelia oahuensis</i> ....	No common name ..	U.S.A. (HI) .....	Campanulaceae .....	E	536	17.96(a)	NA
	*	*	*	*	*		*
<i>Lysimachia filifolia</i> ....	No common name ..	U.S.A. (HI) .....	Primulaceae .....	E	530	17.96(a)	NA
	*	*	*	*	*		*
<i>Mariscus pennatiformis</i> .	No common name ..	U.S.A. (HI) .....	Cyperaceae .....	E	559	17.96(a)	NA
	*	*	*	*	*		*
<i>Melicope lydgatei</i> .....	Alani .....	U.S.A. (HI) .....	Rutaceae .....	E	536	17.96(a)	NA
	*	*	*	*	*		*
<i>Melicope pallida</i> .....	Alani .....	U.S.A. (HI) .....	Rutaceae .....	E	530	17.96(a)	NA
	*	*	*	*	*		*
<i>Melicope saint-johnii</i>	Alani .....	U.S.A. (HI) .....	Rutaceae .....	E	591	17.96(a)	NA
	*	*	*	*	*		*
<i>Myrsine juddii</i> .....	Kolea .....	U.S.A. (HI) .....	Myrsinaceae .....	E	591	17.96(a)	NA
	*	*	*	*	*		*
<i>Neraudia angulata</i> ...	No common name ..	U.S.A. (HI) .....	Urticaceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Nototrichium humile</i>	Kului .....	U.S.A. (HI) .....	Solanaceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Peucedanum sandwicense</i> .	Makou .....	U.S.A. (HI) .....	Apiaceae .....	T	530	17.96(a)	NA
	*	*	*	*	*		*
<i>Phyllostegia hirsuta</i>	No common name ..	U.S.A. (HI) .....	Lamiaceae .....	E	591	17.96(a)	NA
<i>Phyllostegia kaalaensis</i> .	No common name ..	U.S.A. (HI) .....	Lamiaceae .....	E	591	17.96(a)	NA
	*	*	*	*	*		*
<i>Phyllostegia mollis</i> ...	No common name ..	U.S.A. (HI) .....	Lamiaceae .....	E	448	17.96(a)	NA
<i>Phyllostegia parviflora</i> .	No common name ..	U.S.A. (HI) .....	Lamiaceae .....	E	592	17.96(a)	NA
	*	*	*	*	*		*
<i>Plantago princeps</i> ....	Laukahi kuahiwi .....	U.S.A. (HI) .....	Plantaginaceae .....	E	559	17.96(a)	NA
<i>Platanthera holochila</i>	No common name ..	U.S.A. (HI) .....	Orchidaceae .....	E	592	17.96(a)	NA
	*	*	*	*	*		*
<i>Sanicula mariversa</i> ..	No common name ..	U.S.A. (HI) .....	Apiaceae .....	E	448	17.96(a)	NA
<i>Sanicula purpurea</i> ...	No common name ..	U.S.A. (HI) .....	Apiaceae .....	E	592	17.96(a)	NA
	*	*	*	*	*		*
<i>Schiedea hookeri</i> .....	No common name ..	U.S.A. (HI) .....	Caryophyllaceae .....	E	592	17.96(a)	NA
<i>Schiedea kaalae</i> .....	No common name ..	U.S.A. (HI) .....	Caryophyllaceae .....	E	448	17.96(a)	NA
	*	*	*	*	*		*
<i>Schiedea kealiae</i> .....	No common name ..	U.S.A. (HI) .....	Caryophyllaceae .....	E	591	17.96(a)	NA



Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	*
<i>Schiedea nuttallii</i> .....	No common name ..	U.S.A. (HI) .....	Caryophyllaceae .....	E	592	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Sesbania tomentosa</i>	Ohai .....	U.S.A. (HI) .....	Fabaceae .....	E	559	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Silene lanceolata</i> .....	No common name ..	U.S.A. (HI) .....	Caryophyllaceae .....	E	480	17.96(a)	NA
<i>Silene perlmantii</i> .....	No common name ..	U.S.A. (HI) .....	Caryophyllaceae .....	E	448	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Solanum sandwicense</i> .	Aiakeakua, Popolo	U.S.A. (HI) .....	Solanaceae .....	E	530	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Spermolepis hawaiiensis</i> .	No common name ..	U.S.A. (HI) .....	Apiacea .....	E	559	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Stenogyne kanehoana</i> .	No common name ..	U.S.A. (HI) .....	Lamiaceae .....	E	466	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Tetramolopium filiforme</i> .	No common name ..	U.S.A. (HI) .....	Asteraceae .....	E	448	17.96(a)	NA
<i>Tetramolopium lepidotum</i> ssp. <i>lepidotum</i> .	No common name ..	U.S.A. (HI) .....	Asteraceae .....	E	448	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Tetraplasandra gymnocarpa</i> .	Oheohe .....	U.S.A. (HI) .....	Asteraceae .....	E	536	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Trematolobelia singularis</i> .	No common name ..	U.S.A. (HI) .....	Campanulaceae .....	E	591	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Urera kaalae</i> .....	Opuhe .....	U.S.A. (HI) .....	Urticaceae .....	E	448	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Vigna o-wahuensis</i> ..	No common name ..	U.S.A. (HI) .....	Fabaceae .....	E	559	17.96(a)	NA
<i>Viola chamissoniana</i> ssp. <i>chamissoniana</i> .	Olopu .....	U.S.A. (HI) .....	Violaceae .....	E	448	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Viola oahuensis</i> .....	No common name ..	U.S.A. (HI) .....	Violaceae .....	E	591	17.96(a)	NA
*	*	*	*	*	*	*	*
FERNS AND ALLIES							
<i>Adenophorus periens</i>	Pendant kahi fern ....	U.S.A. (HI) .....	Grammitidaceae .....	E	559	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Ctenitis squamigera</i>	Pauoa .....	U.S.A. (HI) .....	Aspleniaceae .....	E	553	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Diellia erecta</i> .....	No common name ..	U.S.A. (HI) .....	Aspleniaceae .....	E	559	17.96(a)	NA
<i>Diellia falcata</i> .....	No common name ..	U.S.A. (HI) .....	Aspleniaceae .....	E	448	17.96(a)	NA
<i>Diellia unisora</i> .....	No common name ..	U.S.A. (HI) .....	Aspleniaceae .....	E	541	17.96(a)	NA
<i>Diplazium molokaiense</i> .	No common name ..	U.S.A. (HI) .....	Aspleniaceae .....	E	553	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Marsilea villosa</i> .....	Ihihi .....	U.S.A. (HI) .....	Marsiliaceae .....	E	474	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Phlegmariurus (Lycopodium) nutans</i> .	Wawaeiole .....	U.S.A. (HI) .....	Lycopodiaceae .....	E	536	17.96(a)	NA
<i>Pteris lidgatei</i> .....	No common name ..	U.S.A. (HI) .....	Adiantaceae .....	E	553	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	*

3. Section 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), 67 FR 4072 (January 28, 2002), 67 FR 9806 (March 4, 2002), 67 FR 15856 (April 3, 2002), 67 FR 16492 (April 5, 2002), 67 FR 34522 (May 14, 2002) and elsewhere in this issue of the **Federal Register** (Big Island Hawaii) is proposed to be further amended as follows:

- a. Add paragraph (a)(1)(i)(I); and
- b. Amend paragraph (a)(1)(ii)(A) and (B) by adding the entries set forth below.

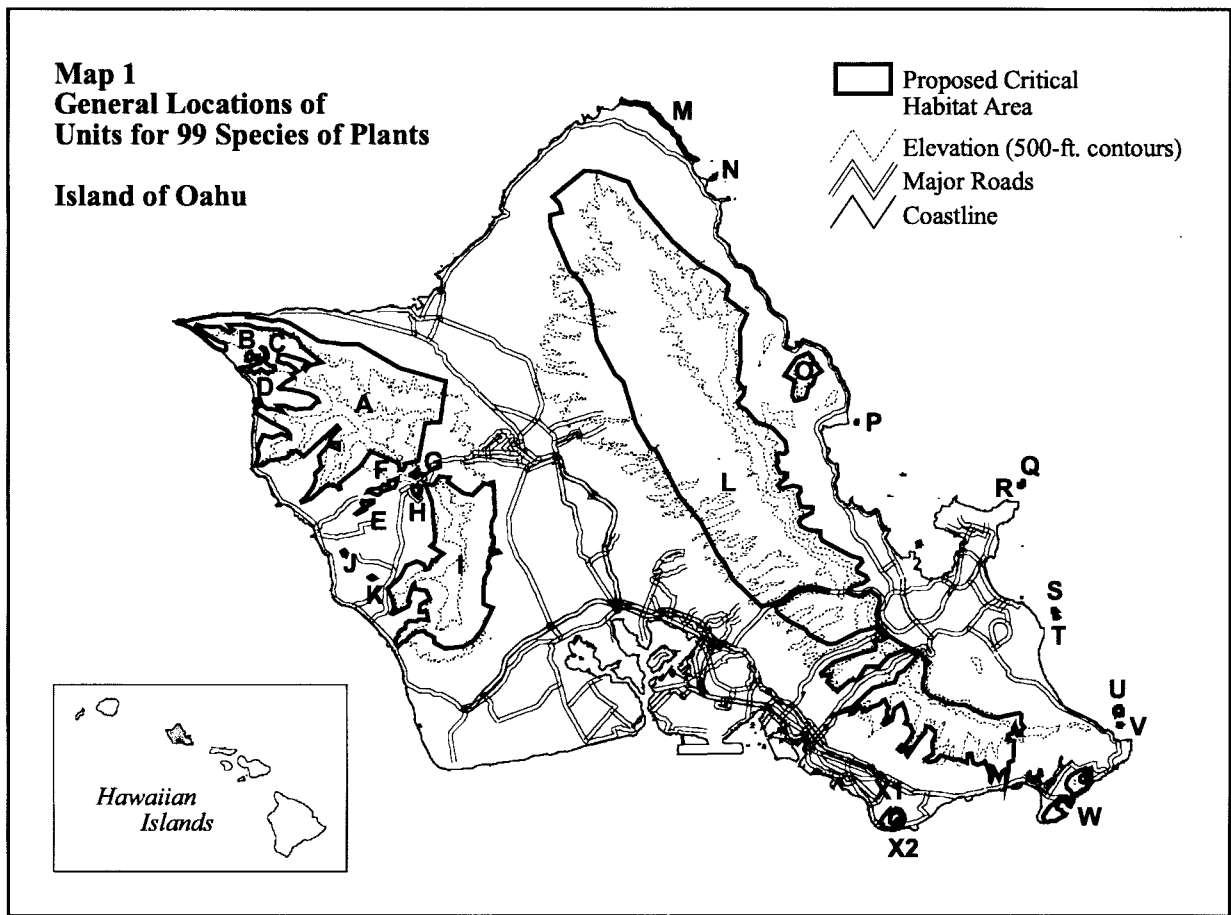
**§ 17.96 Critical habitat-plants.**

(a) \* \* \*  
 (1) \* \* \*  
 (i) Maintain *Maps and critical habitat unit descriptions*. The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing manmade features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, telecommunication equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiaus (indigenous place of worship, shrine), airports, other paved areas,

lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section and are not included in the critical habitat designation.

(I) *Oahu*. Critical habitat units are described below. Coordinates are in UTM Zone 5 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 25 critical habitat units designated on the island of Oahu.

(1) **Note:** Map 1—Index map follows:



(2) Oahu A (8,504 ha, 21,013 ac).  
 (i) Unit consists of the following 129 boundary points: 584950, 2377432; 585671, 2377146; 585659, 2377618; 585016, 2377625; 585092, 2377943;

585733, 2378575; 585538, 2378784; 583246, 2376657; 582737, 2377043; 582396, 2376973; 582116, 2376586; 580873, 2376363; 580475, 2376039; 579928, 2376027; 580207, 2376763;

580077, 2377208; 580463, 2378115; 581095, 2377940; 581741, 2378223; 582348, 2377927; 582352, 2378103; 582079, 2378466; 580956, 2379031; 580053, 2379577; 579916, 2379943;

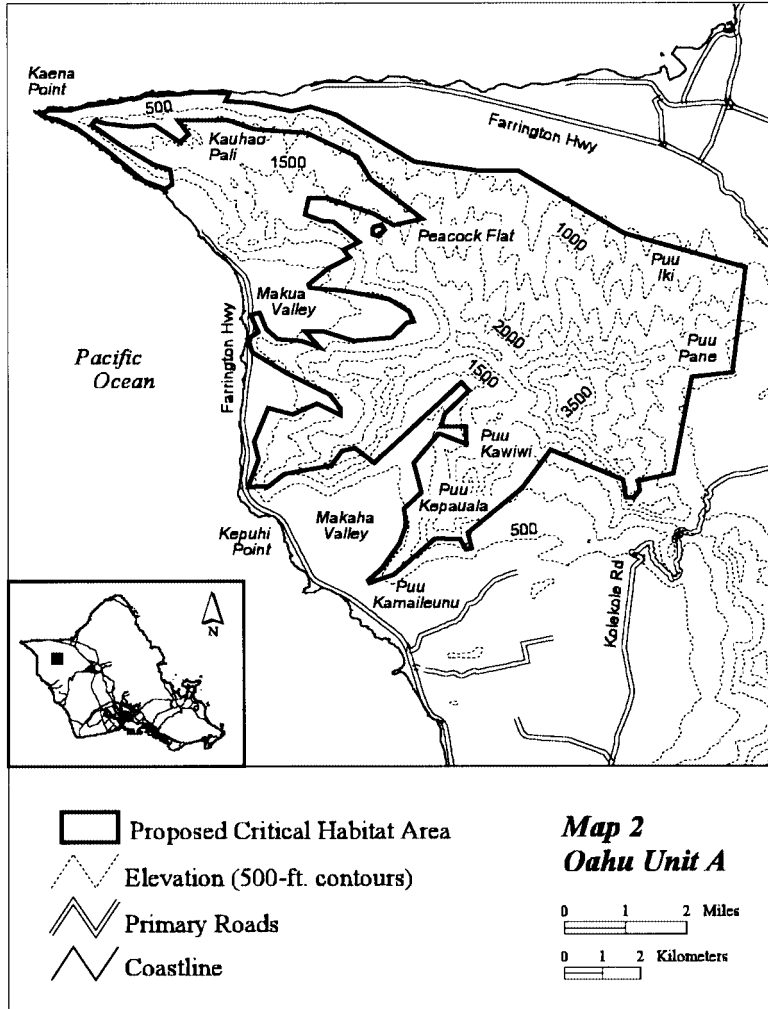
580195, 2380119; 579990, 2380577;  
 580239, 2380639; 580400, 2380204;  
 580711, 2379943; 581339, 2379885;  
 581818, 2379719; 581445, 2380141;  
 581917, 2380146; 582701, 2379888;  
 583715, 2379970; 584093, 2380363;  
 584290, 2380395; 584158, 2380660;  
 583632, 2380990; 582472, 2381212;  
 581560, 2381299; 581525, 2381376;  
 582048, 2381795; 582606, 2382084;  
 582448, 2382291; 582852, 2382503;  
 582190, 2383041; 581891, 2383049;  
 581445, 2383224; 581544, 2383659;  
 581994, 2383664; 583254, 2383233;  
 583771, 2382937; 584528, 2383106;  
 583163, 2384156; 582817, 2384756;  
 581496, 2385379; 580099, 2385471;  
 579431, 2385710; 578101, 2385710;  
 578396, 2385344; 578151, 2385138;  
 577468, 2385588; 576935, 2385536;

576208, 2385632; 575911, 2385714;  
 575829, 2385586; 576581, 2385071;  
 577457, 2384544; 577898, 2384416;  
 577948, 2384016; 577765, 2383898;  
 577185, 2384117; 576277, 2384883;  
 575412, 2385521; 574908, 2385747;  
 574600, 2385794; 574538, 2385893;  
 574683, 2385979; 575263, 2385990;  
 575698, 2386095; 576517, 2386212;  
 576821, 2386287; 576902, 2386302;  
 576929, 2386276; 577139, 2386330;  
 577147, 2386349; 577336, 2386382;  
 577539, 2386382; 577539, 2386383;  
 578164, 2386410; 578534, 2386464;  
 579454, 2386447; 579361, 2386220;  
 580107, 2386178; 581087, 2385955;  
 581593, 2386070; 582279, 2385848;  
 584310, 2384610; 585987, 2384377;  
 587049, 2384382; 589845, 2382717;  
 593031, 2381826; 592675, 2379038;

591610, 2378927; 591125, 2376370;  
 590184, 2376161; 590237, 2375925;  
 590078, 2375730; 589871, 2375739;  
 589804, 2376190; 587886, 2376990;  
 587134, 2375976; 585708, 2374809;  
 585805, 2374401; 585659, 2374361;  
 585509, 2374635; 584838, 2374660;  
 583757, 2373710; 583115, 2373484;  
 583076, 2373552; 583436, 2373865;  
 583905, 2374537; 584086, 2375018;  
 584030, 2375455; 584478, 2375878;  
 584279, 2376661; 584950, 2377432.

(ii) Excluding the area consisting of the following six boundary points (7 ha; 17 ac): 583216, 2382880; 583450, 2382956; 583543, 2382821; 583374, 2382640; 583216, 2382693; 583216, 2382880.

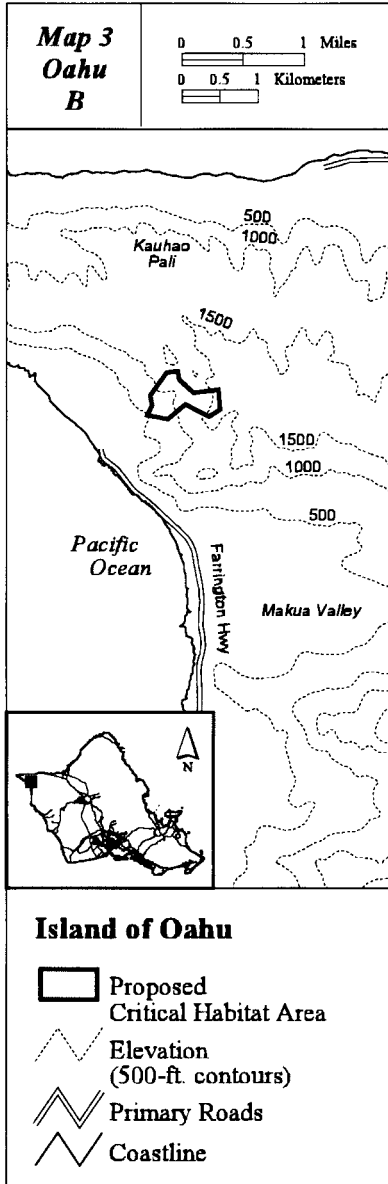
(iii) Note: Map 2 follows:



(3) Oahu B (34 ha, 83 ac).

(i) Unit consists of the following 13 boundary points: 579694, 2383749; 579887, 2383567; 580216, 2383613; 580233, 2383353; 580093, 2383252; 579781, 2383420; 579551, 2383218; 579281, 2383273; 579340, 2383412; 579313, 2383539; 579533, 2383839; 579678, 2383853; 579694, 2383749.

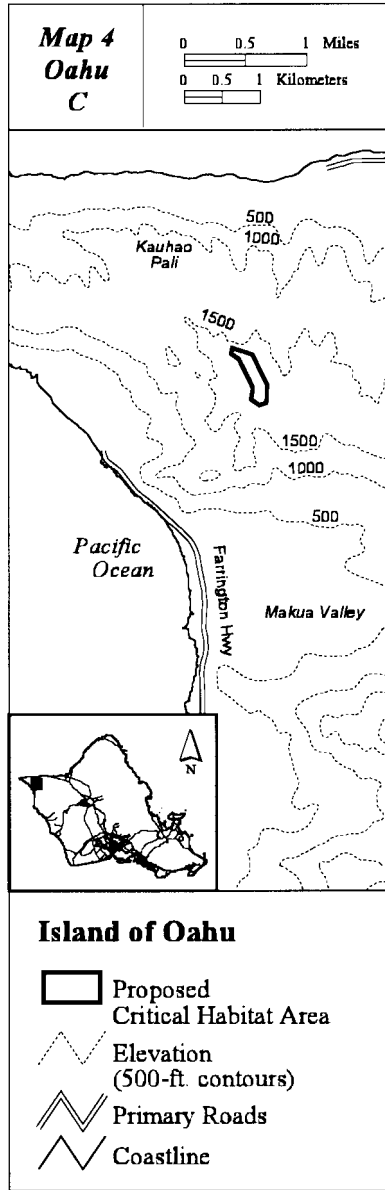
(ii) Note: Map 3 follows:



(4) Oahu C (14 ha, 35 ac).

(i) Unit consists of the following 10 boundary points: 580634, 2383658; 580448, 2384031; 580348, 2384103; 580359, 2384180; 580622, 2384091; 580816, 2383697; 580809, 2383460; 580717, 2383424; 580606, 2383503; 580634, 2383658.

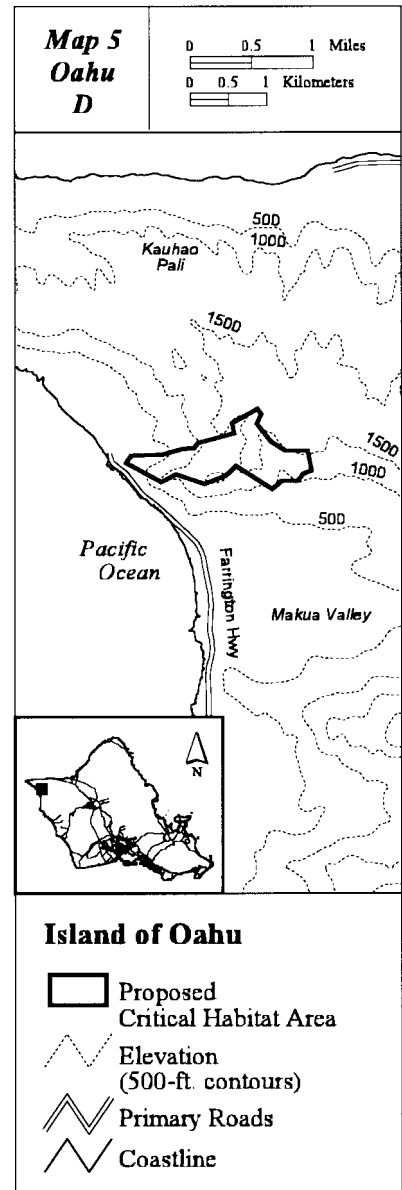
(ii) Note: Map 4 follows:



(5) Oahu D (110 ha, 271 ac).

(i) Unit consists of the following 25 boundary points: 580281, 2383222; 580606, 2383411; 580655, 2383344; 580602, 2383210; 580789, 2382976; 580968, 2382856; 581269, 2382857; 581319, 2382595; 581206, 2382556; 581138, 2382463; 580929, 2382460; 580805, 2382349; 580325, 2382658; 580194, 2382531; 579912, 2382420; 579539, 2382543; 579344, 2382444; 578880, 2382694; 578948, 2382793; 579364, 2382805; 579630, 2382884; 579781, 2382892; 579832, 2382960; 580303, 2383087; 580281, 2383222.

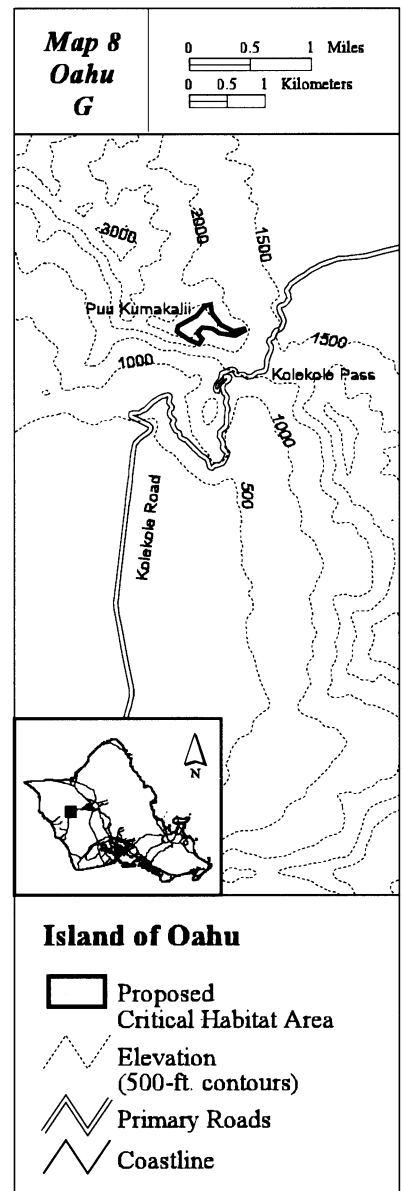
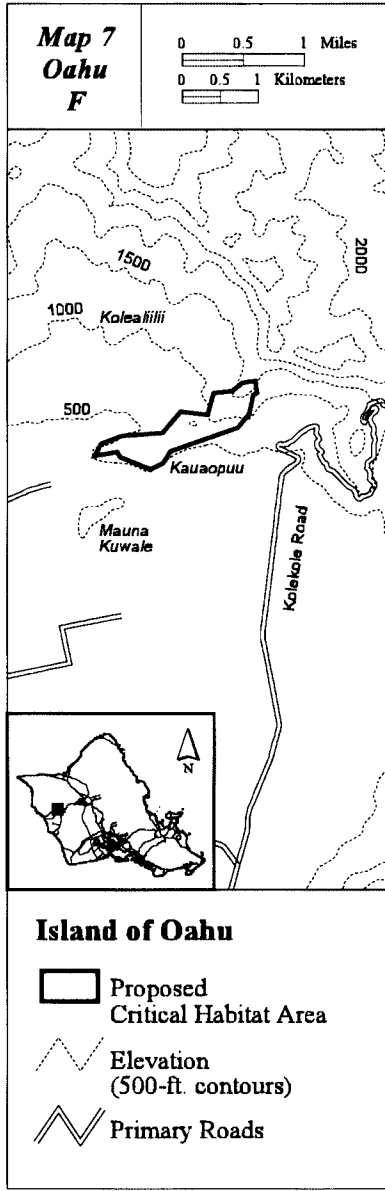
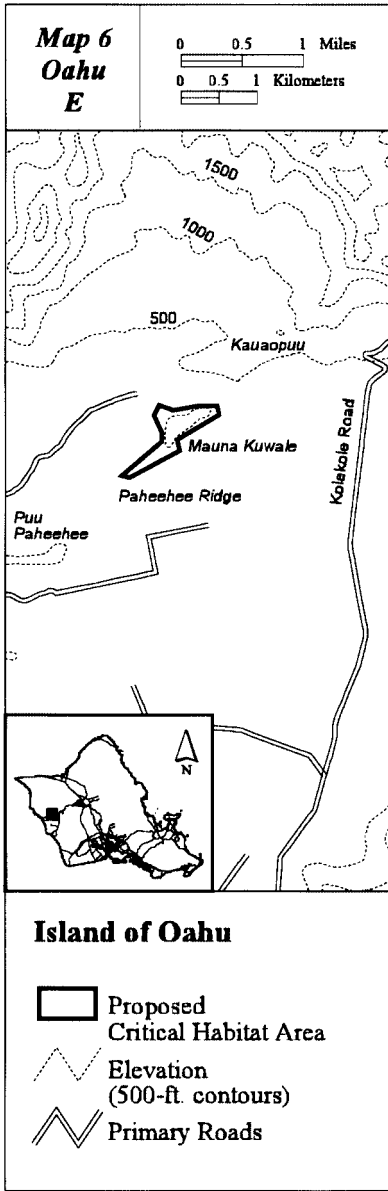
(ii) Note: Map 5 follows:



(6) Oahu E (38 ha, 94 ac).

(i) Unit consists of the following 13 boundary points: 587490, 2373552; 587822, 2373610; 588066, 2373607; 588093, 2373488; 587547, 2373162; 587575, 2373016; 586913, 2372659; 586819, 2372688; 587343, 2373135; 587340, 2373263; 587234, 2373485; 587305, 2373618; 587490, 2373552.

(ii) Note: Map 6 follows:



(7) Oahu F (81 ha, 200 ac).

(i) Unit consists of the following 20 boundary points: 587685, 2374312; 587953, 2374412; 588499, 2374458; 588734, 2374736; 589087, 2374687; 589164, 2374979; 589410, 2375004; 589548, 2375117; 589718, 2375138; 589743, 2374983; 589691, 2374952; 589636, 2374708; 589487, 2374525; 588596, 2374211; 588507, 2374058; 588331, 2373970; 587938, 2374132; 587898, 2374199; 587599, 2374147; 587685, 2374312.

(ii) Note: Map 7 follows:

(8) Oahu G (16 ha, 40 ac).

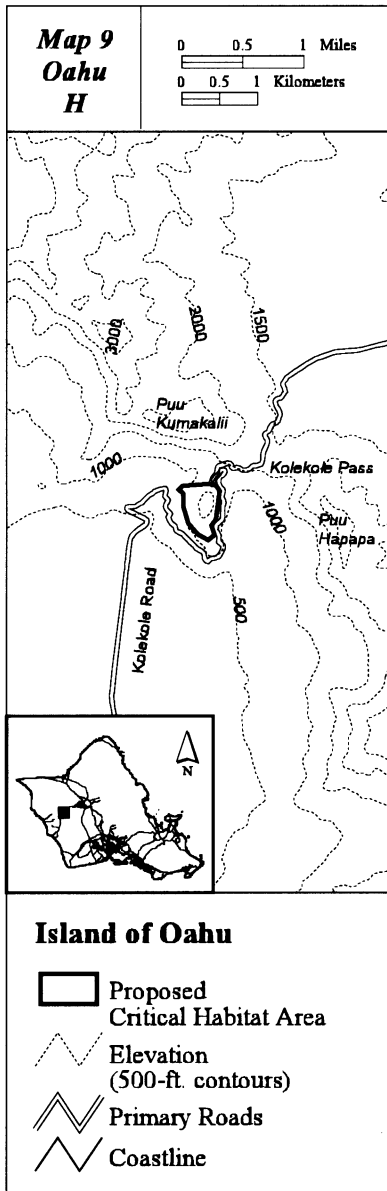
(i) Unit consists of the following 19 boundary points: 590995, 2375723; 591072, 2375735; 591090, 2375622; 591212, 2375467; 591381, 2375387; 591513, 2375416; 591525, 2375393; 591395, 2375323; 591181, 2375356; 591100, 2375416; 590964, 2375432; 590898, 2375362; 590966, 2375282; 590921, 2375214; 590793, 2375263; 590625, 2375384; 590645, 2375451; 590888, 2375585; 590995, 2375723.

(ii) Note: Map 8 follows:

(9) Oahu H (28 ha, 68 ac).

(i) Unit consists of the following 14 boundary points: 590764, 2374307; 590763, 2374472; 590700, 2374526; 590756, 2374578; 591092, 2374606; 591195, 2374587; 591248, 2374509; 591194, 2374127; 591134, 2374054; 591180, 2373922; 591094, 2373854; 590957, 2373933; 590826, 2374078; 590764, 2374307.

(ii) Note: Map 9 follows:

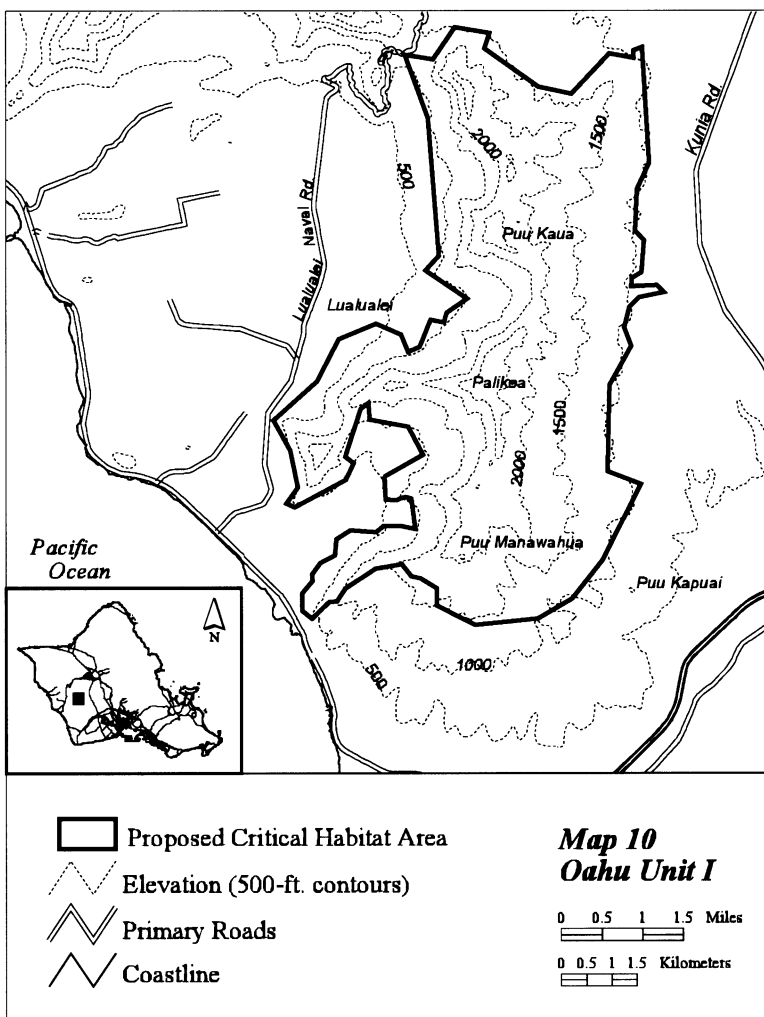


(10) Oahu I (5,108 ha, 12,623 ac).

(i) Unit consists of the following 88 boundary points: 591216, 2366381; 591982, 2366817; 591691, 2367372; 590921, 2367515; 590903, 2367852; 590740, 2367734; 590438, 2366785; 590602, 2366656; 590452, 2366324; 589437, 2365779; 589274, 2365854; 589506, 2366168; 589343, 2366913; 589024, 2367508; 589876, 2368279; 590308, 2369112; 591047, 2369419; 591542, 2369212; 591680, 2368861; 591915, 2368960; 592125, 2369494; 592399, 2369453; 592450, 2369644; 592858, 2369920; 592024, 2370471; 592290, 2370765; 592078, 2373499; 591626, 2374755; 592184, 2374670; 592614, 2375298; 593304, 2375183; 593191, 2374882; 594258, 2374119; 594913, 2373987; 595654, 2374786; 596144, 2374692; 596144, 2374844; 596305, 2374913; 596443, 2372614; 596207, 2372094; 596174, 2371267; 596352, 2371074; 596301, 2370442; 596100, 2370329; 596086, 2370155; 596604, 2370178; 596742, 2370040; 596249, 2369943; 596055, 2369758; 595948, 2369350; 596098, 2368982; 595665, 2368199; 595626, 2366488; 596281, 2366231; 595522, 2364723; 594929, 2363957; 594256, 2363568; 593002, 2363438; 592261, 2363823; 592254, 2364166; 591923, 2364366; 591746, 2364409; 591557, 2364645; 591037, 2364559; 590435, 2364159; 590272, 2363910; 590125, 2363901; 589781, 2363570; 589592, 2363721; 589588, 2364069; 589790, 2364314; 589786, 2364443; 589945, 2364675; 590241, 2364821; 590263, 2365140; 590539, 2365314; 591056, 2365277; 591200, 2365406; 591519, 2365415; 591827, 2365351; 591748, 2365947; 591738, 2365951; 591637, 2365979; 591602, 2365972; 591533, 2365957;

591460, 2365917; 591235, 2365936; 591216, 2366381.

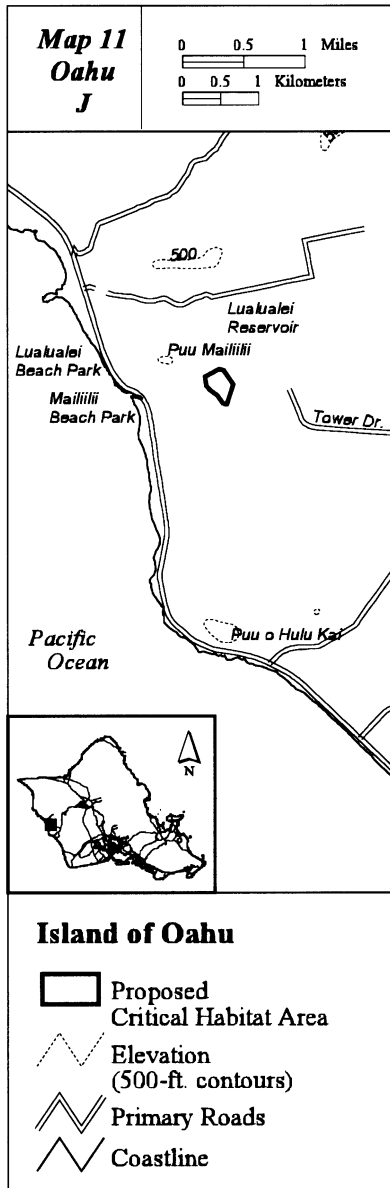
(ii) Note: Map 10 follows:



(11) Oahu J (10 ha, 25 ac).

(i) Unit consists of the following ten boundary points: 586105, 2369712; 586019, 2369826; 585929, 2369900; 585878, 2369958; 585860, 2370075; 586047, 2370180; 586105, 2370159; 586228, 2369973; 586148, 2369708; 586105, 2369712.

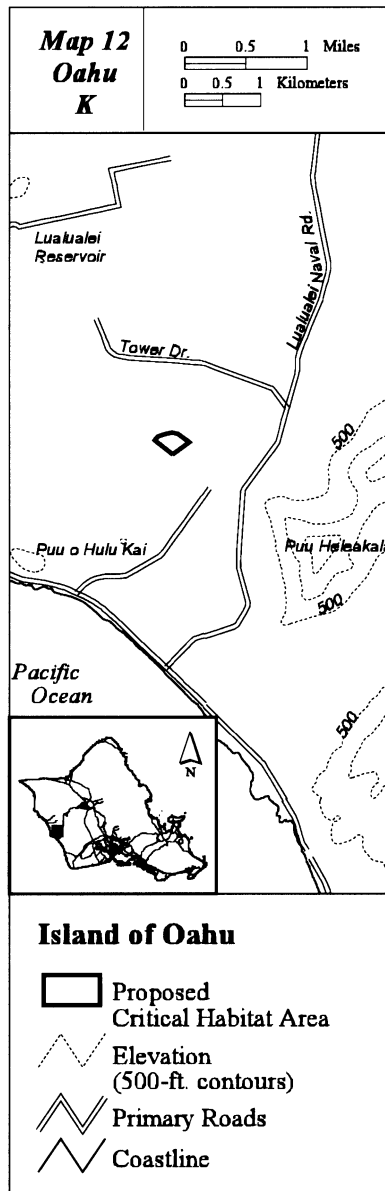
(ii) Note: Map 11 follows:



(12) Oahu K (7 ha, 18 ac).

(i) Unit consists of the following eight boundary points: 587975, 2368114; 587736, 2368302; 587784, 2368350; 587880, 2368389; 587969, 2368407; 588041, 2368390; 588193, 2368272; 587975, 2368114.

(ii) Note: Map 12 follows:



(13) Oahu L (30,068 ha, 74,301 ac).

(i) Unit consists of the following 247 boundary points: 630472, 2354716; 630100, 2355624; 629580, 2355419; 629301, 2355527; 629162, 2356203; 628907, 2356125; 628855, 2355534; 628391, 2355772; 628053, 2355755; 627070, 2356063; 626669, 2355661; 626214, 2355599; 625962, 2355819; 626440, 2356093; 626520, 2356196; 626441, 2356918; 626678, 2357357; 626649, 2357694; 626282, 2358028; 626067, 2358099; 626022, 2357714; 625616, 2357251; 625324, 2356852; 624769, 2356015; 624665, 2356158; 624810, 2356492; 624733, 2356592; 624312, 2356301; 624120, 2356499; 624386, 2356808; 624519, 2356754; 624644, 2356803; 625017, 2357329; 625143, 2357659; 624967, 2358116; 624604, 2358276; 624760, 2358514; 624614, 2359138; 624420, 2359643; 623879, 2359238; 623709, 2358524;

623169, 2358149; 623081, 2358237; 623229, 2358330; 623152, 2358462; 623235, 2358611; 623389, 2358572; 623477, 2358682; 623368, 2358806; 623323, 2359133; 623468, 2359271; 623191, 2359887; 623070, 2359870; 622882, 2359571; 622300, 2359375; 621959, 2359117; 621849, 2359276; 621711, 2359133; 621546, 2359436; 621383, 2359351; 621014, 2358958; 620851, 2358914; 620942, 2359237; 620122, 2358980; 620543, 2359252; 620950, 2359361; 622396, 2360697; 623890, 2361098; 624124, 2361689; 624497, 2361860; 625196, 2362592; 625395, 2362905; 625302, 2363098; 624704, 2363373; 623455, 2362882; 622842, 2362180; 621909, 2362178; 621370, 2361266; 620803, 2361210; 619955, 2360463; 619241, 2361098; 619485, 2361645; 618895, 2361516; 618817, 2361712; 619665, 2362481; 621304, 2363049; 622555, 2363345; 622625, 2363548; 622551, 2363798; 622638, 2363988; 622939, 2363923; 623240, 2364110; 622549, 2364906; 622070, 2364700; 621516, 2364619; 619844, 2363773; 619306, 2363732; 618018, 2364365; 617769, 2364712; 616590, 2365310; 616218, 2365592; 615788, 2365918; 615698, 2366342; 616146, 2366497; 616978, 2367173; 617442, 2367401; 618298, 2367467; 619284, 2367246; 619350, 2367450; 618298, 2367670; 617418, 2367589; 616872, 2367369; 616187, 2366749; 615502, 2366480; 614715, 2366305; 612726, 2368229; 612213, 2369265; 611690, 2369886; 610594, 2372095; 609095, 2373932; 607429, 2377141; 607076, 2377223; 606097, 2378881; 605220, 2381803; 604636, 2382351; 603415, 2384650; 603167, 2386304; 602914, 2387638; 602349, 2388646; 601544, 2389445; 600257, 2392431; 600187, 2393272; 601024, 2393410; 600830, 2394049; 600377, 2394522; 602551, 2396317; 603610, 2396217; 605573, 2395548; 606141, 2394360; 608595, 2391432; 610456, 2389829; 611781, 2389129; 612485, 2388484; 612286, 2387566; 613734, 2386451; 613275, 2385352; 613314, 2383180; 613082, 2381819; 613547, 2381214; 613507, 2380935; 613089, 2380404; 613241, 2380052; 613647, 2379899; 614362, 2379040; 615438, 2378645; 616347, 2377697; 616509, 2377025; 616330, 2376842; 615916, 2376860; 615761, 2376728; 615884, 2376328; 615745, 2376016; 616023, 2375527; 616498, 2375480; 616476, 2375235; 615846, 2374664; 616051, 2374429; 616922, 2374655; 617401, 2374499; 617428, 2374263; 617214, 2373976; 617446, 2373188; 618238, 2373106; 618224, 2372771; 617446, 2372342; 617311, 2372083; 617424, 2371813;

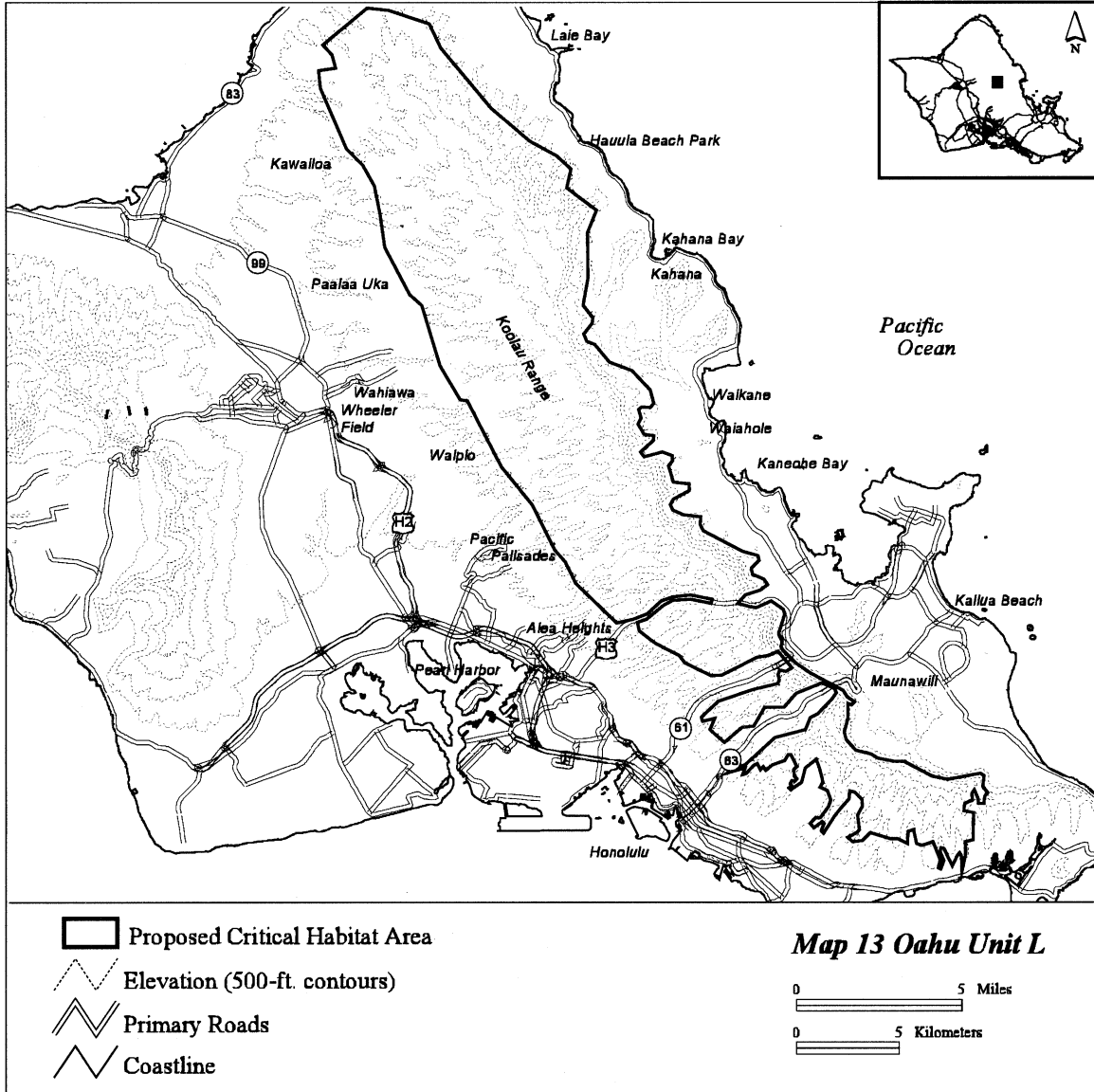


617953, 2371576; 618784, 2371489;  
 618773, 2371099; 618907, 2370820;  
 620838, 2369795; 621571, 2369604;  
 621650, 2369367; 621267, 2368961;  
 621323, 2368668; 621884, 2368434;  
 622056, 2368173; 621695, 2367902;  
 620962, 2367677; 620605, 2367259;  
 621160, 2367110; 621495, 2367050;  
 622240, 2367375; 622811, 2366967;  
 622868, 2366712; 622597, 2365765;  
 622759, 2365413; 622709, 2365156;  
 622784, 2364960; 623415, 2364346;

624146, 2363841; 625731, 2363030;  
 625923, 2362695; 626282, 2362445;  
 626140, 2362302; 625971, 2362363;  
 625953, 2361656; 625785, 2360976;  
 625863, 2360608; 626338, 2360087;  
 627103, 2359897; 627409, 2359692;  
 628198, 2359542; 628683, 2359547;  
 630084, 2358798; 630825, 2358657;  
 632432, 2358970; 632589, 2358852;  
 632556, 2358317; 632776, 2357999;  
 632629, 2357845; 632595, 2357490;  
 632325, 2357479; 632308, 2357738;

632117, 2358148; 632000, 2357971;  
 632038, 2357642; 631661, 2357473;  
 631618, 2357125; 632107, 2357040;  
 632062, 2355691; 631695, 2355601;  
 631703, 2355280; 631699, 2354977;  
 631532, 2354149; 631517, 2354916;  
 631428, 2355081; 631285, 2354916;  
 631057, 2354415; 630644, 2355292;  
 630484, 2355323; 630457, 2355102;  
 630644, 2354689; 630488, 2354267;  
 630389, 2354343; 630472, 2354716.

(i) Note: Map 13 follows:



(14) Oahu M (100 ha, 246 ac).

(i) Unit consists of the following 66 boundary points: 605075, 2401114; 605050, 2401154; 605103, 2401171; 605130, 2401169; 605155, 2401135; 605240, 2401108; 605306, 2401120; 605397, 2401050; 605439, 2401040; 605516, 2401036; 605556, 2401006;

605705, 2400985; 605892, 2401002;  
 605974, 2401051; 606009, 2401054;  
 606082, 2401044; 606286, 2400994;  
 606487, 2400973; 606811, 2400952;  
 607170, 2400618; 607182, 2400505;  
 607216, 2400450; 607264, 2400416;  
 607294, 2400407; 607455, 2400278;  
 607707, 2400136; 608018, 2399654;

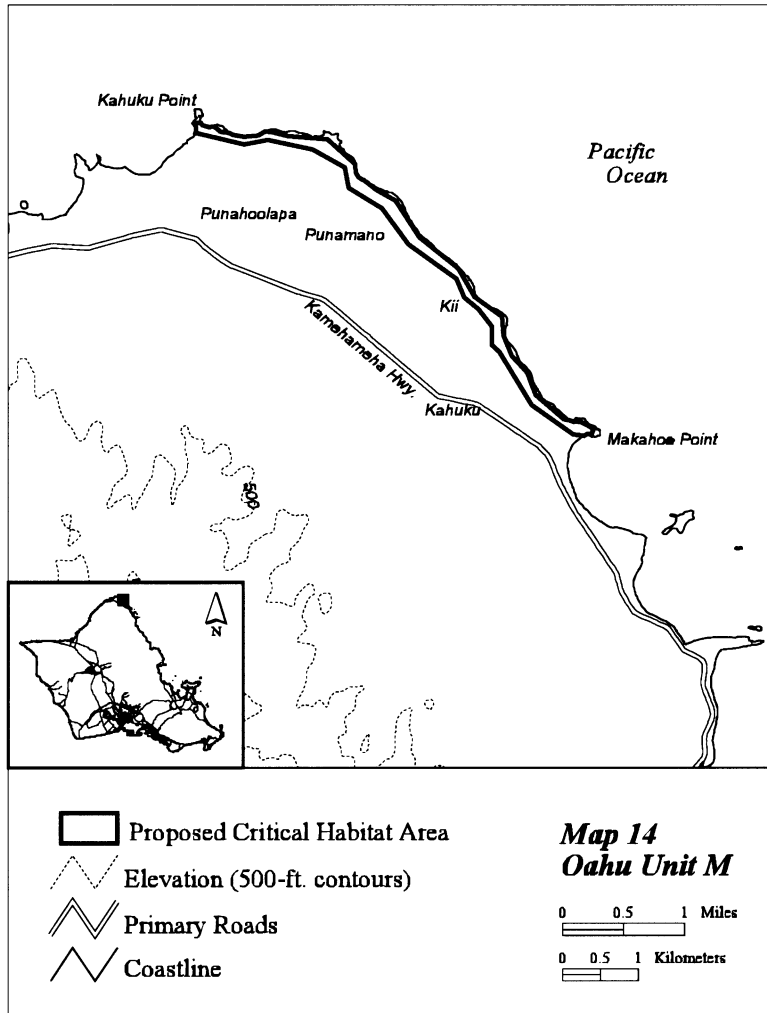
608529, 2399247; 608541, 2399223;  
 608541, 2399222; 608751, 2398862;  
 609109, 2398604; 609125, 2398360;  
 609242, 2398091; 609441, 2397864;  
 609549, 2397569; 609925, 2397252;  
 610007, 2397236; 610009, 2397234;  
 610053, 2397216; 610058, 2397227;  
 610160, 2397208; 610302, 2397128;

610310, 2397106; 610285, 2397037;  
610265, 2397056; 610235, 2397053;  
610193, 2397026; 610049, 2397044;  
609503, 2397435; 609075, 2398137;  
608976, 2398230; 608976, 2398474;

608798, 2398707; 608608, 2398855;  
608506, 2399104; 607877, 2399558;  
607524, 2400032; 607089, 2400309;  
607033, 2400576; 606615, 2400810;  
606022, 2400942; 605706, 2400878;

605065, 2401033; 605075, 2401060;  
605075, 2401114.

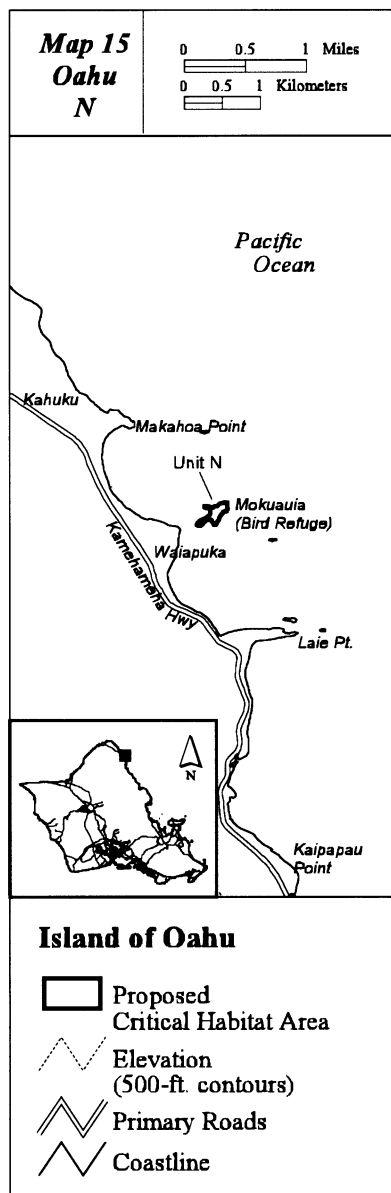
(ii) Note: Map 14 follows:



(15) Oahu N (5 ha, 12 ac).

(i) Unit consists of the entire offshore island located at approximately: 611477, 2395905.

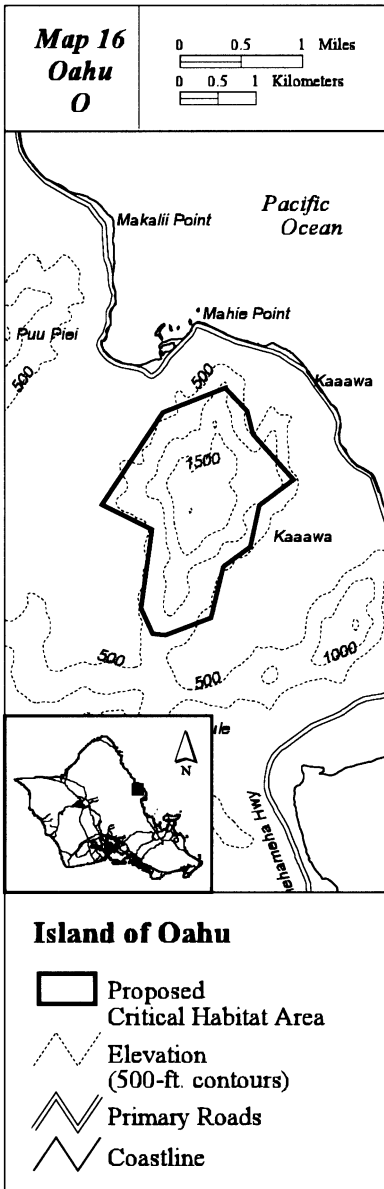
(ii) Note: Map 15 follows:



(16) Oahu O (431 ha, 1,066 ac).

(i) Unit consists of the following 15 boundary points: 617935, 2381391; 617776, 2380713; 617169, 2380478; 617006, 2380498; 616849, 2380834; 616997, 2381875; 616333, 2382207; 617139, 2383429; 617958, 2383753; 618243, 2383442; 618321, 2383143; 618857, 2382536; 618408, 2382201; 618290, 2381653; 617935, 2381391.

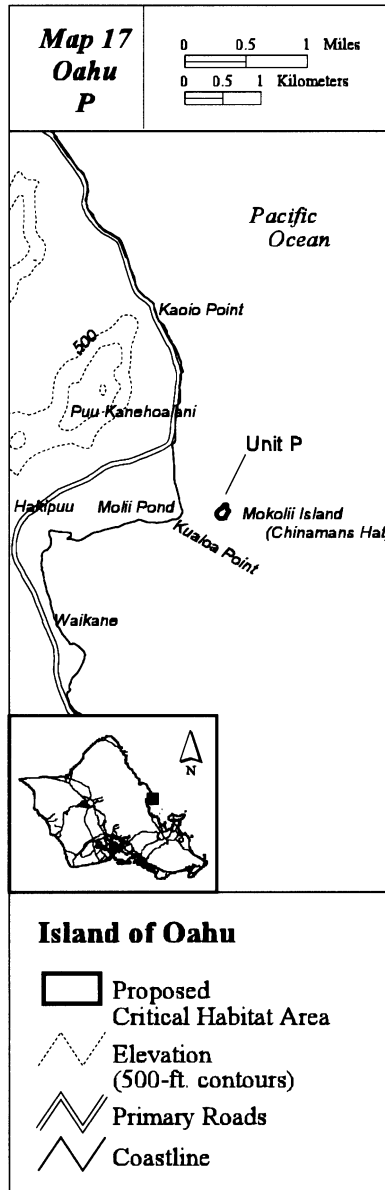
(ii) Note: Map 16 follows:



(17) Oahu P (2 ha, 3 ac).

(i) Unit consists of the entire offshore island located at approximately: 621249, 2378985.

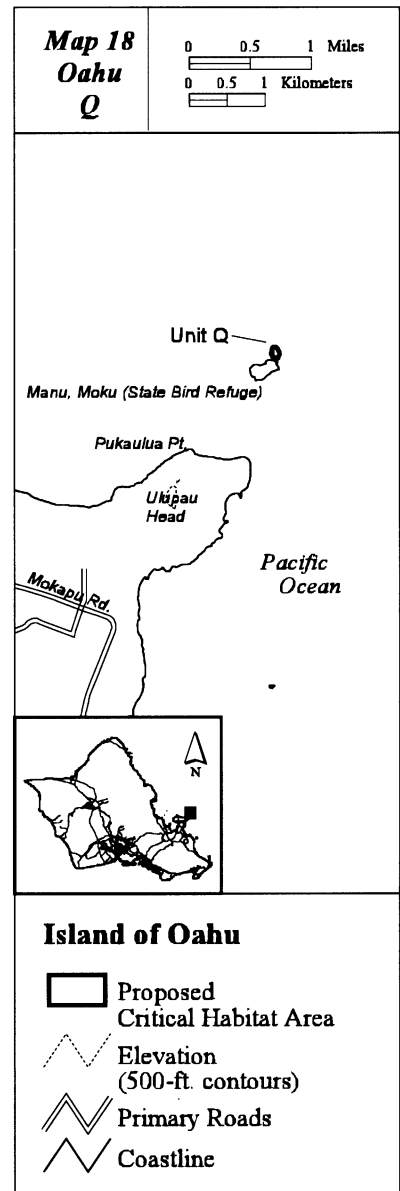
(ii) Note: Map 17 follows:



(18) Oahu Q (1 ha, 3 ac).

(i) Unit consists of the entire offshore island located at approximately: 632741, 2374904.

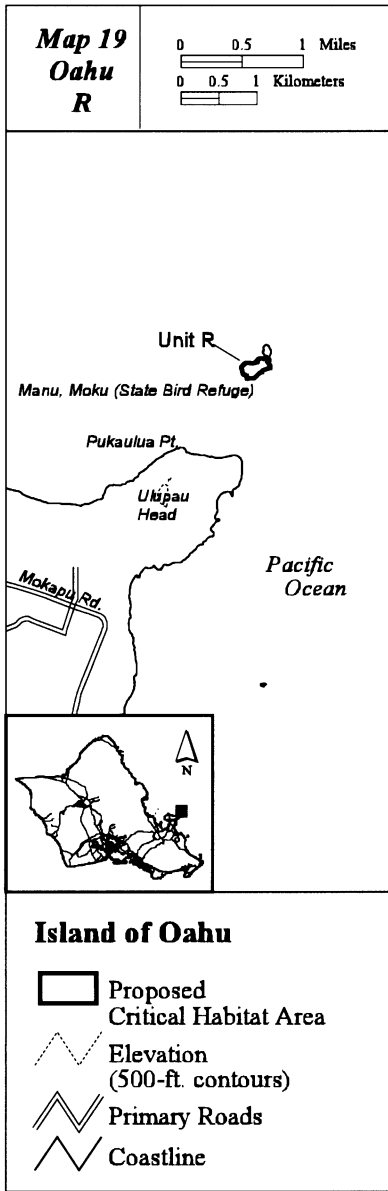
(ii) Note: Map 18 follows:



(19) Oahu R (6 ha, 15 ac).

(i) Unit consists of the entire offshore island located at approximately: 632595, 2374679.

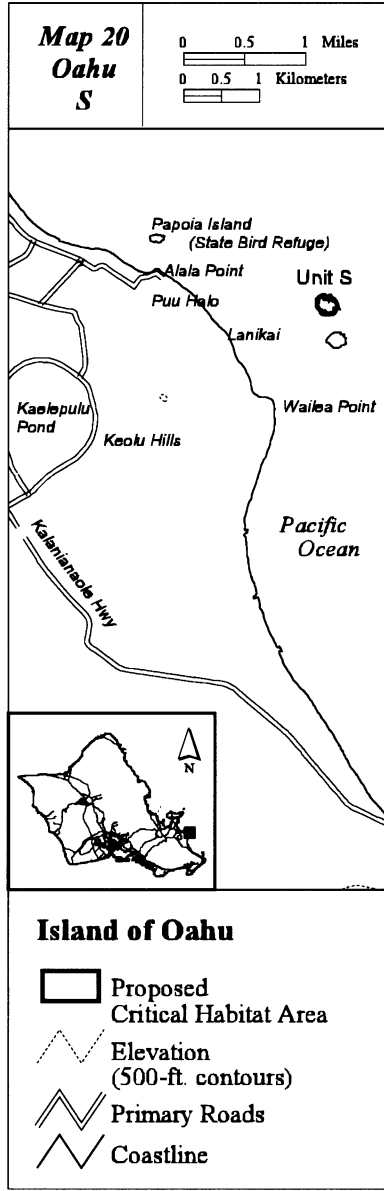
(ii) Note: Map 19 follows:



(20) Oahu S (4 ha, 12 ac).

(i) Unit consists of the entire offshore island located at approximately: 634867, 2366056.

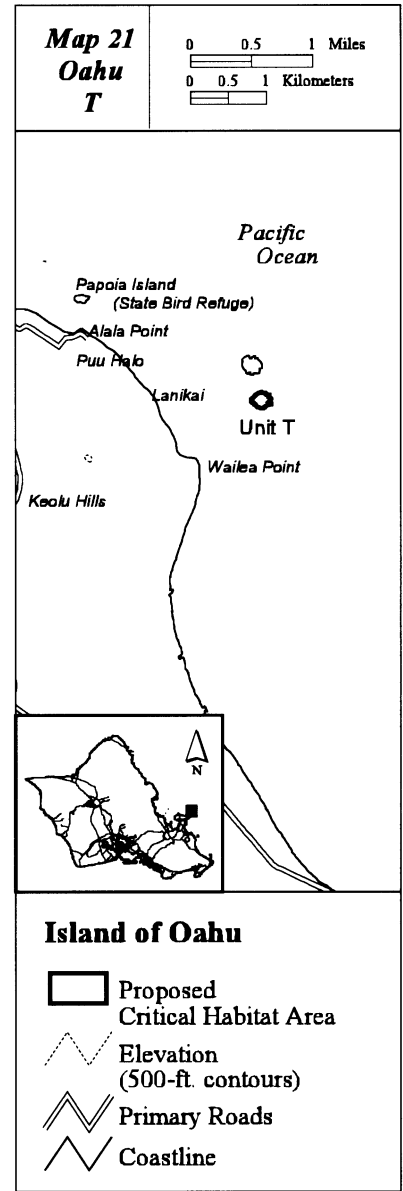
(ii) **Note:** Map 20 follows:



(21) Oahu T (4 ha, 9 ac).

(i) Unit consists of the entire offshore island located at approximately: 634990, 2365593.

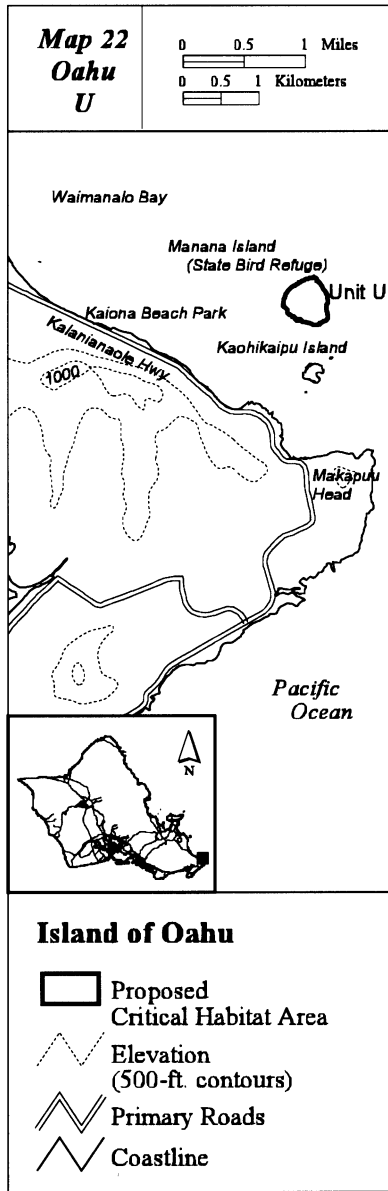
(ii) **Note:** Map 21 follows:



(22) Oahu U (27 ha, 67 ac).

(i) Unit consists of the entire offshore island located at approximately: 639277, 2359130.

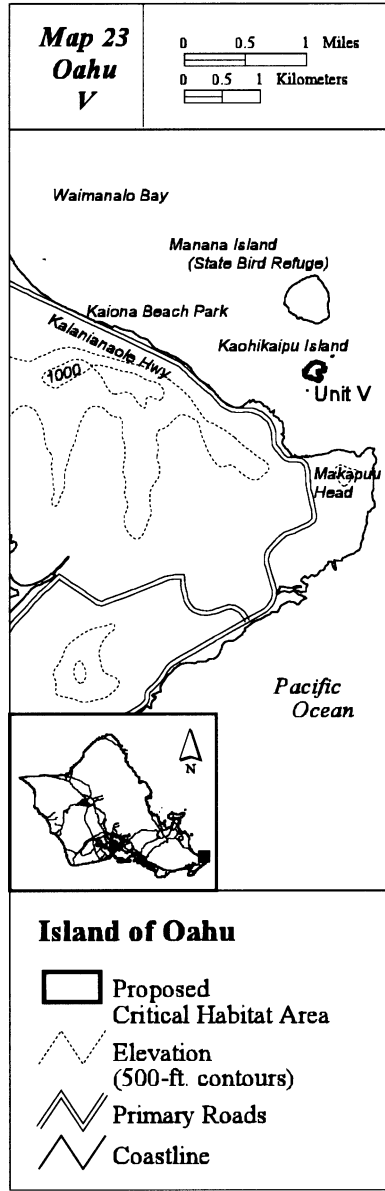
(ii) **Note:** Map 22 follows:



(23) Oahu V (4 ha, 10 ac).

(i) Unit consists of the entire offshore island located at approximately: 639339, 2358203

(ii) Note: Map 23 follows:

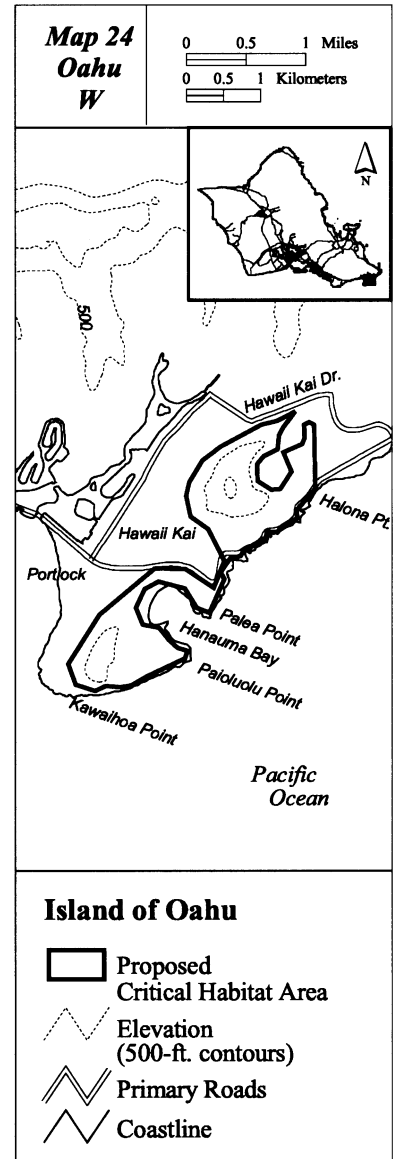


(24) Oahu W (340 ha, 840 ac).

(i) Unit consists of the following 60 boundary points: 637132, 2355245; 636973, 2355040; 636907, 2354928; 636897, 2354741; 636703, 2354644; 636613, 2354536; 636623, 2354312; 636808, 2354187; 636928, 2354201; 637076, 2354437; 636971, 2354701; 637225, 2354809; 637258, 2354895; 637251, 2355073; 637318, 2355106; 637384, 2355073; 637402, 2354195; 637140, 2353900; 637163, 2353807; 636874, 2353617; 636746, 2353610; 636729, 2353536; 636439, 2353369; 636391, 2353293; 636246, 2353257; 636122, 2353069; 636172, 2352980; 635971, 2352522; 635803, 2352590; 635641, 2352849; 635286, 2352948; 635095, 2352844; 634984, 2352593; 635070, 2352360; 635295, 2352316; 635417, 2352155; 635541, 2352050; 635672, 2352009; 635644, 2351902; 635123, 2351660; 634921, 2351541;

634779, 2351512; 634574, 2351531; 634430, 2351464; 634168, 2351550; 634069, 2351830; 634492, 2352496; 635235, 2353123; 635647, 2353114; 636026, 2352858; 636172, 2353227; 635954, 2353657; 635716, 2353823; 635656, 2354107; 635700, 2354295; 635875, 2354584; 636120, 2354776; 636669, 2355067; 636881, 2355121; 637132, 2355245.

(ii) Note: Map 24 follows:



(25) Oahu X1 (117 ha, 290 ac).

(i) Unit consists of the following 19 boundary points: 624293, 2352306; 624551, 2351916; 624594, 2351655; 624479, 2351301; 624279, 2351133; 623918, 2350950; 623734, 2350938; 623387, 2351012; 623164, 2351001; 623038, 2351128; 623080, 2351284; 622861, 2351384; 623109, 2351844; 623379, 2352152; 623614, 2352329; 623656, 2352268; 623889, 2352282; 623968, 2352380; 624293, 2352306.

(ii) Excluding the area consisting of the following 11 boundary points (59 ha; 145 ac): 623847, 2351144; 623734, 2351301; 623550, 2351461; 623616, 2351896; 623861, 2352075; 624048, 2352141; 624172, 2352080; 624321, 2351901; 624343, 2351375; 624109, 2351194; 623847, 2351144.

(iii) Note: See Map 25.

(26) Oahu X2 (8 ha, 21 ac).

(i) Unit consists of the following nine boundary points: 624111, 2351694; 624244, 2351705; 624294, 2351602; 624225, 2351495; 624162, 2351477; 624021, 2351312; 623901, 2351349; 623890, 2351454; 624111, 2351694.

(ii) Note: Map 25 follows:

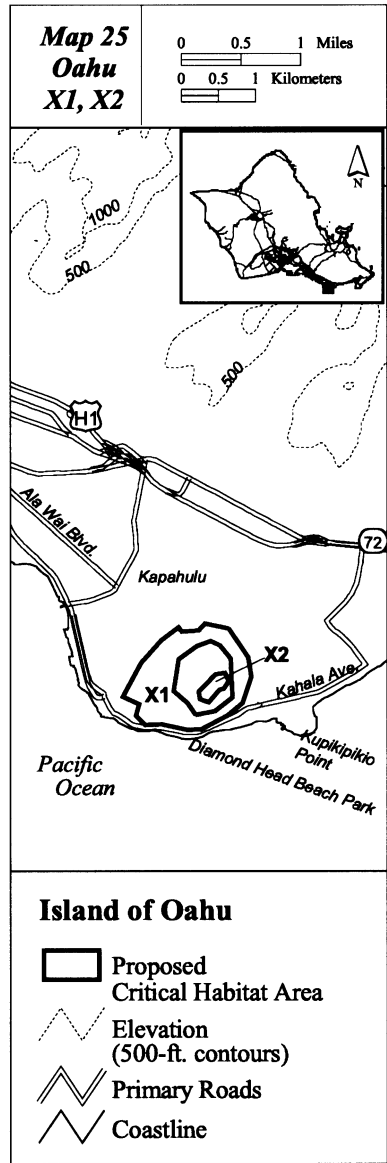


TABLE (A)(1)(i)(I).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR OAHU

Unit name	Species occupied	Species unoccupied
Oahu A .....	<i>Abutilon sandwicense</i> , <i>Alectryon macrococcus</i> , <i>Alsinidendron obovatum</i> , <i>Alsinidendron trinerve</i> , <i>Bonamia menziesii</i> , <i>Cenchrus agrimonioides</i> , <i>Centaurium sebaeoides</i> , <i>Chamaesyce celastroides</i> var. <i>kaenana</i> , <i>Chamaesyce herbstii</i> , <i>Colubrina oppositifolia</i> , <i>Ctenitis squamigera</i> , <i>Cyanea acuminata</i> , <i>Cyanea grimesiana</i> ssp. <i>obatae</i> , <i>Cyanea longiflora</i> , <i>Cyanea superba</i> , <i>Cyperus trachysanthos</i> , <i>Cyrtandra dentata</i> , <i>Delissea subcordata</i> , <i>Diellia falcata</i> , <i>Dubautia herbstobatae</i> , <i>Eragrostis fosbergii</i> , <i>Eugenia koolauensis</i> , <i>Euphorbia haeleleana</i> , <i>Fluggea neowawraea</i> , <i>Gardenia mannii</i> , <i>Gouania meyenii</i> , <i>Gouania vitifolia</i> , <i>Hedyotis degeneri</i> , <i>Hedyotis parvula</i> , <i>Hesperomannia arborescens</i> , <i>Hesperomannia arbuscula</i> , <i>Hibiscus brackenridgei</i> , <i>Isodendron laurifolium</i> , <i>Isodendron longifolium</i> , <i>Labordia cyrtandrae</i> , <i>Lepidium arbuscula</i> , <i>Lipochaeta lobata</i> var. <i>leptophylla</i> , <i>Lipochaeta tenuifolia</i> , <i>Lobelia niihauensis</i> , <i>Melicope pallida</i> , <i>Neraudia angulata</i> , <i>Nototrichium humile</i> , <i>Peucedanum sandwicense</i> , <i>Phyllostegia hirsuta</i> , <i>Phyllostegia kaalaensis</i> , <i>Phyllostegia mollis</i> , <i>Plantago princeps</i> , <i>Sanicula mariversa</i> , <i>Schiedea hookeri</i> , <i>Schiedea kaalae</i> , <i>Schiedea kealiae</i> , <i>Schiedea nuttallii</i> , <i>Sesbania tomentosa</i> , <i>Silene lanceolata</i> , <i>Spermolepis hawaiiensis</i> , <i>Tetramolopium filiforme</i> , <i>Urera kaalae</i> , and <i>Viola chamissoniana</i> ssp. <i>chamissoniana</i> .	<i>Diplazium molokaiense</i> , <i>Isodendron pyrifolium</i> , <i>Mariscus pennatiformis</i> , <i>Solanum sandwicense</i> , <i>Stenogyne kaneohoana</i> , <i>Tetramolopium lepidotum</i> ssp. <i>lepidotum</i> and <i>Vigna o-wahuense</i> .

TABLE (A)(1)(i)(I).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR OAHU—Continued

Unit name	Species occupied	Species unoccupied
Oahu B	<i>Bonamia menzeisii</i> , <i>Euphorbia haelealeana</i> , and <i>Nototrichium humile</i>	<i>Gouania vitifolia</i> , <i>Hibiscus brackenridgei</i> , <i>Isodendron pyrifolium</i> , and <i>Neraudia angulata</i> .
Oahu C	<i>Bonamia menzeisii</i> .	
Oahu D	<i>Bonamia menzeisii</i> , <i>Euphorbia haelealeana</i> , <i>Neraudia angulata</i> , <i>Nototrichium humile</i> , and <i>Schiedea hookeri</i> .	<i>Chamaesyce celastroides</i> var. <i>kaenana</i> , <i>Gouania vitifolia</i> , <i>Hibiscus brackenridgei</i> , and <i>Isodendron pyrifolium</i> .
Oahu E	<i>Chamaesyce kuwaleana</i> .	
Oahu F	<i>Chamaesyce kuwaleana</i>	<i>Isodendron pyrifolium</i> .
Oahu G	<i>Tetramolopium filiforme</i> and <i>Viola chamissoniana</i> ssp. <i>chamissoniana</i> .	
Oahu H	<i>Chamaesyce kuwaleana</i> .	
Oahu I	<i>Abutilon sandwicense</i> , <i>Alectryon macrococcus</i> , <i>Bonamia menzeisii</i> , <i>Cenchrus agrimonioides</i> , <i>Chamaesyce herbstii</i> , <i>Cyanea grimesiana</i> ssp. <i>obatae</i> , <i>Cyrtandra dentata</i> , <i>Delissea subcordata</i> , <i>Diellia falcata</i> , <i>Diellia unisora</i> , <i>Flueggea neowawraea</i> , <i>Gardenia mannii</i> , <i>Hedyotis parvula</i> , <i>Hesperomannia arbuscula</i> , <i>Lepidium arbuscula</i> , <i>Lipochaeta lobata</i> var. <i>leptophylla</i> , <i>Lobelia niihauensis</i> , <i>Melicope saint-johnii</i> , <i>Neraudia angulata</i> , <i>Phyllostegia hirsuta</i> , <i>Phyllostegia kaalaensis</i> , <i>Phyllostegia mollis</i> , <i>Phyllostegia parviflora</i> , <i>Plantago princeps</i> , <i>Sanicula marivera</i> , <i>Schiedea hookeri</i> , <i>Schiedeakaalae</i> , <i>Schiedea nuttallii</i> , <i>Stenogyne kanehoana</i> , <i>Tetramolopium lepidotum</i> ssp. <i>lepidotum</i> , <i>Urera kaalae</i> , and <i>Viola chamissoniana</i> ssp. <i>chamissoniana</i> .	<i>Alsinidendron obovatum</i> , <i>Chamaesyce kuwaleana</i> , <i>Cyanea pinnatifida</i> , <i>Gouania meyenii</i> , <i>Hedyotis coriacea</i> , <i>Hibiscus brackenridgei</i> , <i>Isodendron pyrifolium</i> , <i>Melicope pallida</i> , <i>Silene permanii</i> , and <i>Solanum sandwicense</i>
Oahu J	<i>Marsillea villosa</i> .	
Oahu K	<i>Marsillea villosa</i> .	
Oahu L	<i>Bonamia menzeisii</i> , <i>Chamaesyce deppeana</i> , <i>Chamaesyce rockii</i> , <i>Cyanea acuminata</i> , <i>Cyanea crispa</i> , <i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> , <i>Cyanea humbotiana</i> , <i>Cyanea koolauensis</i> , <i>Cyanea st-johnii</i> , <i>Cyanea truncata</i> , <i>Cyrtandra dentata</i> , <i>Cyrtandra polyantha</i> , <i>Cyrtandra subumbellata</i> , <i>Cyrtandra viridiflora</i> , <i>Diellia erecta</i> , <i>Eugenia koolauensis</i> , <i>Gardenia mannii</i> , <i>Hesperomannia arborescens</i> , <i>Isodendron longifolium</i> , <i>Labordia cyrtandrae</i> , <i>Lobelia gaudichaudii</i> ssp. <i>koolauensis</i> , <i>Lobelia monostachya</i> , <i>Lysimachia filifolia</i> , <i>Melicope lydgatei</i> , <i>Myrsine juddii</i> , <i>Phlegmariurus nutans</i> , <i>Phyllostegia hirsuta</i> , <i>Phyllostegia parviflora</i> , <i>Plantago princeps</i> , <i>Pteris lydgatei</i> , <i>Sanicula purpurea</i> , <i>Schiedea kaalae</i> , <i>Tetraplasandra gymnocarpa</i> , <i>Trematalobelia singularis</i> , and <i>Viola oahuensis</i> .	<i>Adenophorus periens</i> , <i>Chamaesyce celastroides</i> var. <i>kaenana</i> , <i>Cyanea longiflora</i> , <i>Cyanea superba</i> , <i>Delissea subcordata</i> , <i>Hedyotis coriacea</i> , <i>Isodendron laurifolium</i> , <i>Lobelia oahuensis</i> , <i>Platanthera holochila</i> , and <i>Solanum sandwicense</i> .
Oahu M		<i>Centaurium sebaeoides</i> and <i>Sesbania tomentosa</i>
Oahu N		<i>Centaurium sebaeoides</i> and <i>Sesbania tomentosa</i> .
Oahu O	<i>Cyanea crispa</i> , <i>Cyanea truncata</i> , and <i>Schiedea kaalae</i> .	
Oahu P	<i>Bonamia menzeisii</i> , <i>Euphorbia haelealeana</i> , and <i>Nototrichium humile</i>	<i>Gouania vitifolia</i> , <i>Hibiscus brackenridgei</i> , and <i>Isodendron pyrifolium</i>
Oahu Q		<i>Sesbania tomentosa</i> .
Oahu R		<i>Chamaesyce kuwaleana</i> and <i>Sesbania tomentosa</i> .
Oahu S		<i>Sesbania tomentosa</i> and <i>Vigna o-wahuense</i> .
Oahu T		<i>Sesbania tomentosa</i> and <i>Vigna o-wahuense</i> .
Oahu U		<i>Chamaesyce kuwaleana</i> , <i>Sesbania tomentosa</i> , and <i>Vigna o-wahuense</i> .
Oahu V		<i>Sesbania tomentosa</i> .
Oahu W	<i>Centaurium sebaeoides</i> and <i>Marsillea villosa</i>	<i>Cyperus trachysanthos</i> .
Oahu X1	<i>Spermolepis hawaiiensis</i>	<i>Gouania meyenii</i> .
Oahu X2	<i>Cyperus trachysanthos</i>	<i>Marsillea villosa</i> .

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

*Family Amaranthaceae: Nototrichium humile (kului)*

Oahu A, B, D, and P, identified in the legal descriptions in paragraph (a)(1)(i)(I), constitutes critical habitat for *Nototrichium humile* on Oahu. Within these units, currently known primary

constituent elements of critical habitat are the habitat components provided by:

(1) Cliff faces, gulches, streambanks, or steep slopes in dry or mesic forests often dominated by *Sapindus oahuensis* or *Diospyros sandwicensis* containing one or more of the following associated native plant species—*Erythrina sandwicensis*, *Sicyos* sp., *Rauwolfia sandwicensis*, *Nestegis sandwicensis*, *Streblus pendulinus*, *Myoporum*

*sandwicense*, *Metrosideros polymorpha*, *Antidesma pulvinatum*, *Pouteria sandwicensis*, *Charpentiera* sp., *Hibiscus* sp., *Alyxia oliviformis*, *Pisonia umbellifera*, *Lipochaeta tenuis*, *Stenogyne* sp., *Artemisia australis*, *Bidens Cervicata*, *Carex wahuensis*, *Elaeocarpus bifidus*, *Abutilon sandwicense*, *Peperomia* sp., *Dodonaea viscosa*, *Canavalia* sp., *Psydrax odorata*, *Syzygium sandwicensis*, *Reynoldsia*



*sandwicensis*, *Pleomele* sp., *Eugenia reinwartiana*, or *Myrsine lanaiensis*; and  
(2) Elevations between 185 and 806 m (607 and 2,644 ft).

**Family Apiaceae: *Peucedanum sandwicense* (makou)**

Oahu A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Peucedanum sandwicense* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliffs, slopes, or ridges in *Metrosideros polymorpha* lowland mesic forest containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Carex meyenii*, *Eragrostis* sp., *Santalum ellipticum*, *Reynoldsia sandwicensis*, *Osteomeles anthyllidifolia*, *Scaevola sericea*, *Senna gaudichaudii*, *Pittosporum halophilum*, *Sida fallax*, *Plumbago zeylanica*, *Artemisia australis*, *Portulaca lutea*, *Lepidium bidentatum* var. *o-waihiense*, *Schiedea globosa*, *Lipochaeta integrifolia*, *Peperomia remyi*, *Plechranthus parviflorus*, or *Dianella sandwicensis*; and

(2) Elevations between 395 and 977 m (1,296 and 3,205).

**Family Apiaceae: *Sanicula mariversa* (NCN)**

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitutes critical habitat for *Sanicula mariversa* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Well-drained, dry slopes or rock faces in mesic shrublands or open grassy areas containing one or more of the following associated native plant species: *Carex meyenii*, *Eragrostis* sp., *Bidens torta*, *Metrosideros tremuloides*, *Doryopteris* sp., or *Metrosideros polymorpha*; and

(2) Elevations between 582 and 978 m (1,909 and 3,208 ft).

**Family Apiaceae: *Sanicula purpurea* (NCN)**

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Sanicula purpurea* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Open *Metrosideros polymorpha* mixed montane bogs or windswept shrublands within the cloud zone containing one or more of the following associated native plant species: *Cheirodendron* sp., *Sadleria pallida*,

*Bidens* sp., *Dicanthelium koolauensis*, *Styphelia tameiameiae*, *Gahnia beechyi*, *Plantago pachyphylla*, *Lycopodium* sp., *Vaccinium* sp., or *Machaerina angustifolia*; and

(2) Elevations between 415 and 959 m (1,361 and 3,146 ft).

**Family Apiaceae: *Spermolepis hawaiiensis* (NCN)**

Oahu A and X, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Spermolepis hawaiiensis* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep or vertical cliffs or the base of cliffs or ridges in coastal dry cliff vegetation containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Artemisia australis*, *Bidens* sp., *Santalum ellipticum*, *Waltheria indica*, *Heteropogon contortus*, or *Doryopteris* sp.; and

(2) Elevations between 25 to 839 m (82 to 2,752 ft).

**Family Araliaceae: *Tetraplasandra gymnocarpa* (oheohe)**

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Tetraplasandra gymnocarpa* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Windswept summit ridges, slopes, or gullies in wet or sometimes mesic lowland forests or shrublands containing one or more of the following associated native plant species: *Cheirodendron* sp., *Antidesma platyphyllum*, *Syzygium sandwicensis*, *Hedyotis terminalis*, *Diplopterygium pinnatum*, *Melicope* spp., *Tetraplasandra oahuensis*, *Bobea elatior*, *Acacia koa*, *Cibotium chamissoi*, *Lobelia hypoleuca*, *Cyanea humboldtiana*, *Myrsine fosbergii*, *Pouteria sandwicensis*, *Wikstroemia* sp., *Sadleria* sp., *Metrosideros polymorpha*, *Cheirodendron* sp., *Dicranopteris linearis*, *Machaerina angustifolia*, *Freycinetia arborea*, *Broussaia arguta*, *Psychotria* spp., *Labordia* sp., *Hedyotis fosbergii*, *Bidens* sp., *Dubautia laxa*, or *Cibotium* sp.; and

(2) Elevations between 93 and 959 m (305 and 3,156 ft).

**Family Asteraceae: *Dubautia herbstobatae* (naenae)**

Oahu unit A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Dubautia herbstobatae* on Oahu. Within this unit, currently known primary constituent

elements of critical habitat are the habitat components provided by:

(1) Rock outcrops, ridges, moderate slopes, or vertical cliffs in dry or mesic shrubland containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Artemisia australis*, *Chamaesyce celastroides*, *Schiedea mannii*, *Carex meyenii*, *Bidens torta*, *Metrosideros polymorpha*, *Lysimachia waianaensis*, or *Eragrostis variabilis*; and

(2) Elevations between 266 and 978 m (872 and 3,208 ft).

**Family Asteraceae: *Hesperomannia arborescens* (NCN)**

Oahu A and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Hesperomannia arborescens* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes, ridge tops, or gulches in lowland wet forests or shrublands containing one or more of the following associated native plant species:

*Scaevola glabra*, *Broussaia arguta*, *Melicope* sp., *Acacia koa*, *Machaerina angustifolia*, *Hedyotis terminalis*, *Tetraplasandra oahuensis*, *Scaevola gaudichaudiana*, *Dubautia* sp., *Labordia sessilis*, *Cibotium* sp., *Perottetia sandwicensis*, *Pipturus* sp., *Wikstroemia* sp., *Cheirodendron* sp., *Coprosma* sp., *Myrsine* sp., *Bobea elatior*, *Hibiscus arnottianus*, *Metrosideros polymorpha*, *Nestegis sandwicensis*, *Dicranopteris linearis*, *Antidesma platyphyllum*, *Psychotria mariniana*, *Syzygium sandwicensis*, or common *Melicope* spp.; and

(2) Elevations between 110 and 1,147 m (361 and 3,762 ft).

**Family Asteraceae: *Hesperomannia arbuscula* (NCN)**

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Hesperomannia arbuscula* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes or ridges in dry to wet forest dominated by *Acacia koa* or *Metrosideros polymorpha* containing one or more of the following associated native plant species: *Syzygium sandwicensis*, *Freycinetia arborea*, *Cyanea longiflora*, *Antidesma* sp., *Bobea elatior*, *Hibiscus* sp., *Diospyros hillebrandii*, *Hedyotis terminalis*, *Bidens* sp., *Alyxia oliviformis*, or *Psychotria* sp.; and

(2) Elevations between 370 and 1,053 m (1,214 and 3,454 ft).

Family Asteraceae: *Lipochaeta lobata* var. *leptophylla* (nehe)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Lipochaeta lobata* var. *leptophylla* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliffs, ridges, or slopes in dry or mesic shrubland containing one or more of the following associated native plant species: *Diospyros* sp., *Eragrostis* sp., *Artemisia australis*, *Lipochaeta tenuis*, *Stenogyne* sp., *Carex meyenii*, *Dodonaea viscosa*, *Peperomia* sp., *Psydrax odorata*, or *Bidens* sp.; and

(2) Elevations between 256 and 978 m (840 and 3,208 ft).

Family Asteraceae: *Lipochaeta tenuifolia* (nehe)

Oahu unit A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Lipochaeta tenuifolia* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridgetops or bluffs in open areas or protected pockets of dry to mesic forests or shrublands or forests dominated by *Diospyros sandwicensis* containing one or more of the following associated native plant species: *Diospyros* sp., *Dodonaea viscosa*, *Eragrostis* sp., *Artemisia australis*, *Schiedea* sp., *Carex meyenii*, *Rumex* sp., *Dubautia* sp., *Bryophyllum* sp., *Osteomeles anthyllidifolia*, *Reynoldsia sandwicensis*, *Psydrax odorata*, *Doryopteris* sp., *Santalum* sp., *Myoporum sandwicense*, *Sapindus oahuensis*, or *Bidens* sp.; and

(2) Elevations between 67 and 978 m (220 and 3,208 ft).

Family Asteraceae: *Tetramolopium filiforme* (NCN)

Oahu A and G, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Tetramolopium filiforme* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry cliff faces or ridges in dry or mesic forests containing one or more of the following associated native plant species: *Bidens torta*, *Carex meyenii*, *Peperomia tetraphylla*, *Schiedea* sp., *Sida fallax*, *Dodonaea viscosa*, *Artemisia australis*, or *Schiedea mannii*; and

(2) Elevations between 247 and 978 m (810 and 3,208 ft).

Family Asteraceae: *Tetramolopium lepidotum* ssp. *lepidotum* (NCN)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Grassy ridgetops, slopes, or cliffs in windblown dry forests and containing one or more of the following associated native plant species: *Eragrostis* sp., *Carex wahuensis*, *Bidens* sp., or *Metrosideros polymorpha*; and

(2) Elevations between 330 to 1,157 m (1,082 to 3,795 ft).

Family Brassicaceae: *Lepidium arbuscula* (anaunau)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Lepidium arbuscula* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Exposed ridge tops and cliff faces in mesic and dry vegetation communities and containing one or more of the following associated native plant species: *Metrosideros polymorpha*, *Peperomia* sp., *Dryopteris unidentata*, *Sida fallax*, *Schiedea ligustrina*, *Artemisia australis*, *Rumex albescens*, *Styphelia tameiameia*, *Psydrax odorata*, *Carex wahuensis*, *Chamaesyce multiformis*, *Lysimachia hillebrandii*, *Dubautia* sp., *Sophora chrysophylla*, *Dodonaea viscosa*, *Eragrostis* sp., *Bidens* sp., or *Carex meyenii*; and

(2) Elevations between 131 and 978 m (430 and 3,208 ft).

Family Campanulaceae: *Cyanea acuminata* (haha)

Oahu A and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Cyanea acuminata* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes, ridges, or stream banks in *Metrosideros polymorpha*-*Dicranopteris linearis*, *Acacia koa*-*Metrosideros polymorpha* wet or mesic forest or shrubland, or *Diospyros sandwicensis*-*Metrosideros polymorpha* lowland mesic forest containing one or more of the following associated native plant species: *Hibiscus* sp., *Charpentiera* sp., *Cyrtandra* spp., *Antidesma* sp., *Freyinetia arborea*, *Athyrium sandwichianum*, *Psychotria* sp., *Hedyotis* sp., *Perrottetia sandwicensis*, *Melicope* spp., *Thelypteris*

*sandwicensis*, *Hedyotis centranthoides*, *Broussaisia argutus*, *Pipturus albidus*, *Labordia* sp., *Chamaesyce* sp., *Pisonia* sp., *Touchardia latifolia*, *Machaerina* sp., *Sadleria* sp., *Wikstroemia* sp., *Dubautia laxa*, *Ilex anomala*, *Syzygium sandwicensis*, and *Phyllostegia* sp.; and

(2) Elevations between 216 and 1,208 m (708 and 3,962 ft).

Family Campanulaceae: *Cyanea crispa* (haha)

Oahu L and O, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Cyanea crispa* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes, moist gullies, or streambanks in open mesic forests or closed wet forests containing one or more of the following associated native plant species: *Diospyros* sp., *Pipturus albidus*, *Cibotium chamissoi*, *Perrottetia sandwicensis*, *Metrosideros polymorpha*, *Boehmeria grandis*, *Broussaisia argutus*, *Dubautia* sp., *Psychotria* sp., *Thelypteris cyatheoides*, *Antidesma platyphyllum*, *Microsorium spectrum*, *Cyrtandra* spp., *Pisonia umbellifera*, or *Touchardia latifolia*; and

(2) Elevations between 56 and 959 m (184 and 3,146 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rocky or steep slopes of stream banks in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa*, and containing one or more of the following associated native plant species: *Cyanea angustifolia*, *Joinvillea* sp., *Clermontia persicaefolia*, *Melicope* sp., *Dicranopteris linearis*, *Coprosma* sp., *Alyxia oliviformis*, *Syzygium sandwicensis*, *Diplazium sandwichianum*, *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis*, *Psychotria* sp., or *Xylosma* sp.; and

(2) Elevations between 114 and 746 m (374 and 2,447 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *obatae* (haha)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Cyanea grimesiana* ssp. *obatae* on Oahu. Within these units, currently known primary constituent

elements of critical habitat are the habitat components provided by:

(1) Steep, moist, shaded slopes in diverse mesic to wet lowland forests containing one or more of the following associated native plant species: *Pouteria sandwicensis*, *Psychotria hathewayi*, *Streblus pendulinus*, *Perrottetia sandwicensis*, *Dubautia* sp., *Rumex* sp., *Chamaesyce* sp., *Coprosma* sp., *Nothoecstrum* sp., *Dryopteris unidentata*, *Freycinetia arborea*, *Cibotium chamissoi*, *Myrsine lessertiana*, *Hedyotis terminalis*, *Hedyotis acuminata*, *Selaginella arbuscula*, *Charpentiera obovata*, *Cyrtandra waianaensis*, *Pipturus albidus*, *Claoxylon sandwicense*, *Pisonia umbellifera*, *Acacia koa*, *Antidesma platyphyllum*, *Metrosideros polymorpha*, *Diplazium sandwichianum*, and *Cyanea membranacea*; and

(2) Elevations between 404 and 1,092 m (1,325 and 3,528 ft).

*Family Campanulaceae: Cyanea humboltiana* (haha)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Cyanea humboltiana* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland containing one or more of the following associated native plant species: ferns, *Hedyotis terminalis*, *Dubautia laxa*, *Cibotium chamissoi*, *Syzygium sandwicense*, *Acacia koa*, *Psychotria mariniana*, *Bobea elatior*, *Sadleria* sp., *Wikstroemia* sp., *Broussaisia argutus*, *Phyllostegia* sp., *Melicope* sp., *Machaerina angustifolia*, *Ilex anomala*, or *Scaevola mollis*; and

(2) Elevations between 261 and 959 m (856 and 3,146 ft).

*Family Campanulaceae: Cyanea koolauensis* (haha)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Cyanea koolauensis* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes, streambanks, and ridge crests in wet *Metrosideros polymorpha-Dicranopteris linearis* forest or shrubland containing one or more of the following associated native plant species: *Acacia koa*, *Bobea elatior*, *Syzygium sandwicense*, *Pittosporum* sp., *Dubautia* sp., *Cibotium* sp., *Hedyotis* sp., *Wikstroemia* sp., *Bidens* sp., *Machaerina* sp., *Diploterygium*

*pinnatum*, *Pritchardia martii*, *Sadleria* sp., *Broussaisia argutus*, *Melicope* sp., *Antidesma platyphyllum*, *Psychotria mariniana*, and *Scaevola* sp.; and

(2) Elevations between 163 and 959 m (535 and 3,146 ft).

*Family Campanulaceae: Cyanea longiflora* (haha)

Oahu A and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Cyanea longiflora* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes, bases of cliffs, or ridge crests in mesic *Acacia koa-Metrosideros polymorpha* lowland forest containing one or more of the following associated native plant species: *Cibotium* sp., *Schiedea* sp., *Psychotria* sp., *Antidesma* sp., *Dicranopteris linearis*, *Coprosma* sp., or *Syzygium sandwicense*; and

(2) Elevations between 221 and 1,191 m (725 and 3,906 ft).

*Family Campanulaceae: Cyanea pinnatifida* (haha)

Oahu unit I, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Cyanea pinnatifida* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep, wet, rocky slopes in diverse mesic forest containing one or more of the following associated native plant species: *Strongylodon ruber*, *Pisonia umbellifera*, *Pisonia sandwicensis*, *Psychotria* sp., *Canavalia* sp., *Pipturus albidus*, *Diplazium sandwichianum*, or native ferns; and

(2) Elevations between 450 and 881 m (1,476 and 2,890 ft).

*Family Campanulaceae: Cyanea st.-johnii* (haha)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Cyanea st.-johnii* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wet, windswept slopes and ridges in *Metrosideros polymorpha* mixed lowland shrubland or *Metrosideros polymorpha-Dicranopteris linearis* lowland shrubland containing one or more of the following associated native plant species: *Psychotria* sp., *Alyxia oliviformis*, *Melicope* sp., *Broussaisia argutus*, *Cibotium* sp., *Labordia* sp., *Scaevola mollis*, *Dubautia laxa*, *Hedyotis* sp., *Antidesma* sp., *Sadleria pallida*, *Syzygium sandwicense*,

*Machaerina angustifolia*, *Bidens macrocarpa*, *Chamaesyce clusifolia*, or *Freycinetia arborea*; and

(2) Elevations between 415 and 959 m (1,361 and 3,146 ft).

*Family Campanulaceae: Cyanea superba* (haha)

Oahu A and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Cyanea superba* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Understory on sloping terrain on a well drained rocky substrate within mesic forest containing one or more of the following associated native plant species: *Diospyros* sp., *Metrosideros polymorpha*, *Xylosma* sp., *Nestegis sandwicensis*, *Psychotria* sp., *Hedyotis terminalis*, and *Pisonia brunoniana*; and

(2) Elevations between 354 and 872 m (1,161 and 2,860 ft).

*Family Campanulaceae: Cyanea truncata* (haha)

Oahu L and O, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Cyanea truncata* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Windward slopes and streambanks in mesic to wet forests containing one or more of the following associated native plant species: *Cyrtandra calpidicarpa*, *Cyrtandra laxiflora*, *Pipturus albidus*, *Cibotium chamissoi*, *Hibiscus arnottianus*, *Diospyros sandwicensis*, *Metrosideros polymorpha*, *Cyrtandra propinqua*, *Neraudia melastomifolia*, or *Pisonia umbellifera*; and

(2) Elevations between 54 and 705 m (177 and 2,312 ft).

*Family Campanulaceae: Delissea subcordata* (NCN)

Oahu A, I, and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Delissea subcordata* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate to steep gulch slopes in mixed mesic forests containing one or more of the following associated native plant species: *Acacia koa*, *Alyxia oliviformis*, *Hedyotis acuminata*, *Streblus pendulinus*, *Diospyros sandwicensis*, *Psydrax odorata*, *Bobea* sp., *Myrsine lanaiensis*, *Claoxylon sandwicense*, *Charpentiera obovata*, *Chamaesyce multififormis*, *Pouteria sandwicensis*, *Antidesma* sp.,

*Metrosideros polymorpha*, *Pisonia* sp., *Diospyros hillebrandii*, *Nestegis sandwicensis*, or *Psychotria hathewayi*; and

(2) Elevations between 162 and 1025 m (531 and 3,362 ft).

**Family Campanulaceae:** *Lobelia gaudichaudii* ssp. *koolauensis* (NCN)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Lobelia gaudichaudii* ssp. *koolauensis* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate to steep slopes in *Metrosideros polymorpha* lowland wet shrublands or bogs containing one or more of the following associated native plant species: *Sadleria pallida*, *Isachne distichophylla*, *Vaccinium dentatum*, *Cibotium* sp., *Melicope* sp., *Bidens* sp., *Scaevola* sp., *Machaerina angustifolia*, *Dicanthelium koolauensis*, or *Broussaisia arguta*; and

(2) Elevations between 383 and 867 m (1,256 and 2,844 ft).

**Family Campanulaceae:** *Lobelia monostachya* (NCN)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Lobelia monostachya* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep, sparsely vegetated cliffs in mesic shrubland containing one or more of the following associated native plant species: *Artemisia australis*, *Carex meyenii*, *Psilotum nudum*, or *Eragrostis* sp.; and

(2) Elevation between 44 and 614 m (144 to 2,014 ft).

**Family Campanulaceae:** *Lobelia niihauensis* (NCN)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Lobelia niihauensis* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Exposed mesic or dry cliffs or ledges containing one or more of the following associated native plant species: *Osteomeles anthyllidifolia*, *Dodonaea viscosa*, *Schiedea mannii*, *Carex meyenii*, *Doryopteris* sp., *Sida fallax*, *Styphelia tameiameia*, *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus*, *Lipochaeta tenuis*, or *Artemisia* sp.; and

(2) Elevations between 339 to 926 m (1,112 to 3,037 ft).

**Family Campanulaceae:** *Lobelia oahuensis* (NCN)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Lobelia oahuensis* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes on summit cliffs in cloudswep wet forests or in lowland wet shrubland that are frequently exposed to heavy wind and rain containing one or more of the following associated native plant species: *Sadleria squarrosa*, *Peperomia* sp., *Broussaisia arguta*, *Scaevola* sp., *Vaccinium* sp., *Hedyotis* sp., *Cibotium* sp., *Freycinetia arborea*, *Lycopodium* sp., *Bidens* sp., *Wikstroemia* sp., *Phyllostegia* sp., *Syzygium sandwicensis*, *Melicope* sp., *Metrosideros polymorpha*, *Dicranopteris linearis*, *Machaerina angustifolia*, *Cheirodendron trigynum*, *Dubautia laxa*, or *Labordia hosakae*; and

(2) Elevations between 415 and 959 m (1,361 and 3,146 ft).

**Family Campanulaceae:** *Trematalobelia singularis* (NCN)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Trematalobelia singularis* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep, windswept cliff faces or slopes in *Metrosideros polymorpha*-*Dicranopteris linearis* lowland wet shrubland containing one or more of the following associated native plant species: *Eugenia* sp., *Wikstroemia* sp., *Melicope* sp., *Sadleria* sp., *Cibotium* sp., *Broussaisia arguta*, or *Dubautia laxa*; and

(2) Elevations between 545 and 953 m (1,788 and 3,126 ft).

**Family Caryophyllaceae:** *Alsinidendron obovatum* (NCN)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Alsinidendron obovatum* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* and *Metrosideros polymorpha* containing one or more of the following associated native plant species: *Bidens torta*, *Antidesma platyphyllum*, *Cibotium chamissoi*, *Hedyotis terminalis*, *Cyanea longiflora*, *Pipturus* sp., *Machaerina* sp., *Peperomia* sp., *Perrottetia sandwicensis*, *Ilex*

*anomala*, *Psydrax odorata*, *Coprosma* sp., or *Alyxia oliviformis*; and  
(2) Elevations between 476 and 943 m (1,561 and 3,093 ft).

**Family Caryophyllaceae:** *Alsinidendron trinerve* (NCN)

Oahu unit A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Alsinidendron trinerve* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes in wet forest or the wetter portions of diverse mesic forest dominated by *Metrosideros polymorpha* or *Ilex anomala* and *Metrosideros polymorpha* montane wet forest containing one or more of the following associated native plant species: *Machaerina* sp., *Hedyotis* sp., *Peperomia* sp., *Perrottetia sandwicensis*, *Athyrium sandwichianum*, *Broussaisia arguta*, *Vaccinium* sp., *Phyllostegia* sp., *Coprosma ochracea*, *Gunnera* sp., *Nothoperanema rubiginosa*, or *Pipturus albidus*; and

(2) Elevations between 833 and 1,233 m (2,732 and 4,044 ft).

**Family Caryophyllaceae:** *Schiedea hookeri* (NCN)

Oahu A, D, and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Schiedea hookeri* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes, cliffs or cliff bases, rock walls, or ledges in diverse mesic or dry lowland forest often with *Metrosideros polymorpha*, *Diospyros sandwicensis*, or *Diospyros hillebrandii* dominant, containing one or more of the following associated native plant species: *Carex wahuensis*, *Psydrax odoratum*, *Acacia koa*, *Bidens torta*, *Alyxia oliviformis*, *Pouteria sandwicensis*, *Hibiscus* sp., *Charpentiera tomentosa*, *Styphelia tameiameia*, *Sida fallax*, *Pisonia sandwicensis*, *Lipochaeta tenuis*, *Stenogyne* sp., *Antidesma pulvinatum*, *Elaeocarpus bifidus*, *Dodonaea viscosa*, *Artemisia australis*, *Carex meyenii*, or *Eragrostis grandis*; and

(2) Elevations between 208 and 978 m (682 and 3,208 ft).

**Family Caryophyllaceae:** *Schiedea kaalae* (NCN)

Oahu A, I, L, and O, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Schiedea kaalae* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes, cliffs, streambanks, or deep shade in diverse mesic or wet forests containing one or more of the following associated native plant species: *Pisonia sandwicensis*, *Psychotria hathewayi*, *Pouteria sandwicensis*, *Freycinetia arborea*, *Pipturus albidus*, *Cyrtandra laxiflora*, *Hedyotis acuminata*, *Selaginella arbuscula*, *Cyrtandra calpidicarpa*, *Boehmeria grandis*, *Claoxylon sandwicense*, *Diospyros hillebrandii*, *Dryopteris unidentata*, *Alyxia oliviformis*, *Charpentiera* sp., *Athyrium sandwichianum*, *Xylosma hawaiiense*, *Nothoecstrum longifolium*, *Athyrium arnottii*, or *Pisonia umbellifera*; and

(2) Elevations between 64 and 869 m (210 and 2,850 ft).

Family Caryophyllaceae: *Schiedea kealiae* (NCN)

Oahu unit A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Schiedea kealiae* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes or cliff faces or bases in dry remnant *Erythrina sandwicensis* forest containing one or more of the following associated native plant species: *Sicyos* sp., *Plumbago zeylanica*, *Lepidium bidentatum*, *Lipochaeta remyi*, *Myoporum sandwicense*, *Hibiscus arnottianus*, *Psydrax odorata*, *Bidens* sp., or *Sida fallax*; and

(2) Elevations between 64 and 869 m (210 and 2,850 ft.)

Family Caryophyllaceae: *Schiedea nuttallii* (NCN)

Oahu A and I, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Schiedea nuttallii* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Rock walls, forested slopes, or steep walls in *Acacia koa*-*Metrosideros polymorpha* lowland mesic forest or *Metrosideros polymorpha*-*Dodonaea viscosa* forest containing one or more of the following associated native plant species: *Alyxia oliviformis*, *Bidens torta*, *Psydrax odorata*, *Cyanea longiflora*, *Cibotium chamissoi*, *Hedyotis terminalis*, *Perrottetia sandwicensis*, *Ilex anomala*, *Coprosma* sp., *Peperomia* sp., *Machaerina* sp., *Pipturis* sp., or *Antidesma platyphyllum*; and

(2) Elevations between 436 and 1185 m (1,430 and 3,887 ft).

Family Caryophyllaceae: *Silene lanceolata* (NCN)

Oahu unit A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Silene lanceolata* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliff faces or ledges of gullies in dry to mesic shrubland or cliff communities containing one or more of the following associated native plant species: *Artemisia australis*, *Dodonaea viscosa*, *Schiedea mannii*, *Tetramolopium fifulforme*, *Bidens* sp., *Carex* sp., *Osteomeles anthyllifolia*, *Chamaesyce* sp., or *Lysimachia* sp.; and

(2) Elevations between 351 to 978 m (1,151 to 3,208 ft).

Family Caryophyllaceae: *Silene perlmannii* (NCN)

Oahu unit I, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Silene perlmannii* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep rocky slopes in *Acacia koa*-*Metrosideros polymorpha* lowland mesic forest; and

(2) Elevations between 493 and 919 m (1,617 and 3,014 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Oahu A, B, C, D, I, L, and P, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Bonamia menziesii* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes or level ground in dry or mesic forest in open or closed canopy containing one or more of the following associated native plant species: *Alyxia oliviformis*, *Pleomele* sp., *Sida fallax*, *Waltheria indica*, *Erythrina sandwicensis*, *Rauvolfia sandwicensis*, *Sicyos* sp., *Acacia koa*, *Styphelia tameiameia*, *Dodonaea viscosa*, *Metrosideros polymorpha*, *Psydrax odorata*, *Dianella sandwicensis*, *Diospyros sandwicensis*, *Hedyotis terminalis*, *Melicope anisata*, *Melicope barbiger*, *Myoporum sandwicensis*, *Nestegis sandwicense*, *Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis*, or *Sapindus oahuensis*; and

(2) Elevations between 31 and 809 m (102 and 2,654 ft).

Family Cyperaceae: *Cyperus trachysanthos* (puukaa)

Oahu A, W, and X, identified in the legal descriptions in (a)(1)(i)(I),

constitute critical habitat for *Cyperus trachysanthos* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Mud flats, wet clay soil, seasonal ponds, or wet cliff seeps on coastal cliffs or talus slopes containing *Hibiscus tiliaceus*; and

(2) Elevations above 248 m (813 ft).

Family Cyperaceae: *Mariscus pennatififormis* (NCN)

Oahu unit A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Mariscus pennatififormis* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Mesic and wet *Metrosideros polymorpha* forest and *Metrosideros polymorpha*-*Acacia koa* forest; and

(2) Elevations between 424 and 1,032 m (1,391 and 3,385 ft).

Family Euphorbiaceae: *Chamaesyce celastroides* var. *kaenana* (akoko)

Oahu A, D, and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Chamaesyce celastroides* var. *kaenana* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Windward talus slopes, leeward rocky cliffs, open grassy slopes, or on vegetated cliff faces in coastal dry shrubland containing one or more of the following associated native plant species: *Lipochaeta lobata*, *Myoporum sandwicense*, *Heteropogon contortus*, *Santalum* sp., *Plumbago zeylanica*, *Psydrax odorata*, *Boerhavia* sp., *Waltheria indica*, *Dodonaea viscosa*, *Artemisia australis*, *Psilotum nudum*, *Chamaesyce celastroides* var. *amplectans*, *Gossypium tomentosum*, *Jacquemontia ovalifolia* ssp. *sandwicensis*, *Santalum freycinetianum*, or *Sida fallax*; and

(2) Elevations between sea level and 862 m (0 and 2,827 ft).

Family Euphorbiaceae: *Chamaesyce deppeana* (akoko)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Chamaesyce deppeana* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Windward facing ridge crests, cliff faces and mixed native cliffs containing one or more of the following associated native plant species: *Metrosideros polymorpha* or *Bidens sandwicensis*; and

(2) Elevations from 274 to 661 m (899 to 2,168 ft).

Family Euphorbiaceae: *Chamaesyce herbstii* (akoko)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitutes critical habitat for *Chamaesyce herbstii* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Shaded gulch bottoms and slopes in mesic *Acacia koa*-*Metrosideros polymorpha* lowland forests or diverse mesic forests containing one or more of the following associated native plant species: *Xylosma* sp., *Pteralyxia* sp., *Morinda trimera*, *Hedyotis* sp., *Coprosma* sp., *Pipturis albidus*, *Diplazium sandwicense*, *Antidesma platyphyllum*, *Hibiscus arnottianus* var. *arnottianus*, *Melicope* sp., *Pouteria sandwicensis*, or *Urera glabra*; and

(2) Elevations between 435 and 886 m (1,427 and 2,906 ft).

Family Euphorbiaceae: *Chamaesyce kuwaleana* (akoko)

Oahu E, F, H, I, R, and U, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Chamaesyce kuwaleana* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Thin guano soil on basaltic rock, arid, exposed volcanic cliffs, dry or mesic rocky ridges, or sparsely vegetated slopes containing one or more of the following associated native plant species: *Heteropogon contortus*, *Bidens* sp., *Artemisia* sp., *Plectranthus parvilifolius*, *Chamaesyce* sp., *Schiedea* sp., *Carex* sp., *Sida fallax* or *Dodonaea viscosa*; and

(2) Elevations between 0 and 596 m (0 and 1,955 ft).

Family Euphorbiaceae: *Chamaesyce rockii* (akoko)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Chamaesyce rockii* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gulch slopes, gulch bottoms, and ridge crests in wet *Metrosideros polymorpha*-*Dicranopteris linearis* forest and shrubland containing one or more of the following associated native plant species: *Bidens* sp., *Antidesma platyphyllum*, *Hedyotis terminalis*, *Psychotria* spp., *Melicope* spp., *Coprosma longifolia*, *Diplopterygium pinnatum*, *Cibotium* sp., *Broussaisia*

*arguta*, *Dubautia laxa*, *Machaerina* sp., *Psychotria fauriei*, *Wikstroemia* sp., or *Myrsine juddii*; and

(2) Elevations between 208 and 871 m (682 and 2,857 ft).

Family Euphorbiaceae: *Euphorbia haeleleana* (akoko)

Oahu A, B, D, and P, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Euphorbia haeleleana* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry forest dominated by *Diospyros* sp. containing one or more of the following associated native plant species: *Psydrax odorata*, *Dodonaea viscosa*, *Erythrina sandwicensis*, *Pleomele* sp., *Reynoldsia sandwicensis*, or *Sapindus oahuensis*; and

(2) Elevations between 156 and 586 m (512 and 1,922 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Flueggea neowawraea* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gulch slopes, ridge crests, or near streams in dry or mesic forest containing one or more of the following associated native plant species: *Pisonia sandwicensis*, *Hibiscus arnottianus*, *Morinda sandwicensis*, *Hedyotis terminalis*, *Alyxia oliviformis*, *Chamaesyce multifloris*, *Metrosideros polymorpha*, *Myrsine* sp., *Pleomele* sp., *Myoporum sandwicense*, *Chamaesyce herbstii*, *Pteralyxia* sp., *Pipturis albidus*, *Diospyros hillebrandii*, *Pisonia umbellifera*, *Charpentiera* sp., *Claoxylon sandwicensis*, *Antidesma platyphyllum*, *Sapindus oahuensis*, *Pittosporum* sp., *Erythrina sandwicensis*, *Diospyros sandwicensis*, *Antidesma pulvinatum*, *Bobea* sp., *Psydrax odorata*, *Nestegis sandwicensis*, *Rauvolfia sandwicensis*, or *Streblus pendulina*; and

(2) Elevations between 323 to 1,006 m (1,059 to 3,300 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Oahu A, M, N, Q, R, S, T, U, and V, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Sesbania tomentosa* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliff faces, broken basalt, or sand dunes with rock outcrops in *Scaevola*

*sericea* coastal dry shrubland or *Sporobolus virginicus* mixed grasslands containing one or more of the following associated native plant species:

*Heliotropium* sp., *Jacquemontia sandwicensis*, *Myoporum sandwicense*, *Sida fallax*, or *Lipochaeta* sp.; and

(2) Elevations between sea level and 152 m (0 and 499 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

Oahu S, T, and U, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Vigna o-wahuensis* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Open dry fossil reef, with shrubs or grasses for the plant to climb over or fairly steep slopes; and

(2) Elevations between 0 and 609 m (0 and 1,998 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Oahu A, M, N, and W, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Centaurium sebaeoides* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Volcanic or clay soils or cliffs in arid coastal areas or on coral plains containing one or more of the following associated native plant species:

*Artemisia* sp., *Bidens* sp., *Jacquemontia ovalifolia*, *Lipochaeta succulenta*, or *Lysimachia* sp.; and

(2) Below 368 m (1,207 ft).

Family Gesneriaceae: *Cyrtandra dentata* (haiwale)

Oahu A, I, and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Cyrtandra dentata* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gulches, slopes, streambanks, or ravines in mesic or wet forest containing one or more of the following associated native plant species: *Urera glabra*, *Acacia koa*, *Pisonia sandwicensis*, *Pipturis albidus*, *Metrosideros polymorpha*, *Pouteria sandwicensis*, *Pisonia umbellifera*, or *Syzygium sandwicensis*; and

(2) Elevations between 255 and 953 m (836 and 3,126 ft).

Family Gesneriaceae: *Cyrtandra polyantha* (haiwale)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes

critical habitat for *Cyrtandra polyantha* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridges of valleys in *Metrosideros polymorpha* mesic or wet forests containing one or more of the following associated native plant species: *Machaerina angustifolia*, *Dicranopteris linearis*, *Broussaisia arguta*, *Coprosma foliosa*, or *Psychotria* sp.; and

(2) Elevations between 331 and 762 m (1,086 and 2,499 ft).

**Family Gesneriaceae:** *Cyrtandra subumbellata* (haiwale)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Cyrtandra subumbellata* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moist slopes or gulch bottoms in wet forest dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha*-*Dicranopteris linearis*-*Acacia koa* containing one or more of the following associated native plant species: *Machaerina* sp., *Boehmeria grandis*, *Broussaisia arguta*, or *Thelypteris* sp.; and

(2) Elevations between 345 and 790 m (1,132 and 2,591 ft).

**Family Gesneriaceae:** *Cyrtandra viridiflora* (haiwale)

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Cyrtandra viridiflora* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Wind blown ridge tops in cloud covered wet forest or shrubland containing one or more of the following associated native plant species: *Diplopterygium pinnatum*., *Psychotria* sp., *Freycinetia arborea*, *Dubautia* sp., *Ilex anomala*, *Melicope* sp., *Hedyotis* sp., *Cheirodendron platyphyllum*, *Broussaisia arguta*, *Metrosideros polymorpha*, *Syzygium sandwicensis*, *Machaerina* sp., *Metrosideros rugosa*, or *Dicranopteris linearis*; and

(2) Elevations between 443 and 867 m (1,453 and 2,844 ft).

**Family Loganiaceae:** *Labordia cyrtandrae* (kamakahala)

Oahu A and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Labordia cyrtandrae* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Shady gulches, slopes, or glens in mesic to wet forests and shrublands dominated by *Metrosideros polymorpha*, *Diplopterygium pinnatum*, and/or *Acacia koa* containing one or more of the following associated native plant species: *Broussaisia arguta*, *Cyrtandra* sp., *Phyllostegia* sp., *Dicranopteris linearis*, *Antidesma* sp., *Bidens torta*, *Artemisia australis*, *Dubautia plantaginea*, *Rumex* sp., *Lysimachia hillebrandii*, *Chamaesyce* sp., *Coprosma* sp., *Boehmeria grandis*, *Peperomia membranaceae*, *Pouteria sandwicensis*, *Diplazium sandwichianum*, *Pipturus albidus*, *Perrottetia sandwicensis*, or *Psychotria* sp.; and

(2) Elevations between 212 and 1,233 m (695 and 4,044 ft).

**Family Lamiaceae:** *Phyllostegia hirsuta* (NCN)

Oahu A, I, and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Phyllostegia hirsuta* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep, shaded slopes, cliffs, ridges, gullies, or streambanks in mesic or wet forests dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* containing one or more of the following associated native plant species: *Pisonia* sp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Chamaesyce multiformis*, *Hibiscus* sp., *Rumex albescens*, *Machaerina angustifolia*, *Clermontia kekeana*, *Perottetia sandwicensis*, *Cibotium* sp., *Hedyotis schlehtendahlana*, *Ilex anomala*, *Lysimachia hillebrandii*, *Melicope* sp., *Psychotria* sp., *Astelia* sp., *Antidesma platyphyllum*, *Dubautia laxa*, *Cyanea membranacea*, *Elaeocarpus bifidus*, *Myrsine sandwicensis*, *Scaevola gaudichaudiana*, *Pleomele* sp., *Dryopteris unidentata*, *Streblus pendulinus*, *Claoxylon sandwicense*, *Nothoecstrum* sp., *Neraudia* sp., *Zanthoxylum kauaense*, *Labordia kaalae*, *Cyrtandra waianaensis*, *Phyllostegia grandiflora*, *Liparis hawaiiensis*, *Dubautia sherffiana*, *Pouteria sandwicensis*, *Broussaisia arguta*, *Pipturis* sp., *Coprosma longifolia*, *Hedyotis terminalis*, *Myrsine lessertiana*, or native ferns; and

(2) Elevations between 195 and 1,202 m (640 and 3,943 ft).

**Family Lamiaceae:** *Phyllostegia kaalaensis* (NCN)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute

critical habitat for *Phyllostegia kaalaensis* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gulch slopes or bottoms or almost vertical rock faces in mesic forest or *Sapindus oahuensis* forest containing one or more of the following associated native plant species: *Myrsine lanaiensis*, *Myrsine lessertiana*, *Psychotria hathewayi*, *Antidesma platyphyllum*, *Diplazium sandwichianum*, *Pipturus albidus*, *Hibiscus* sp., *Claoxylon sandwicense*, *Neraudia melastomifolia*, *Streblus pendulinus*, *Pouteria sandwicensis*, *Freycinetia arborea*, or *Urera glabra*; and

(2) Elevations between 374 and 796 m (1,227 and 2,611 ft).

**Family Lamiaceae:** *Phyllostegia mollis* (NCN)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Phyllostegia mollis* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes or gulches in diverse mesic to wet forests containing one or more of the following associated native plant species: *Pouteria sandwicensis*, *Antidesma platyphyllum*, *Dryopteris unidentata*, *Carex meyenii*, *Metrosideros polymorpha*, *Chamaesyce multiformis*, *Acacia koa*, *Claoxylon sandwicense*, *Alyxia oliviformis*, *Myrsine* sp., *Diospyros hillebrandii*, *Psychotria hathewayi*, *Pipturus alba*, *Urera glabra*, or *Pisonia umbellifera*; and

(2) Elevations between 519 to 928 m (1,702 to 3,044 ft).

**Family Lamiaceae:** *Phyllostegia parviflora* (NCN)

Oahu unit I, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Phyllostegia parviflora* var. *lydgatei* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate to steep slopes in mesic forest containing one or more of the following associated native plant species: *Xylosma hawaiiense*, *Claoxylon sandwicense*, *Antidesma platyphyllum*, *Pouteria sandwicensis*, *Pipturus albidus*, *Myrsine lessertiana*, *Chamaesyce multiformis*, *Coprosma foliosa*, *Dryopteris unidentata*, *Selaginella arbuscula*, or *Pipturus alba*; and

(2) Elevations between 555 to 881 m (1,820 to 2,890 ft).

Oahu unit L, identified in the legal description in (a)(1)(i)(I), constitutes

critical habitat for *Phyllostegia parviflora* var. *parviflora* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha* mixed lowland wet forest containing one or more of the following associated native plant species: *Cibotium* sp., *Dicranopteris linearis*, *Broussaisia arguta*, *Antidesma* sp., *Pritchardia* sp., *Tetraplasandra* sp., *Touchardia latifolia*, *Pipturus* sp., *Cheirodendron* sp., *Phyllostegia glabra*, *Cyrtandra* sp., *Syzygium sandwicensis*, or *Melicope* sp.; and

(2) Elevations between 232 and 867 m (761 and 2,844 ft).

*Family Lamiaceae: Stenogyne kanehoana* (NCN)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Stenogyne kanehoana* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland mesic forest containing one or more of the following associated native plant species: *Acacia koa*, *Metrosideros polymorpha*, *Psychotria* sp., *Freycinetia arborea*, *Bidens* sp., *Chamaesyce* sp., *Alyxia oliviformis*, *Cibotium* sp., or *Scaevola* sp.; and

(2) Elevations between 559 and 1,168 m (1,834 and 3,831 ft).

*Family Malvaceae: Abutilon sandwicense* (NCN)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Abutilon sandwicense* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes or gulches in dry to mesic lowland forest containing one or more of the following associated native plant species: *Sapindus oahuensis*, *Hibiscus arnottianus*, *Psydrax odorata*, *Diospyros sandwicensis*, *Reynoldsia sandwicensis*, *Nestegis sandwicensis*, *Antidesma pulvinatum*, *Pittosporum* sp., *Pleomele* sp., *Rauvolfia sandwicensis*, *Myrsine lanaiensis*, *Pisonia* sp., *Metrosideros polymorpha*, *Pipturus albidus*, *Eugenia reinwartiana*, or *Elaeocarpus bifidus*; and

(2) Elevations between 149 and 875 m (489 and 2,870 ft).

*Family Malvaceae: Hibiscus brackenridgei* (mao hau hele)

Oahu A, B, D, I, and P, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Hibiscus*

*brackenridgei* ssp. *mokuleianus* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes, cliffs, or arid ledges in lowland dry forest or shrubland containing one or more of the following associated native plant species: *Erythrina sandwicensis*, *Heteropogon contortus*, *Waltheria indica*, *Doryopteris* sp., *Lepidium bidentatum*, *Lipochaeta remyi*, *Bidens amplexans*, *Chamaesyce* sp., *Reynoldsia sandwicensis*, *Pleomele halapepe*, *Diospyros hillebrandii*, *Dodonaea viscosa*, *Psydrax odorata* or *Sida fallax*; and

(2) Elevations between 24 to 490 m (79 to 1,607 ft).

Oahu A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Hibiscus brackenridgei* ssp. *molokaiana* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry shrublands containing one or more of the following associated native plant species: *Waltheria indica*, *Sida fallax*, *Doryopteris* sp., *Dodonaea viscosa*, or *Heteropogon contortus*; and

(2) Elevations between 23 and 580 m (75 to 1,902 ft).

*Family Myrsinaceae: Myrsine juddii* (kolea)

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Myrsine juddii* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridge crests or gulch slopes in wet forests or shrublands dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* containing one or more of the following associated native plant species: *Machaerina* sp., *Cheirodendron trigynum*, *Melicope clusiifolia*, *Psychotria mariniana*, *Cheirodendron platyphyllum*, or *Syzygium sandwicensis*; and

(2) Elevations between 384 and 867 m (1,260 and 2,844 ft).

*Family Myrtaceae: Eugenia koolauensis* (nioi)

Oahu A and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Eugenia koolauensis* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gentle to steep slopes or ridges in mesic or dry forests dominated by

*Metrosideros polymorpha* or *Diospyros* sp. containing one or more of the following associated native plant species: *Bohea elatior*, *Rauvolfia sandwicensis*, *Alyxia oliviformis*, *Pouteria sandwicensis*, *Dicranopteris linearis*, *Styphelia tameiameia*, *Carex meyenii*, *Myrsine lessertiana*, *Nestegis sandwicensis*, *Pleomele halapepe*, or *Psydrax odorata*; and

(2) Elevations between 57 to 437 m (187 to 1,433 ft).

*Family Orchidaceae: Platanthera holochila* (NCN)

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Platanthera holochila* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) *Metrosideros polymorpha*-*Dicranopteris linearis* montane wet forest or *Metrosideros polymorpha* mixed montane bogs containing one or more of the following associated native plant species: *Cibotium* sp., *Coprosma ernodeoides*, *Styphelia tameiameia*, *Wikstroemia* sp., *Scaevola chamissoniana*, *Sadleria* sp., *Lythrum maritimum*, *Deschampsia nubigena*, *Luzula hawaiiensis*, *Sisyrinchium acre*, *Broussaisia arguta*, *Clermontia* sp., *Lycopodium cernuum*, *Dubautia scabra*, *Polypodium pellucidum*, *moreletia gahniiformis*, or *Vaccinium reticulatum*; and

(2) Elevations between 447 and 867 m (1,466 and 2,844 ft).

*Family Plantaginaceae: Plantago princeps* (laukahi kuahiwi)

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Plantago princeps* var. *longibracteata* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Sides of waterfalls or wet rock faces containing one or more of the following associated native plant species: *Lobelia gaudichaudii*, *Scaevola glabra*, *Bidens* sp., *Eugenia* sp., *Coprosina granadensis*, or *Metrosideros rugosa*; and

(2) Elevations around 64 and 835 m (210 and 2,844 ft).

Oahu A, I, and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Plantago princeps* var. *princeps* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes or ledges in *Metrosideros polymorpha* lowland mesic forests or shrublands containing one or more of



the following associated native plant species: *Lysimachia* sp., *Chamaesyce* sp., *Eragrostis* sp., *Pilea peploides*, *Artemisia australis*, *Viola* sp., *Dubautia plantaginea*, or *Bidens* sp.; and

(2) Elevations between 110 and 1,064 m (361 and 3,490 ft).

**Family Poaceae: *Cenchrus agrimonioides* (kamanomano)**

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Cenchrus agrimonioides* var. *agrimonioides* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry ridges or upper slopes, or ridges in lowland mixed mesic forest containing one or more of the following associated native plant species: *Acacia koa*, *Metrosideros polymorpha*, *Alyxia oliviformis*, *Psydrax odorata*, *Diospyros sandwicensis*, *Carex wahuensis*, *Nestegis sandwicensis*, *Psychotria* sp., *Bobea* sp., *Chamaesyce multiformis*, *Gahnia beecheyi*, *Coprosma foliosa*, *Styphelia tameiameia*, or *Eragrostis variabilis*; and

(2) Elevations between 357 and 890 m (1,171 and 2,919 ft).

**Family Poaceae: *Eragrostis fosbergii* (NCN)**

Oahu A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Eragrostis fosbergii* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridge crests or moderate slopes in dry or mesic forests containing one or more of the following associated native plant species: *Chamaesyce* sp., *Alyxia oliviformis*, *Sphenomeris* sp., *Nephrolepis exaltata*, *Doodia* sp., *Bidens* sp., *Melicope* sp., *Acacia koa*, *Metrosideros polymorpha*, *Psydrax odorata*, *Dodonaea viscosa*, or *Eragrostis grandis*; and

(2) Elevations between 578 and 941 m (1,896 and 3,086 ft).

**Family Primulaceae: *Lysimachia filifolia* (no common name)**

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Lysimachia filifolia* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests containing one or more of the following

associated native plant species: mosses, ferns, liverworts, or *Pilea peploides*; and

(2) Elevations between 65 and 798 m (213 and 2,617 ft).

**Family Rhamnaceae: *Colubrina oppositifolia* (kauila)**

Oahu A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Colubrina oppositifolia* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Lowland dry or mesic forests dominated by *Diospyros sandwicensis* containing one or more of the following associated native plant species: *Alyxia oliviformis*, *Nestegis sandwicensis*, *Sapindus oahuensis*, *Psydrax odorata*, or *Reynoldsia sandwicensis*; and

(2) Elevations between 277 and 761 m (909 and 2,496 ft).

**Family Rhamnaceae: *Gouania meyenii* (NCN)**

Oahu A, I, and X, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Gouania meyenii* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate to steep slopes in dry shrubland or mesic lowland forest containing one or more of the following associated native plant species:

*Diospyros sandwicensis*, *Charpentiera* sp., *Alyxia oliviformis*, *Pisonia* sp., *Hibiscus* sp., *Canavalia* sp., *Sophora chrysophylla*, *Sida fallax*, *Schiedea* sp., *Dubautia sherffiana*, *Psydrax odorata*, *Eragrostis* sp., *Dryopteris unidentata*, *Sapindus oahuensis*, *Myrsine* sp., *Dodonaea viscosa*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, *Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii*; and

(2) Elevations between 323 to 1,006 m (1,059 to 3,300 ft).

**Family Rhamnaceae: *Gouania vitifolia* (NCN)**

Oahu A, B, D, and P, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Gouania vitifolia* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Sides of ridges or gulches in dry to mesic forests containing one or more of the following associated native plant species: *Erythrina sandwicensis*, *Dodonaea viscosa*, *Hibiscus arnottianus*, *Pipturis albidus*, *Urera glabra*, *Chamaesyce* sp., *Psychotria* sp.,

*Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, or *Diospyros sandwicensis*; and

(2) Elevation between 39 to 978 m (128 to 3,208 ft).

**Family Rubiaceae: *Gardenia mannii* (nanu)**

Oahu A, I, and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Gardenia mannii* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate to moderately steep gulch slopes, ridge crests, gulch bottoms, and streambanks in mesic or wet forests containing one or more of the following associated native plant species: *Coprosma foliosa*, *Pisonia* sp., *Bobea* sp., *Syzygium sandwicensis*, *Melicope* sp., *Cheirodendron* sp., *Perotettia* sp., *Elaeocarpus* sp., *Cibotium* sp., *Thelypteris* sp., *Pipturus* sp., *Ilex anomala*, *Freycinetia arborea*, *Boehmeria grandis*, *Metrosideros polymorpha*, *Pouteria sandwicensis*, *Acacia koa*, *Dicranopteris linearis*, *Antidesma platyphyllum*, *Broussaisia arguta*, *Hedyotis acuminata*, *Alyxia oliviformis*, or *Psychotria mariniana*; and

(2) Elevations between 82 and 1,050 m (269 and 3,444 ft).

**Family Rubiaceae: *Hedyotis coriacea* (kioele)**

Oahu I and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Hedyotis coriacea* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep, rocky, slopes in dry to mesic *Dodonaea viscosa* dominated shrublands or forests containing one or more of the following associated native plant species: *Metrosideros polymorpha*, *Styphelia tameiameia*, or *Alyxia oliviformis*; and

(2) Elevations between 57 and 836 m (187 and 2,742 ft).

**Family Rubiaceae: *Hedyotis degeneri* (NCN)**

Oahu A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Hedyotis degeneri* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridge crests in diverse mesic forest containing one or more of the following associated native plant species: *Styphelia tameiameia*, *Dicranopteris linearis*, *Wikstroemia oahuensis*,

*Dodonaea viscosa*, *Alyxia oliviformis*, *Diospyros sandwicensis*, *Psychotria hathewayi*, *Cocculus* sp., *Lysimachia hillebrandii*, *Chamaesyce multififormis*, *Lobelia yuccoides*, *Gahnia* sp., *Pleomele* sp., *Carex meyenii*, *Psydrax odorata*, *Metrosideros polymorpha*, or *Hedyotis terminalis*; and

(2) Elevations between 349 and 1,083 m (1,145 and 3,552 ft).

**Family Rubiaceae: *Hedyotis parvula* (NCN)**

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Hedyotis parvula* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliff faces or their bases, rock outcrops, or ledges in mesic habitat containing one or more of the following associated native plant species: *Eragrostis* sp., *Carex* sp., *Rumex* sp., *Metrosideros polymorpha*, *Chamaesyce* sp., *Bidens* sp., *Dodonaea viscosa*, *Psydrax odorata*, *Metrosideros tremuloides*, or *Plectranthus parviflorus*; and

(2) Elevations between 331 and 1,160 m (1,086 and 3,805 ft).

**Family Rutaceae: *Melicope lydgatei* (alani)**

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Melicope lydgatei* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridges in mesic or wet forests containing one or more of the following associated native plant species: *Acacia koa*, *Metrosideros polymorpha*, *Dicranopteris linearis*, *Psychotria* sp., *Syzygium sandwicensis*, or *Bobea elatior*; and

(2) Elevations between 349 and 671 m (1,145 and 2,201 ft).

**Family Rutaceae: *Melicope pallida* (alani)**

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Melicope pallida* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep rock faces in lowland dry or mesic forests containing one or more of the following associated native plant species: *Psychotria mariniana*, *Bobea elatior*, *Acacia koa*, *Cibotium* sp., *Wikstroemia oahuensis*, *Syzygium sandwicensis*, *Abutilon sandwicense*, *Alyxia oliviformis*, *Dryopteris* sp.,

*Metrosideros polymorpha*, *Pipturus albidus*, *Sapindus oahuensis*, *Tetraplasandra* sp., or *Xylosma hawaiiense*; and

(2) Elevations between 234 to 841 m (768 to 2,758 ft).

**Family Rutaceae: *Melicope saint-johnii* (alani)**

Oahu I, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Melicope saint-johnii* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Ridges or gulch bottoms in mesic forest containing one or more of the following associated native plant species: *Artemisia australis*, *Eragrostis* sp., *Hedyotis schlechtendahlia*, *Lysimachia hillebrandii*, *Bidens torta*, *Alyxia oliviformis*, *Carex wahuensis*, *Panicum beechyi*, *Rumex albescens*, *Pittosporum* sp., *Pleomele halapepe*, *Pipturus albidus*, *Metrosideros polymorpha*, *Coprosma longifolia*, *Labordia kaalae*, or *Psychotria hathewayi*; and

(2) Elevations between 240 and 953 m (787 and 3,126 ft).

**Family Sapindaceae: *Alectryon macrococcus* (mahoe)**

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Alectryon macrococcus* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes, ridges, or gulches within mesic lowland forests containing one or more of the following associated native plant species: *Pisonia sandwicensis*, *Elaeocarpus bifidus*, *Streblus pendulinus*, *Psychotria hathewayi*, *Pouteria sandwicensis*, *Pisonia umbellifera*, *Diplazium sandwichianum*, *Claoxylon sandwicense*, *Neraudia* sp., *Pipturus albidus*, *Diospyros hillebrandii*, *Charpentiera* sp., *Hibiscus arnotianus*, *Metrosideros polymorpha*, *Diospyros sandwicensis*, *Nestegis sandwicensis*, *Pisonia* sp., *Xylosma* sp., *Antidesma platyphyllum*, *Myrsine lanaiensis*, *Psydrax odorata*, *Canavalia* sp., or *Alyxia oliviformis*; and

(2) Elevations between 367 and 941 m (1,204 and 3,086 ft).

**Family Solanaceae: *Solanum sandwicense* (aiakeakua, popolo)**

Oahu A, I, and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Solanum sandwicense* on Oahu. Within these units, currently known primary

constituent elements of critical habitat are the habitat components provided by:

(1) Talus slopes or streambeds in open, sunny areas containing one or more of the following associated native plant species: *Pisonia* sp. or *Psychotria* sp.; and

(2) Elevations between 131 and 1,006 m (430 and 3,300 ft).

**Family Urticaceae: *Neraudia angulata* (NCN)**

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Neraudia angulata* var. *angulata* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes, ledges, or gulches in lowland mesic or dry forest containing one or more of the following associated native plant species: *Diospyros* sp., *Dodonaea viscosa*, *Bidens* sp., *Artemisia australis*, *Sida fallax*, *Carex meyenii*, *Psydrax odorata*, *Hibiscus* sp., *Pisonia sandwicensis*, or *Nestegis sandwicensis*; and

(2) Elevations between 189 and 978 m (620 and 3,208 ft).

Oahu A, B, D, and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Neraudia angulata* var. *dentata* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cliffs, rock embankments, gulches, or slopes in mesic or dry forests containing one or more of the following associated native plant species: *Diospyros sandwicensis*, *Diospyros hillebrandii*, *Dodonaea viscosa*, *Artemisia australis*, *Alyxia oliviformis*, *Sapindus oahuensis*, *Psydrax odorata*, *Pisonia* sp., *Antidesma pulvinatum*, *Nestegis sandwicensis*, *Myrsine lanaiensis*, *Hibiscus* sp., *Metrosideros polymorpha*, *Bidens torta*, *Canavalia* sp., *Rauwolfia sandwicensis*, *Carex* sp., *Charpentiera* sp., *Sida fallax*, *Streblus pendulinus*, or *Eragrostis* sp.; and

(2) Elevations between 110 and 978 m (361 and 3,208 ft).

**Family Urticaceae: *Urera kaalae* (opuhe)**

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Urera kaalae* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Slopes or gulches in diverse mesic forest containing one or more of the following associated native plant species: *Hibiscus* sp., *Alyxia oliviformis*, *Canavalia* sp., *Charpentiera* sp., *Senna*

*gaudichaudii*, *Claoxylon sandwicense*, *Pleomele* sp., *Xylosma hawaiiense*, *Chamaesyce* sp., *Antidesma platyphyllum*, *Athyrium* sp., *Streblus pendulinus*, *Hedyotis acuminata*, *Asplenium kaulfusii*, *Doryopteris* sp., *Pouteria sandwicensis*, *Claoxylon sandwicense*, *Freycinetia arborea*, *Pipturus albidus*, *Urera glabra*, *Psychotria* sp., *Diospyros hillebrandii*, or *Nestegis sandwicensis*; and

(2) Elevations between 439 and 1074 m (1,440 and 3,523 ft).

**Family Violaceae: *Isodendron laurifolium* (aupaka)**

Oahu A and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Isodendron laurifolium* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gulch slopes, ravines, or ridges in diverse mesic or dry forest dominated by *Metrosideros polymorpha*, *Acacia koa*, *Eugenia reinwardtiana*, or *Diospyros sandwicensis* containing one or more of the following associated native plant species: *Nestegis sandwicensis*, *Hibiscus arnottianus*, *Alyxia oliviformis*, *Rauvolfia sandwicensis*, *Psydrax odorata*, *Carex wahuensis*, *Charpentiera tomentosa*, *Doodia* sp., *Dryopteris unidentata*, *Sapindus* sp., *Antidesma pulvinatum*, *Smilax melastomifolia*, *Antidesma platyphyllum*, *Xylosma hawaiiense*, *Hedyotis terminalis*, *Pisonia* sp., or *Pouteria sandwicensis*; and

(2) Elevations between 90 and 959 m (295 and 3,146 ft).

**Family Violaceae: *Isodendron longifolium* (aupaka)**

Oahu A and L, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Isodendron longifolium* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep slopes or stream banks in mixed mesic or lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest containing one or more of the following associated native plant species: *Syzygium sandwicensis*, *Pouteria sandwicensis*, *Acacia koa*, *Psydrax odoratum*, *Alyxia oliviformis*, *Melicope* sp., *Pittosporum* sp., *Carex* sp., *Selaginella arbuscula*, *Isachne pallens*, *Bobea brevipes*, *Antidesma* sp., *Cyanea* sp., *Cyrtandra* sp., *Hedyotis terminalis*, *Peperomia* sp., *Perrottetia sandwicensis*, or *Psychotria* sp.; and

(2) Elevations between 363 and 964 m (1,191 and 3,162 ft).

**Family Violaceae: *Isodendron pyrifolium* (wahine noho kula)**

Oahu A, B, D, F, I, and P, identified in the legal descriptions in (a)(1)(i)(I), constitutes critical habitat for *Isodendron pyrifolium* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Bare rocky hills or wooded ravines in dry shrublands from 363 to 964 m (1,191 to 3,162 ft.).

**Family Violaceae: *Viola chamissoniana* ssp. *chamissoniana* (olopu)**

Oahu A, G, and I, identified in the legal descriptions in (a)(1)(i)(I), constitute critical habitat for *Viola chamissoniana* ssp. *chamissoniana* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Dry cliffs, rocky ledges, or steep slopes in mesic shrubland or cliff vegetation containing one or more of the following associated native plant species: *Sida fallax*, *Chamaesyce* sp., *Dodonaea viscosa*, *Schiedea* sp., *Dubautia* sp., *Peperomia* sp., *Lipochaeta tenuis*, *Rumex* sp., *Artemisia australis*, *Bidens torta*, *Carex meyenii*, *Eragrostis* sp., *Metrosideros polymorpha*, or *Styphelia tameiameia*; and

(2) Elevations between 414 and 1,149 m (1,358 and 3,769 ft).

**Family Violaceae: *Viola oahuensis* (NCN)**

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Viola oahuensis* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Exposed, windswept ridges of moderate to steep slope in wet *Metrosideros polymorpha-Dicranopteris linearis* shrublands or *Metrosideros polymorpha* mixed montane bogs in the cloud zone containing one or more of the following associated native plant species: *Broussaisia arguta*, *Cibotium* sp., *Labordia* sp., *Dubautia laxa*, *Wikstroemia* sp., *Hedyotis terminalis*, *Antidesma* sp., *Syzygium sandwicensis*, *Melicope* sp., *Bidens macrocarpa*, *Machaerina* sp., *Sadleria* sp., or *Vaccinium* sp.; and

(2) Elevations between 415 and 959 m (1,361 and 3,146 ft).

(B) Ferns and Allies.

**Family Adiantaceae: *Pteris lidgatei* (NCN)**

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Pteris lidgatei* on

Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep stream banks or cliffs in wet *Metrosideros polymorpha-Dicranopteris linearis* forest containing one or more of the following associated native plant species: *Cyrtandra* sp., *Machaerina angustifolia*, *Selaginella arbuscula*, *Isachne pallens*, *Thelypteris sandwicensis*, *Diploterygium pinnatum*, *Sadleria* sp., *Broussaisia arguta*, *Cibotium chamissoi*, *Dicranopteris linearis*, *Elaphoglossum crassifolium*, *Sadleria squarrosa*, *Asplenium* sp., *Doodia lyonii*, or *Sphenomeris chusana*; and

(2) Elevations around 75 m (246 ft).

**Family Aspleniaceae: *Ctenitis squamigera* (pauoa)**

Oahu A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Ctenitis squamigera* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Gentle to steep slopes in *Metrosideros polymorpha-Diospyros sandwicensis* mesic forest or diverse mesic forest containing one or more of the following associated native plant species: *Alyxia oliviformis*, *Hibiscus* sp., *Diospyros hillebrandii*, *Nestegis sandwicensis*, *Psydrax odorata*, *Pouteria sandwicensis*, *Carex meyenii*, *Dodonaea viscosa*, *Freycinetia arborea*, *Pisonia* sp., *Dryopteris unidentata*, *Doodia kunthiana*, *Myrsine* sp., *Psychotria* sp., or *Xylosma* sp.; and

(2) Elevations between 387 to 923 m (1,269 to 3,027 ft).

**Family Aspleniaceae: *Diellia erecta* (NCN)**

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Diellia erecta* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate to steep gulch slopes or sparsely vegetated rock faces in mesic forest containing one or more of the following associated native plant species: *Sapindus oahuensis*, *Psydrax odorata*, *Coprosma* sp., *Dodonaea viscosa*, *Dryopteris unidentata*, *Myrsine* sp., *Psychotria* sp., *Syzygium sandwicensis*, or *Wikstroemia* sp.; and

(2) Elevations between 118 and 550 m (387 and 1,804 ft).

*Family Aspleniaceae: Diellia falcata*  
(NCN)

Oahu A and I, identified in the legal descriptions in (a)(1)(i)(I), constitutes critical habitat for *Diellia falcata* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Deep shade or open understory on moderate to moderately steep slopes and gulch bottoms in diverse mesic forest containing one or more of the following associated native plant species: *Pisonia sandwicensis*, *Doodia kunthiana*, *Dryopteris unidentata*, *Antidesma* sp., *Nestegis sandwicensis*, *Alyxia oliviformis*, *Psydrax odorata*, *Pipturis* sp., *Metrosideros polymorpha*, *Freycinetia arborea*, *Athyrium sandwichianum*, *Dryopteris unidentata*, *Nephrolepis exaltata*, *Diospyros hillebrandii*, *Acacia koa*, *Elaeocarpus bifidus*, *Myrsine lanaiensis*, *Selaginella arbuscula*, *Carex meyenii*, *Sophora chrysophylla*, *Claoxylon sandwicense*, *Psychotria* sp., *Hibiscus* sp., *Xylosma* sp., *Melicope* sp., *Coprosma foliosa*, *Asplenium kaulfussii*, *Nothocestrum* sp., *Charpentiera* sp., *Hedyotis terminalis*, *Sapindus oahuensis*, *Diospyros sandwicensis*, or *Pouteria sandwicensis*; and

(2) Elevations between 224 and 953 m (735 and 3,126 ft).

*Family Aspleniaceae: Diellia unisora*  
(NCN)

Oahu I, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Diellia unisora* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Moderate to steep slopes or gulch bottoms in deep shade or open

understory in mesic forest containing one or more of the following associated native plant species: *Coprosma* sp., *Rumex* sp., *Antidesma* sp., *Psychotria* sp., *Carex meyenii*, *Dryopteris unidentata*, *Chamaesyce multiformis*, *Dodonaea viscosa*, *Bidens torta*, *Eragrostis grandis*, *Hedyotis terminalis*, *Alyxia oliviformis*, *Myrsine lessertiana*, *Hedyotis schlechtendahlana*, *Selaginella arbuscula*, *Acacia koa*, or *Metrosideros polymorpha*; and

(2) Elevations between 382 and 953 m (1,253 and 3,126 ft).

*Family Aspleniaceae: Diplazium molokaiense* (NCN)

Oahu A, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Diplazium molokaiense* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Steep rocky wooded gulch walls in wet forests; and

(2) Elevations around 450 m (1,476 ft).

*Family Grammitidaceae: Adenophorus periens* (pendant kihi fern)

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Adenophorus periens* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Trees in *Metrosideros polymorpha* or *Metrosideros rugosa* wet forests containing one or more of the following associated native plant species: *Dicranopteris linearis*, *Cheirodendron* spp., *Machaerina angustifolia*, *Syzygium sandwicensis*, *Hedyotis terminalis*, or *Cibotium* sp.; and

(2) Elevations between 618 to 1,202 m (2,027 to 3,943 ft).

*Family Lycopodiaceae: Phlegmariurus nutans* (wawaeiole)

Oahu L, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Phlegmariurus nutans* on Oahu. Within this unit, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Tree trunks, open ridges, forested slopes, or cliffs in *Metrosideros polymorpha* dominated wet forests, cliffs, or shrublands or mesic forests containing one or more of the following associated native plant species:

*Machaerina angustifolia*, *Wikstroemia oahuensis*, *Antidesma platyphyllum*, *Syzygium sandwicensis*, *Elaphoglossum* sp., *Hibiscus* sp., *Psychotria mariniana*, *Cyrtandra laxiflora*, *Hedyotis terminalis*, *Broussaisia arguta*, or *Dicranopteris linearis*; and

(2) Elevations between 227 and 846 m (745 and 2,775).

*Family Marsileaceae: Marsilea villosa*  
(ihi ihi)

Oahu J, K, W, and X, identified in the legal description in (a)(1)(i)(I), constitutes critical habitat for *Marsilea villosa* on Oahu. Within these units, currently known primary constituent elements of critical habitat are the habitat components provided by:

(1) Cinder craters, vernal pools surrounded by lowland dry forest vegetation, mud flats, or lowland grasslands containing *Sida fallax*; and

(2) Elevations between 424 and 1,032 m (1,391 and 3,385 ft).

Dated: May 2, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-11348 Filed 5-24-02; 8:45 am]

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# Federal Register

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**Tuesday,  
May 28, 2002**

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**Part IV**

## **Department of Health and Human Services**

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**Administration for Children and Families**

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**Request for Applications for the Office of  
Community Services' Fiscal Year 2002  
Community Economic Development  
Program; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[Program Announcement No. OCS-2002-10]

#### Request for Applications for the Office of Community Services' Fiscal Year 2002 Community Economic Development Program

**AGENCY:** Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Request for applications for the Office of Community Services' Community Economic Development Awards.

**SUMMARY:** The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that competing applications will be accepted for new grants and cooperative agreements pursuant to the Secretary's Community Economic Development authority under sections 680(a)(2) of the Community Services Block Grant Act of 1981, as amended, (Public Law 105-285). The Office of Community Services is particularly interested in receiving applications from faith-based community development corporations.

**CLOSING DATE:** The closing date for submission of applications for Fiscal Year 2002 is July 12, 2002. Applications received after this date will be classified as late.

#### Application Submission

**Mailing and Delivery Address:** Community Economic Development Program applications must be mailed or hand-carried to the OCS Operations Center: 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209; Attention: Application for Community Economic Development Program. This is the only address that applications will be accepted; applications mailed or delivered to any other address will be returned to sender.

**Submission Instructions:** Applications shall be considered as meeting the announced deadline if they are received by 4:30 p.m. Eastern Standard Time (EST), at the OCS Operations Center on or before the closing date July 12, 2002. Applications not received by the closing date will be returned to the sender.

Applications either mailed, by U.S. Postal Service or hand delivered or courier delivered, must be physically received at the OCS Operations Center by 4:30 p.m. EST, on or before the closing date July 12, 2002. Applicants

are reminded to mail or deliver applications to the OCS Operations Center well in advance of the closing date to assure timely receipt of their applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications mailed or hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting the announced deadline if they are received on or before the closing date at the OCS Operations Center: 1815 North Fort Meyer Drive, Suite 300, Arlington, VA 22209. The Operations Center is open daily between the hours of 8 a.m. and 4:30 p.m. EST, Monday through Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note, "Attention: Application for Community Economic Development Program". (Applicants are again cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

**Late applications:** Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

**Extension of deadlines:** ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant. Determinations to extend or waive deadline requirements rest with ACF's Chief, Grants Management Officer.

**Number of Copies Required:** One signed original application and two additional copies must be submitted at the time of the initial submission. (OMB-0970-0139, which expires 12/31/2003).

The first page of the SF-424 must contain in the lower right-hand corner, a designation indicating under which priority area funds are being requested, for example 'OP' for Priority Area "1"—Operational Projects. See Part G, section 1, item 11 for details. Also, see Part C, section 5 for a description of each of the priority areas.

**Acknowledgment of Receipt:** All applicants will receive an

acknowledgment notice with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application that can be attached to this acknowledgment notice. The identification number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within two weeks after the deadline date, please notify the OCS Operations Center by telephone at (703) 351-7676.

**[Note:** To facilitate receipt of this acknowledgment from the operations center, applicant should include a cover letter with the application containing an E-mail address and facsimile (FAX) number if these resources are available to applicant.]

**FOR GENERAL QUESTIONS ON THE ANNOUNCEMENT, CONTACT:** Mr. Ros Relaford, Technical Assistance Manager, OCS Operations Center, Call: 1-800-281-9516, or E-mail: [OCS@lcnnet.com](mailto:OCS@lcnnet.com).

**FOR A COPY OF THE ANNOUNCEMENT, CONTACT:** OCS Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, (703) 351-7676.

In addition, the announcement is accessible on the OCS web site for reading or downloading at: <http://www.acf.dhhs.gov/programs/ocs/kits1.htm>

The Catalog of Federal Domestic Assistance number for this program is 93.570. The title is Community Services Block Grant—Discretionary Awards (Urban Rural Economic Development.)

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**PART A—PREAMBLE***1. Legislative Authority*

The Community Services Block Grant (CSBG) Act of 1981, as amended, (Section 680 of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998), authorizes the Secretary to make grants to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business ownership opportunities.

*2. Departmental Goals*

This announcement is particularly relevant to the Departmental goal of strengthening the American family and promoting self-sufficiency. These programs have objectives of increasing the access of low-income people to employment and business development opportunities, and improving the integration, coordination, and continuity of the various HHS (and other Federal Departments') funded services potentially available to families living in poverty. Faith-based organizations are eligible to apply for grants under this program if they are private, non-profit organizations that are community development corporations.

*3. Definition of Terms*

For purposes of this Program Announcement, the following definitions apply:

*Beneficiaries:* Low-income people (as defined in the most recent annual revision of the Poverty Income Guidelines published by DHHS) and low-income communities receive direct benefits.

*Budget period:* The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.

*Business Start-up Period:* The initial period (usually three to six months) after the effective date of an OCS award during which a grantee completes preliminary project tasks including but not limited to assembling key staff, execution of contracts, lease out or build-out of space for occupancy, upfit plant equipment and other similar activities.

*Building deconstruction:* The systematic disassembly of residential and commercial buildings.

*Cash contributions:* The recipient's cash outlay, including the outlay of money contributed to the recipient by the third parties.

*Community Development Corporation (CDC):* A private, non-profit corporation,

governed by a board of directors consisting of residents of the community and business and civic leaders, that has as a principal purpose planning, developing, or managing low-income housing or community development projects.

*Community Economic Development (CED):* A process by which a community uses resources to attract capital and increase physical, commercial, and business development and job opportunities for its residents.

*Construction projects:* For the purpose of this announcement, construction projects involve land improvements and development or major renovation of (new or existing) facilities and buildings, including their improvements, fixtures and permanent attachments.

*Cooperative Agreement:* An award instrument of financial assistance when substantial involvement is anticipated between the awarding office and the recipient during performance of the contemplated project.

*Developmental phase:* The time interval during a project period that precedes the operational phase. During the developmental phase, preliminary activities are accomplished which include establishing third party agreements, mobilizing monetary and other resources, assembling, rezoning and leasing of properties, conducting architectural and engineering studies, constructing facilities and etc.

*Displaced worker:* An individual who is in the labor market but has been unemployed for six months or longer.

*Distressed community:* A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

*Eligible applicant:* A private, non-profit organization that is a Community Development Corporation. (Also, see "Eligible Applicants" under Part B—Application Pre-Requisites and also Program Priority Areas under Part C.)

*Employment education and training program:* A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations.

*Empowerment Zones and Enterprise Communities (EZ/EC):* Those communities designated as such by the Secretary of Agricultural or Housing and Urban Development.

*Equity investment:* The provision of capital to a business entity for some specified purpose in return for a portion of ownership using a third party

agreement as the contractual instrument.

*Faith-Based Community Development Corporation:* A community development corporation that has a religious character.

*Hypothesis:* An assumption made in order to test its validity. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and result must be measured in order to confirm the hypothesis. For example, the following is a hypothesis: "Eighty hours of classroom training in small business planning will be sufficient for participants to prepare a successful loan application." In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

*Intervention:* Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan and loan package are planned interventions.

*Job creation:* New jobs, i.e. jobs not in existence prior to the start of the project, that result from new business startups, business expansion, development of new services industries, and/or other newly-undertaken physical or commercial activities.

*Job placement:* Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

*Letter of commitment:* A signed letter or agreement from a third party to the applicant that pledges financial or other support for the grant activities only subject to receiving an award of OCS grant funds.

*Loan:* Money lent to a borrower under a binding pledge for a given purpose to be repaid, usually at a stated rate of interest and within a specified period of time.

*Operational phase:* The time interval during the project when businesses, commercial or other activities are in operation and employment or business ownership opportunities are provided for low-income persons.

*Outcome evaluation:* An assessment of project results as measured by collected data which define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced

desirable changes and their potential for replicability. It should answer the question: Did this program work?

*Poverty Income Guidelines:* Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families.

*Process evaluation:* The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer questions such as: (1) Who is receiving what services and (2) are the services being delivered as planned. In addition, this process is known as a formative evaluation because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred, how the problems were resolved and what recommendations are needed for future implementation.

*Pre-development phase:* The time interval during a project period that an applicant or grantee plans a project, conducts feasibility studies, prepares a business or work plan and mobilizes non-OCS funding.

*Program income:* Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

*Project period:* The total time for which a project is approved for OCS support, including any approved extensions.

*Revolving loan fund:* A capital fund established to make loans whereby repayments are re-lent to other borrowers.

*Self-employment:* The state of an individual or individuals who engage in self-directed economic activities.

*Self-sufficiency:* The economic state not requiring public assistance for an individual and his (her) immediate family.

*Sub-award:* An award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in 45 CFR 74.2. (Note: Sub awards do not

include equity investments or loan transactions since they are promulgated under third party agreements.)

*Technical assistance:* A problem-solving event generally utilizing the services of a specialist. Such services may be provided on-site, by telephone, or by other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.

*Temporary Assistance to Needy Families (TANF):* Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) creates the TANF program that transforms welfare into a system that requires work in exchange for time-limited assistance. The law specifically eliminates any individual entitlement to or guarantee of assistance, repeals the Aid to Families with Dependent Children (AFDC) program, Emergency Assistance (EA) and Job Opportunities and Basic Skills Training (JOBS) programs, and replaces them with a block grant entitlement to States under Title IV-A of the Social Security Act.

*Third party:* Any individual, organization, or business entity that is not the direct recipient of grant funds.

*Third party agreement:* A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly-owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.

*Third party in-kind contributions:* The value of non-cash contributions provided by non-federal third parties which may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or program.

#### 4. Paperwork Reduction Act of 1995 (Public Law 104-13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under Office of Management and Budget (OMB) Control Number 0970-0139 which expires 12/31/2003. 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.



## PART B—APPLICATION PRE-REQUISITES

### 1. Eligible Applicants

An eligible applicant must be a private, non-profit organization and must provide proof of its status. The non-profit agency can accomplish this by providing a copy of either the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations, a copy of the currently valid IRS tax exemption certificate, or a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. Faith-based organizations are eligible to apply.

Also to be eligible, an applicant must be a Community Development Corporation (CDC). A CDC is a private, non-profit corporation, governed by a board of directors consisting of residents of the community and business and civic leaders, that has a principal purpose of planning, developing, or managing low-income housing or community development projects.

All eligible applicants must have private, non-profit status at the time of submission of their application. In addition to non-profit status, each priority area of this program announcement has additional eligibility requirements. These requirements are identified in the narrative descriptions of each priority area found in Part C. *Applicant must submit proof of non-profit status in its application at the time of submission.* Applications that *do not* include proof of this status with their application will be disqualified.

### 2. Availability of Funds

Approximately \$25,000,000 is available for FY 2002. However, all grant awards for FY 2002 are subject to the availability of appropriated funds. The maximum funding level for each award is described under each priority area description in Part C.

### 3. Project and Budget Periods

For Priority Areas 1, 2, and 3, applicants with projects involving construction may request a project period of up to 60 months and a budget period of up to 36 months. Applicants for non-construction projects under these priority areas may request project periods of up to 36 months and budget periods of up to 17 months. For Priority Area 4, applicants may request project and budget periods of up to 12 months.

### 4. Mobilization of Resources

OCS encourages and strongly supports leveraging of resources through public/private partnerships that can

mobilize cash and/or third-party in-kind contributions.

### 5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to low-income people as defined in the most recent annual revision of the Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the Poverty Income Guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. Also, grantees may contact the OCS Operations Center to obtain a copy of the guidelines. No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

Note, however, that low-income individuals granted lawful temporary resident status under Sections 245A or 210A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (Public Law 99-603), may not be eligible for direct or indirect assistance based on financial need under this program for a period of five years from the date such status was granted.

### 6. Number of Projects in Application

All Priority Area applications shall contain only one proposed project except for Priority Area 4. Applicants that are not in compliance with this requirement may be disqualified. Under Priority Area 4, applicants may address a number of ideas or activities that promote planning or development of projects.

### 7. Multiple Submittals

There is no limit to the number of applications that an applicant can submit under this announcement as long as each application contains a different project. However, an applicant can receive only one grant or cooperative agreement under this program announcement.

### 8. Sub-awarding or Delegating Projects

OCS does not fund projects where the role of the applicant is *primarily* to serve as a conduit for funds through the use of sub awards to other

organizations. In cases where the applicant proposes to make one or more sub awards, it must retain a substantive role in the implementation and operation of the project for which funding is requested.

### 9. Third Party Agreements

Any applicant submitting an application for funding under Priority Areas 1 or 3 that proposes to use some or all of the requested OCS funds to enter into a third party agreement in order to make an equity investment, such as the purchase of stock or a loan to an organization or business entity (including a wholly-owned subsidiary), is required to include in the application, along with the business plan, a copy of the signed third party agreement for approval by OCS. When the applicant is proposing to enter into a third party agreement for all of the grant funds and a signed third party agreement is not included with the business plan, if the application is approved, OCS will send a time-limited letter of intent to fund each viable, competitively ranked project pending receipt of a signed third party agreement. Once OCS has determined that the agreement is acceptable, an award will be forwarded to the applicant.

If a signed third party agreement is not available when the application is submitted, the applicant must submit as part of the narrative as much of the information below as possible in order to enable reviewers to evaluate the application. This exception is particularly applicable to Incremental Development Projects or Priority Area 2.

For this priority area an applicant may establish a third party agreement during the developmental phase but before the operational phase of the project. However, it should be noted that the portion of a grant that will be used to fund project activities related to a third party agreement will not be released (in any instances) until the agreement has been approved by OCS.

A third party agreement covering an equity investment must contain, at a minimum, the following:

- Purpose(s) for which the equity investment is being made.
- Cost per share.
- The type of equity transaction (e.g. stock purchase).
- Number of shares being purchased.
- Percentage of ownership of the business.
- Term of duration of the agreement.
- Number of seats on the board, if applicable.
- Signatures of the authorized official of the grantee and third party organization.

A third party agreement covering a loan transaction must contain, at a minimum, the following information:

- Purpose(s) for which the loan is being made.
- Rates of interest and other fees.
- Terms of loan.
- Repayment schedules.
- Collateral security.
- Default and collection procedures.
- Signatures of the authorized official of the lender and borrower.

All third party agreements must include written commitments as follows:

From the Third Party (as Appropriate)

- Low-income individuals will fill a minimum of 60% of the jobs to be created from project activities as a result of the injection of grant funds.
- The grantee will have the right to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility.
- If the grantee's equity investment equals 25% or more of the business's assets, the grantee will have representation on the board of directors.
- Reports will be made to the grantee regarding the use of grant funds on a quarterly basis or more frequently, if necessary.
- Procedures will be developed to assure that there are no duplicate counts of jobs created.

Detailed information will be provided on how the grant funds will be used by the third party by submitting a Source and Use of Funds Statement. In addition, the agreement must provide details on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

From the Grantee

Detailed information on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

All third party agreements should be accompanied by:

A signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system in accordance with 45 CFR 74, to protect adequately any federal funds awarded under the application.

Financial statements for the third party organization for the prior three years. (If not available because the organization is a newly formed entity, include a statement to this effect.)

The third party agreement will specify how the grantee will provide oversight

of the grant supported activities of the third party for the life of the agreement. Also, the agreement will specify that the third party will maintain documentation related to the grant objectives as specified in the agreement and will provide the grantee and HHS access to that documentation.

The grantee is responsible for ensuring that grant funds expended by it and the third party are expended in compliance with Federal regulations of 45 CFR, part 74 and OMB Circular A-122.

#### 10. Funding Considerations

In cases where an application ranks high and is competitive, the following may apply:

(a) Previous performance of applicants will be considered an important determining factor in the grant award decisions.

(b) Any applicant that has two or more active OCS grants may only be funded under exceptional circumstances.

(c) Pre-award site visits may be performed for the purpose of undertaking assessments of many of these applications prior to OCS making final determinations on grant awards.

#### 11. Prohibited Activities

OCS will not consider applications that propose the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS does not fund projects that have a primary purpose to provide education and training activities. In projects where participants must be trained, any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to those individuals who have been selected for employment in the grant supported project which includes new business startups, business expansions, development of new service industries, and/or other newly-undertaken physical and commercial activities.

Projects involving training and placement for existing vacant positions will be disqualified from competition.

Projects that would result in the relocation of a business from one geographic area to another with the possible displacement of employees are discouraged.

### PART C—APPLICATION REQUIREMENTS AND PROGRAM PRIORITY AREAS

#### 1. Program Goals

Projects must further the Departmental goals of strengthening

American families and promoting their self-sufficiency. OCS is particularly interested in receiving applications that involve public-private partnerships that are directed toward the development of economic self-sufficiency for low-income people and distressed communities through projects that focus on providing employment and business ownership opportunities for low-income people through business startups, business expansions, development of new services, and/or other newly-undertaken physical and commercial activities.

#### 2. Project Scope

OCS encourages each applicant to describe the project scope that includes the low-income community served, the business activities undertaken, and types of jobs to be created. The business activities should be described by the North American Industry Classification System (NAICS) and jobs by occupational classifications. This information is published by the U. S. Department of Commerce in the current Statistical Abstract of the United States, or updated revisions. Also, applicant may use the material included in Attachment I to identify industrial areas and occupational classifications.

#### 3. Program Focus

The focus of this program is to encourage the creation of projects intended to create jobs and provide employment and business ownership opportunities for low-income people through business, physical or commercial development. Generally the opportunities must aim to improve the quality of the economic and social environment of TANF recipients; low-income residents including displaced workers; at-risk teenagers; custodial and non-custodial parents, particularly those of children receiving TANF assistance; individuals residing in public housing; individuals who are homeless; and individuals with developmental disabilities. Grant funds under this program announcement area are intended to provide resources to eligible applicants but also have the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas.

#### 4. Community Empowerment and Collaboration

Eligible organizations including faith-based community development corporations located in Empowerment Zones, Enterprise Communities and rural areas are urged to submit applications. Likewise, applicants are

encouraged to foster partnerships with child support enforcement agencies to increase the capability of low-income non-custodial parents, particularly those of children receiving TANF assistance, to fulfill their parental responsibilities. Such applicants may request funds for a business development project or a project that demonstrates innovative ways to create jobs for low-income persons in the targeted group or community.

##### 5. Types of Funding, Priority Areas and Estimated Funding

The types of funding are grants and cooperative agreements. Operational projects, developmental projects and planning projects will be supported through grants. Incremental development projects and Native American Tribes incremental development projects will be supported through cooperative agreements.

The program priority areas and the estimated level of funding available under each area are:

###### 1. Operational Projects (OP)—\$12,600,000 estimate.

2A. Incremental Development Projects (IDP)—\$2,240,000 estimate. (First increment will be funded in FY 2002. Second increment will be considered in FY 2003 or FY 2004, respectively, depending on whether a successful applicant has no more than a 12-month budget period or a budget period ranging from 13–17 months. Also, funding of the second increment is subject to continued funding of this program.)

2B.—Native American Tribes (NAT) Incremental Development Projects;—\$280,000 estimate.

(First increment will be funded in FY 2002. Second increment will be considered in FY 2003 or FY 2004, respectively, depending on whether a successful applicant has no more than a 12-month budget period or a budget period ranging from 13–17 months. Also, funding of the second increment is subject to continued funding of this program.)

###### 3. Developmental Projects (DP)—\$7,000,000 estimate.

###### 4. Planning Projects (PP)—\$1,350,000 estimate.

Applicants applying for priority areas 1, 2A, 2B and 3 must show that the proposed project:

(1) Creates full-time permanent jobs except where an applicant demonstrates that a permanent part-time job produces actual wages that exceed the HHS poverty guidelines. At least sixty percent (60%) of the jobs created must be filled by low-income residents of the

community and must also provide for career development opportunities. Project emphasis should be on employment of individuals who are unemployed or on public assistance, with particular emphasis on those that are at-risk teenagers, TANF recipients, low-income custodial and non-custodial parents (particularly those of children receiving TANF assistance), individuals residing in public housing, individuals with developmental disabilities, and individuals who are homeless. While projected employment in future years may be included in the application, it is essential that the focus of employment projects concentrate on those permanent jobs created during the duration of the OCS project period; and/or

(2) Creates a significant number of business ownership opportunities for low-income residents of the community or significantly aids such residents in maintaining economically viable businesses; and

(3) Assists low-income participants to become self-sufficient.

In addition, favorable consideration in the review process will be given to applicants that develop linkages and agreements or demonstrate their intention to coordinate services with the local TANF offices and/or other employment education and training offices and child support enforcement agencies that serve the proposed area. The offices and agencies should serve TANF recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals (as defined by the annual revision to the Poverty Income Guidelines published by DHHS) including custodial and non-custodial parents. Applicants should submit a written agreement from the applicable office or agency that indicates what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested. The agreement should include the goals and objectives (including target groups) that the applicant and the employment education and training office and child support enforcement agencies expect to reach through their collaboration. It should describe the cooperative relationship, including specific activities and/or actions each of these entities proposes to carry out in support of the project, and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS. Documentation that illustrates the organizational experience of the employment education and training office should also be included.

Applications must include provision for an independent, methodologically

sound evaluation of the effectiveness of the activities carried out with the grant and their efficacy in creating new jobs and business ownership opportunities. There must be a well-defined process evaluation, and an outcome evaluation whose design will permit tracking of project participants throughout the proposed project period. The evaluation must be conducted by an independent evaluator, i.e., a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. It is important that each successful applicant have a third-party evaluator selected, and implement their role at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the design of the program, in order to assure that data necessary for the evaluation will be collected and available.

The executive director and/or project director, and the evaluator must attend a two-day national workshop in Washington, DC. The workshop will be scheduled shortly after the effective date of the grant award. Additionally, the project director should plan annual meetings with their program and grants management specialists each year, thereafter, during the life of the grant. The evaluator should also attend a final evaluation workshop to be held at the end of the project period. Project budgets must include funds from the OCS award for travel to and attendance at these meetings and workshops.

##### Priority Area 1. Operational Projects (OP)

An applicant for an operational project must have in place written commitments for all projected non-OCS funding required for their project. Written proof of commitments from third parties must be submitted with the application. After the business start-up period, a period that is relatively a short time after the effective date of the OCS grant, an operational project should start its operational phase. The operational phase is defined as the time interval when business, commercial or other activities are in operation and employment or business ownership opportunities are provided for low-income persons.

An eligible applicant must propose a project that provides employment and business ownership opportunities for low-income people through business, physical or commercial development at the local level. Applicants should submit a work plan or business plan that complies with the test of economic feasibility. Attachment K is a guideline for the work plan or business plan.

The cost-per-job for low-income persons in OCS funds may not exceed \$15,000. Unless there are extenuating circumstances, OCS will not fund projects where the cost-per-job for low-income persons in OCS funds exceeds \$15,000.

The maximum award of OCS funding can be no more than \$700,000 for a project.

A project period up to 60 months and a budget period up to 36 months are permitted for projects involving construction. Projects that do not involve construction may have a maximum project period up to 36 months and a maximum budget period up to 17 months.

Applicants must be aware that projects funded under this priority area must be operational by the end of the project period, *i.e.*, businesses must be in place, and low-income individuals actually employed in those businesses.

#### Priority Area 2A. Incremental Development Projects (IDP)

IDP projects will be funded in two increments including (1) a developmental phase and (2) an operational phase. IDP applicants should submit a comprehensive, written business plan or work plan. OCS intends to support an IDP project under a cooperative agreement. A cooperative agreement is an award instrument of financial assistance when substantial involvement is anticipated between the awarding office and the recipient during performance of the contemplated project. The OCS will outline a plan of interaction with the grantee for implementation under the cooperative agreement. The respective responsibilities of the OCS and the successful applicant will be identified and incorporated into the cooperative agreement during pre-award negotiations. It is anticipated that OCS responsibilities will not change the project requirements found in this Announcement. The plan under the cooperative agreement will describe the general and specific responsibilities of the grantee and the grantor as well as foreseeable joint responsibilities. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to the implementation of the project. An applicant for IDP has the same requirements as Priority Area 1 (OP) except for the following:

(a) All written commitments need not be in place;

(b) All non-OCS funding necessary to complete the project need not be in place;

(c) A third party agreement need not be in place (if applicable); and

(d) Acquisition or site control of the proposed site and similar activities need not be in place.

An applicant requesting funding for an IDP project must request the total amount of OCS funding at the initial submission of their application. However, the project will receive OCS funding in two increments: (a) The first increment will be provided to begin the developmental phase. During the developmental phase, the grantee will be granted initial funding up to but not to exceed more than 20% of the total OCS funding requested for the entire project period. The second increment is predicated on success of the developmental activities being in place. Documentation of completed tasks must be submitted to the Office of Grants Management in accord with terms and requirements of the cooperative agreement to be reviewed by OCS prior to the project's operational phase being funded. The decision to continue funding the project is at the sole discretion of the OCS.

Funding will be provided in no more than two increments as follows:

The first increment will not exceed 20% of the anticipated total OCS grant award. The budget period for this phase can be no longer than 17 months for non-construction projects and 24 months for projects involving construction.

The second increment is for the balance of anticipated OCS funds. The budget period for this phase can be no longer than 17 months for non-construction projects and 24 months for construction projects. The combined project period and budget periods for the first and second increment cannot exceed 36 months for non-construction and 60 months for construction type projects.

The cost-per-job in OCS funds (based on the total anticipated request of OCS funds for the entire project period) may not exceed \$15,000.

The maximum award of OCS funding requested for the entire project period can be no more than \$700,000 for a project. The maximum amount of the first incremental award cannot exceed \$140,000 or 20% of the total OCS funding, whichever is lower.

#### Priority Area 2B. Native American Tribe, Incremental Development Project, (NAT)

Funds will be provided to two private, non-profit, 501(c), community development corporations that enter into an agreement with an eligible Native American tribe to carry out

business development activities, *i.e.* business startups, business expansions, development of new services industries, and/or other newly-undertaken physical and commercial activities, on reservations. An eligible Native American Tribe is one of the 42 tribes that operate a Temporary Assistance for Needy Families Block Grant Program (TANF) under a direct agreement (recognized under tribal self-governance agreements as the equal of a State block grant program) with the Federal government.

The applicant should select a project that promotes economic sustainability and self-sufficiency for families on the reservation where the project will be implemented. An application under this priority area must reflect a significant partnership role for the tribe. The application also must contain a written, signed agreement from an authorized tribal official confirming the tribe's significant involvement in the grant activities. By entering into a partnership agreement with a tribe, the applicant will be considered to have fulfilled the goal of mobilizing non-discretionary program dollars under sub-criterion V.1, Mobilization of resources and will be granted the maximum number of points (10) in that category.

In addition, applicants must develop a project that has the same purposes and requirements as Priority Area 2A. Also, for each applicant, the maximum OCS funding requested, budget and project period and other requirements are the same as Priority Area 2A.

#### Priority Area 3. Developmental Projects (DP)

Funds will be provided to a limited number of eligible applicants that received planning grants from OCS in Fiscal Years 2000 and 2001.

Applicant must develop a project that has the same purposes and requirements as Priority Area 1.

The maximum award of OCS funding can be no more than \$350,000.

#### Priority Area 4. Planning Projects (PP)

Funds will be provided to a limited number of eligible applicants that have been recently established and are inexperienced in implementing economic development projects. The primary purpose of this priority area is to assist eligible organization in planning, developing organizational capacity, identifying potential projects, mobilizing resources and the development of a business plan for implementation on completion of the planning project.

Eligible applicants cannot be more than three years old, or if more than

three years old have no experience in implementing economic development projects. (For the latter type of applicant, a written assurance must be provided in the project narrative that states “the applicant had no participation in economic development projects”). The phrase “no participation in economic development projects” means an eligible applicant has not sponsored nor had any significant participation in projects that have provided employment or business ownership opportunities through business startups, expansions or development through physical, business or commercial activities or provision of financial services. In addition, applicants with housing experience must not have had primary responsibility in planning, developing, and managing housing projects.

With funding received under this priority area, applicants may incur costs to: (1) Evaluate the feasibility of potential projects that address identified needs in the low-income community (see Part E—Evaluation Criteria, Section 2, Criterion I for details) and that conform to those projects and activities allowable under Priority Areas 1, 2A, 2B and 3; (2) develop a business plan related to one of those projects; (3) mobilize resources to be contributed to one of those projects and (4) develop organizational capacity. Examples of activities under item 4 may include hiring staff, training board members, staff and volunteers, recruiting community volunteers and developing management systems.

The business plan developed as a result of the respective planning project must be submitted as part of your next competitive application if you participate in the Developmental or Operational Projects set-asides for Fiscal Year 2003 based on the availability of funds.

The maximum award of OCS funding can not exceed \$75,000 including the cost of travel for the program director to attend a two-day workshop in Washington, DC.

The project and budget period can be no longer than 12 months.

Applications submitted under this priority area will be evaluated on how well the project narrative comply with the following information:

1. Description of the impact area, i.e., a description of the low-income area it proposes to address;
2. Need identification in the targeted area;
3. How the potential projects relate to applicant's organizational goals and previous experience (if any);

4. Project approach and implementation factors including a discussion of potential projects that might be implemented to address identified needs;

5. A strategy for conduct of feasibility studies on potential projects including quarterly work plans with specific task timelines and a self-evaluation component; and

6. Project objectives and measurable impact, i.e., a discussion of preparing a business plan on only one selected project based on results of the feasibility studies and a plan for mobilization of non-OCS dollars to implement it.

#### **PART D—THE PROJECT DESCRIPTION, PROGRAM APPLICATION ELEMENTS AND REVIEW CRITERIA**

##### *1. Purpose*

The project description provides the major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

##### *2. Project Summary/Abstract*

Provide a summary of the project description (a page or less) with reference to the funding request.

##### *3. Objectives and Need for Assistance*

Clearly identify the physical, economic, social, financial, instructional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any

relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

##### *4. Results or Benefits Expected*

Identify the results and benefits to be derived. For example, describe the types of jobs to be created or employment or business ownership opportunities to be provided to low-income persons, career opportunities provided and how the applicant will assist participants to move towards self-sufficiency. As another example, the applicant should provide information on the funds and other resources mobilized or attracted to respective low-income communities.

##### *5. Approach*

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. Also, this section should include the number of jobs created and business ownership opportunities provided to low income persons; and the amount of resources and types of business attracted to low-income communities. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any “collection of information that is conducted or sponsored by ACF.”

List organizations, cooperating entities, consultants, or other key

individuals who will work on the project along with a short description of the nature of their effort or contribution.

#### 6. Organization Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)3 of the IRS code, or, by providing a copy of the currently valid IRS tax exemption certificate, or, by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

#### 7. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

#### 8. Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

#### 9. Business Plan

When Federal grant funds will be used to make an equity investment or loan, provide a business plan. The business plan should include discussion of applicable elements of a business plan as described in Attachment K, "Guidelines for a Business Plan".

#### 10. Third-Party Agreements

Include written agreements between grantees and sub-grantees or subcontractors or other cooperating entities. These agreements must detail the scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

#### 11. Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included.

#### 12. Budget and Budget Justification

Provide a line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424.

Provide a narrative budget justification that describes how categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

#### General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

#### Personnel

*Description:* Costs of employee salaries and wages.

*Justification:* Identify the project director or principal investigator, if known. If not known at the time of submission, a comprehensive position description should be included that indicates that the responsibility to be assigned to the project director are relevant to the successful implementation of the project. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

#### Fringe Benefits

*Description:* Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, Federal Insurance Compensation Act (FICA), retirement insurance, taxes, etc.

#### Travel

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

*Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

#### Equipment

*Description:* "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

*Justification:* For each type of equipment requested, provide a

description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

#### Supplies

*Description:* Costs of all tangible personal property other than that included under the Equipment category.

*Justification:* Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

#### Contractual

*Description:* Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

*Justification:* All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 74 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) (currently set at \$100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for applications or invitations for bids, independent cost estimates, etc.

**Note:** Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

#### Other

*Description:* Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff

development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

#### Non-Federal Resources

Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF-424. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

### PART E—EVALUATION CRITERIA

Each application submitted under this program announcement will undergo initial screening to determine that the application was received by the closing date, complies with the page limitation, is eligible for funding and complies with other instructions. Also, see Part F—Application Procedures, section 4 for additional details of “criteria for screening applicants”.

Each application that passes the initial screening will be reviewed and scored by a panel of three independent reviewers. Each panel gives a numerical score and summary evaluation of each application reviewed. The summary evaluation will include explanatory statements describing major strengths and weaknesses reviewed against published criterion.

The competitive review of each application is based on the degree to which applicants:

- (1) Adhere to the requirements in PART B, incorporate the elements of specific priority area and address elements under each criterion; and
- (2) Describe a project that will create jobs and provide employment to and business ownership opportunities for low-income persons including TANF and other eligible persons.

#### 1. Criteria for Review and Evaluation of Applications Submitted Under Priority Areas 1, 2 and 3

##### Criterion I: Need for Assistance Maximum: (5 Points)

The application documents that the project addresses a vital need in a distressed community. Distressed community is defined as a geographic urban neighborhood or rural community of high unemployment and pervasive poverty. The application documents that both the unemployment rate and poverty level for the targeted neighborhood or community must be equal or greater than the national level. (0–3 points)

The application cites the most recent available statistics from published sources e.g. the recent U.S. Census or updates, the State, county, city, election district and other information are provided in support of its contention. (0–2 points)

##### Criterion II: Organizational Profiles and Staff Responsibilities (Maximum: 15 Points)

###### (1) Organizational Profiles (Sub-Rating: 0–7 Points)

The applicant has the organizational structure and strategic plan to develop business, physical, or community development activities. (0–4 points)

The applicant has demonstrated the ability to implement major activities in such areas as business development, commercial development, physical development, or financial services; and the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.). (0–3 points)

###### (2) Staff Skills, Resources and Responsibilities (Sub-Rating: 0–8 Points)

The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but whose professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description that indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. (0–5 points)

The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. (0–2 points)

The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project. (0–1 points)

##### Criterion III: Project Approach (Maximum: 25 Points)

(1) The business plan or work plan, where applicable, is both sound and feasible. The plan describes the key project tasks and shows how the project objectives will be accomplished including the development of businesses and creation of jobs for low-income persons during the allowable OCS project period. (0–3 points)

(2) The project is responsive to the needs identified in the Analysis of Need. (0–4 points)

(3) The work plan outlines realistic quarterly time targets by which the various work tasks would be completed. (0–5 points)

(4) Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems. (0–3 points)

The application contains a full and accurate description of the proposed use of the requested financial assistance for all projects. However, if an applicant proposes (under Priority Areas 1 and 3) to make an equity investment or a loan to an individual, organization, or business entity (including a wholly-owned subsidiary), the application includes a signed third party agreement; a signed statement by a Certified or Licensed Public Accountant, as to the sufficiency of the third party's financial management system; and financial statements for the third party's prior three years of operation. (If newly formed and unable to provide the information regarding the prior three years of operation, a statement to that effect is included.) If the applicant states that an agreement is not currently in place, the application contains in the narrative as much information required for third party agreements as is available. (See Part B, item 9.)

**Note:** For applicants that propose projects under Priority Area 2A and 2B, at the time of application their proposal needs only to contain a comprehensive, written business or work plan. Developmental activities related to equity investment and third party agreements may be unrealized concepts at the time of their application. Thus, no points should be deducted from the total points for this sub-criterion for these applicants.]

Also, if the project proposes the development of a new or expanded business, service, physical or commercial activity, the application addresses applicable elements of a business plan. Guidelines for a Business Plan are included in Attachment K.

(5) The financial plan element, which indicates the project's potential and timetable for financial self-sufficiency, is included. It includes for the applicant and the third party, if appropriate, the following exhibits for the first three years (on a quarterly basis) of the business' operations: Profit and Loss Forecasts, Cash Flow projections, and Proforma Balance Sheets. Based on these documents, the application also contains an analysis of the financial feasibility of the project. In addition, a Source and Use of Funds statement for all project funding is included. (0–10 points)

Criterion IV: Results or Benefit Expected (Maximum: 20 Points)

(1) Results or Benefits Expected (Sub-Rating: 0–5 Points)

The proposed project will produce permanent and measurable results including, but not limited to, employment and business ownership opportunities that will reduce the incidence of poverty and TANF assistance in the community. (0–3 points)

The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated Empowerment Zones and Enterprise Communities. (0–2 points)

(2) Community Empowerment Consideration and Partnership With Child Support Enforcement Agency (Sub-Rating: 0–5 Points)

The applicant is located in an area that is characterized by poverty and other indicators of socio-economic distress such as a poverty or TANF assistance rate of at least 20%, designation as an Empowerment Zone or Enterprise Community (EZ/EC), high levels of unemployment, high levels of incidences of violence, gang activity, crime, drug use, and low-income custodial and non-custodial parents of children receiving TANF. (0–3 points)

Applicant documents that it was involved in the preparation and implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner; and how the proposed project will support the goals of that plan. Also, if an applicant documents that it has entered into partnership agreements with the local TANF and/or other employment education and training office and/or child support enforcement agency to increase capability of low-income parents and families to fulfill their parental responsibilities. (0–2 points)

**Note 1:** Applicants who have projects located in EZ/EC target areas or those who have included signed current agreements with child support enforcement agencies will automatically receive the maximum 2 points.

**Note 2:** For applicants that apply under Priority Area 2B, partnership agreements refer to agreements entered into with a Native American Tribe and the contents of the agreement support the goals of participants on the reservation. If the agreement is included with the application, the applicant automatically receives the maximum 2 points.

(3) Cost-per-job (Sub-Rating: 0–5 Points)

During the project period, the proposed project will create new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job below \$15,000 in OCS funds *unless* there are extenuating circumstances, e.g., Alaska where the cost of living is much higher. (0–5 points)

(4) Career Development Opportunities (Sub-Rating: 0–5 Points)

The applicant documents that the jobs to be created for low-income people have career development opportunities that will promote self-sufficiency. (0–5 points)

Criterion V: Public-Private Partnerships (Maximum: 15 Points)

(1) Mobilization of Resources: (Sub-Rating: 10 Points)

The applicant documents it has mobilized from public and/or private sources the proposed balance of Non-OCS funding required to fully implement the project. Lesser contributions will be given consideration based upon the value documented. (0–10 points)

**Note 1:** Applicant under Priority Area 2A and 2B, need only document an amount equal to the amount of OCS funds requested for the first segment.

**Note 2:** Applicants under Priority Area 2B with a written partnership agreement with a tribe will be considered to have fulfilled the goal of mobilizing non-discretionary program dollars and on this basis will be granted the maximum number of points (10) in this sub-priority area.

**Note 3:** Cash resources such as cash or loans contributed from all project sources (except for those contributed directly by the applicant) are documented by letters of commitment from third parties making the contribution.

**Note 4:** The value of in-kind contributions for personal property is documented by an inventory valuation for equipment and a certified appraisal for real property. Also, a copy of a deed or other legal document is required for real property.

**Note 5:** Anticipated or projected program income such as gross or net profits from the project or business operations will not be recognized as mobilized or contributed resources.

(2) Integration/Coordination of Services (Sub-Rating: 5 Points)

The applicant demonstrates a commitment to, or agreements with, local agencies responsible for administering child support enforcement, employment education,



and training programs to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals, and low-income custodial and non-custodial parents will be trained and placed in the newly created jobs. The applicant provides written agreements from the local TANF or other employment education and training offices, and child support enforcement agency indicating what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested. (0–2 points)

The agreements include: (1) The goals and objectives that the applicant and the TANF or other employment education and training offices and/or child support enforcement agency expect to achieve through their collaboration; (2) the specific activities/actions that will be taken to integrate/coordinate services on an on-going basis; (3) the target population that this collaboration will serve; (4) the mechanism(s) to be used in integrating/coordinating activities; (5) how those activities will be significant in relation to the goals and objectives to be achieved through the collaboration; and (6) how those activities will be significant in relation to their impact on the success of the OCS-funded project. (0–2 points)

The applicant also provides documentation that illustrates the organizational experience related to the employment education and training program. (Refer to Criterion II for guidelines.) (0–1 point)

#### Criterion VI: Project Evaluation (Maximum: 15 Points)

Sound evaluations are essential to the Community Economic Development Program. OCS requires applicants to include in their applications a well thought through outline of an evaluation plan for their project. The outline should explain how the applicant proposes to answer the key questions about how effectively the project is being/was implemented; whether the project activities, or interventions, achieved the expected immediate outcomes, and why or why not (the process evaluation); and whether and to what extent the project achieved its stated goals, and why or why not (the outcome evaluation). Together, the process and outcome evaluations should answer the question: “What did this program accomplish and why did it work/not work?”

Applicants are *not* being asked to submit a complete and final evaluation plan as part of their application; but they must include:

(1) A well thought through outline of an evaluation plan that identifies the principal cause-and-effect relationships to be tested, and that demonstrates the applicant's understanding of the role and purpose of both process and outcome evaluations. (See previous paragraph). (0–2 points)

A reporting format based on the grantee's documentation of its activities (interventions) and their effectiveness, to be included in the grantee's semi-annual program progress report, which will provide OCS with insights and lessons learned, as they become evident, concerning the various aspects of the work plan, such as recruitment, training, support, public-private partnerships, and coordination with other community resources, as they may be relevant to the proposed project. (0–2 points)

(2) The identity and qualifications of the proposed third-party evaluator, or if not selected, the qualifications which will be sought in choosing an evaluator, which must include successful experience in evaluating community development programs, and the planning and/or evaluation of programs designed to foster self-sufficiency in low income populations. (0–2 points)

(3) A commitment to the selection of a third-party evaluator approved by OCS, and to completion of a final evaluation design and plan, in collaboration with the approved evaluator and the OCS Evaluation Technical Assistance Contractor during the six-month start-up period of the project, if funded. (0–2 points)

Applicants should ensure, above all, that the evaluation outline presented is consistent with their project design. A clear project framework of the type recommended earlier identifies the key project assumptions about the target populations and their needs, as well as the hypotheses, or expected cause-effect relationships to be tested in the project; and the proposed project activities, or interventions, that will address those needs in ways that will lead to the achievement of the project goals of self-sufficiency. It also identifies in advance the most important process and outcome measures that will be used to identify performance success and expected changes in individual participants, the grantee organization, and the community. Finally, as noted above, the outline should provide for prompt reporting, concurrently with the semi-annual program progress reports, of lessons learned during the course of the project, so that they may be shared without waiting for the final evaluation report.

(4) For all these reasons, it is important that each successful applicant have a third-party evaluator selected and performing at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the final design of the program, and in order to assure that data necessary for the evaluation will be collected and available. Plans for selecting an evaluator should be included in the application narrative. A third-party evaluator must have knowledge about, and have experience in, conducting process and outcome evaluations in the job creation field, and have a thorough understanding of the range and complexity of the problems faced by the target population. (0–2 points)

The competitive procurement regulations (45 CFR part 74, Sections 74.40–74.48, especially section 74.43) apply to service contracts such as those for evaluators.

It is suggested that applicants use no more than three (3) pages for this Element, plus the resume or position description for the evaluator, which should be included in an appendix.

#### Criterion VII: Budget and Budget Justification Maximum: 5 Points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. (0–2 points)

The application includes a detailed budget breakdown and a narrative justification for each of the budget categories in the SF-424A. The applicant presents a reasonable administrative cost. (0–2 points)

The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–1 point)

#### 2. Criteria for Review and Evaluation of Applications Submitted Under Priority Area 4

##### Criterion I: Need for Assistance (Maximum: 15 Points)

The application documents that the project addresses a vital need in a distressed community. A distressed community is defined as a geographic urban neighborhood or rural community of high unemployment and pervasive poverty. The application documents that both the unemployment rate and poverty level for the targeted neighborhood or community is equal or greater than the national level. (0–10 points)

The application cites the most recent available statistics from official sources (e.g., the recent U.S. Census or updates,

the State, county, city, election district and other information are provided in support of its contention). (0–5 points)

**Criterion II: Organizational Profiles and Staffing Capacity (Maximum: 20 Points)**

**(1) Organizational Profiles (Sub-Rating: 5 Points)**

The applicant shows why its organization can successfully implement the project for which it is requesting funds. (0–3 points)

\* Please note that this entire section relates to the organizational experience of the applicant organization, itself, and does not pertain to the experience of a partner or an affiliated or parent organization. Also, this section does not pertain to the experience of the directors, officers, employees, contractors, volunteers or other persons have gained from other organizations or otherwise.

The organization must demonstrate that the Board of Directors are residents, or business or civic leaders of the community. This can be done by showing the address(es) of their home and/or businesses or local civic association. The applicant must show that its board of directors is active by providing a copy of the minutes of the meeting (properly signed by the Secretary) held within the 90 days of its submission of its application to OCS. The minutes must include the attendees and officers present that constitute a quorum and the subject matters discussed including its approval of the organization's submission of an application to OCS for funding. (0–2 points)

**(2) Management Capacity (Sub-Rating: 5 Points)**

Applicant fully details its ability to implement sound and effective management practices and, if it has been a recipient of other Federal or other governmental grants, it also details that it has consistently complied with financial and program progress reporting and audit requirements. (0–3 points)

Applicant has submitted available documentation on its management practices and progress reporting procedures along with a statement by a Certified or Licensed Public Accountant (CPA) as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted. If the applicant has not hired a CPA, it may include a statement signed by both the head of the organization and the treasurer providing assurance of the sufficiency of the

financial management system. (0–2 points)

[**Note:** The assurance or documentation of the applicant's management practices, etc., and statement from the accountant on the financial management system must address the applicant organization's own internal system rather than an external system of an affiliate, partner, management support organization, etc.]

**(3) Staffing (Sub-Rating: 5 Points)**

The application fully describes (e.g., resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project.

**(4) Staffing responsibilities (Sub-Rating: 5 Points)**

The application describes how the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

**Criterion III: Project Approach and Evaluation (Maximum: 30 Points)**

**(1) Project Approach (Sub-Rating: 25 Points)**

The work plan addresses a clearly identified need in the low-income community as described in Criterion I. The plan must include a methodology to evaluate the feasibility of potential projects that conform to the type of projects and activities allowable under Priority Areas 1, 2, and 3. (0–8 points)

The work plan discusses the preparation of a business plan on one selected project based on the results of the feasibility studies and a plan for mobilization of non-Community Economic Development funds to implement the business plan. (0–4 points)

The work plan addresses activities to develop organizational capacity, e.g. hiring staff, training board members, staff and volunteers, recruiting community volunteers and developing management systems. (0–4 points)

It outlines realistic quarterly time schedules of work tasks by which the objectives (including the development of organizational capacity, a business plan and mobilization of resources) will be accomplished.

[**Note:** Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets will seriously reduce an applicant's point score in this criterion.] (0–5 points)

It defines critical issues or potential problems that might impact negatively on the project and it indicates how the project objectives will be attained

notwithstanding any such potential problems. (0–4 points)

**(2) Evaluation component (Sub-Rating: 5 Points)**

The application includes a self-evaluation component. The evaluation data collection and analysis procedures are specifically oriented to assess the degree to which the stated goals and objectives are achieved. (0–3 Points)

Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above are used to the maximum extent possible. This component indicates the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all organizations receiving planning grants. (0–2 points)

**Criterion IV: Results and Benefits Expected (Maximum: 25 Points)**

(1) The proposed project around which the business plan is to be developed with the use of OCS grant funds is targeted into low-income communities, and/or designated Empowerment Zones or Enterprise Communities with the goals of increasing the economic conditions and social self-sufficiency of residents. Also, the project proposes to produce permanent and measurable results that will reduce the incidence of poverty and number of TANF recipients in the low-income area targeted. (0–15 points)

[**Note:** This priority area permits applicants to conduct several feasibility studies related to various potential projects. However, on completion of the studies, one proposed project must be selected and a business plan prepared for the selected project.]

(2) The activity targets mobilization of non-OCS program dollars from private sector individuals, public resources, corporations and foundations, if the proposed project is implemented. (0–10 points)

**Criterion V: Budget and Budget Justification (Maximum: 10 Points)**

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–5 points)

The application includes a detailed budget breakdown and a narrative justification for each of the budget categories in the SF 424–A. The applicant presents a reasonable administrative cost. (0–5 points)

## PART F—APPLICATION PROCEDURES

### 1. Availability of Forms

For purposes of this announcement, all applicants will use the following forms: SF-424, SF-424A, SF-424B.

Applications proposing construction projects will present all required financial data using SF-424A. Instructions for completing the SF-424, SF-424A, and SF-424B are found in Attachments B, C, and D. These forms may be photocopied for this application.

An applicant may use instructions under Part D or F for preparing the project abstract and project narrative. They should be submitted on plain bond paper along with the SF-424 and related forms.

Attachment M, Applicant's Checklist, provides a checklist to aid applicants in preparing a complete application package for OCS.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the following regulations: Drug-free workplace, Attachment E; Debarment, Attachment F; and Environmental Tobacco Smoke, Attachment J.

### 2. Intergovernmental Review

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, states may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following jurisdictions have elected NOT to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Palau.

An applicant should contact its Single Point of Contact (SPOC) as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process.

It is imperative that the applicant submits all required materials, if any, to the SPOC and indicates the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a, and submits a copy of the letter along with its application to OCS. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official state process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each state and territory is included as Attachment G of this announcement.

### 3. Application Consideration

Applications that meet the screening requirements in sections 4.a and b. below may be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas will be reviewed by persons outside of the Office of Community Services. The results of these reviews will assist the Director and OCS program staff in considering competing applications.

Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports;

investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

Applicants with two or more active OCS grants at the time of review may be denied funding. In addition, OCS may consider the geographic distribution of funds among states and the relative proportion of funding among rural and urban areas in accordance with Section 680(a)(2)(D) of the CSBG Act.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

### 4. Criteria for Screening Applications

#### 1. a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain the Application for Federal Assistance (SF-424), a budget (SF-424A), and signed Assurances (SF 424B) completed according to instructions included in Parts D, F, G and H of this Program Announcement.

(2) A project abstract must also accompany the standard forms.

(3) The SF-424 and the SF-424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(4) While there is no limit to the number applications that can be submitted under a specific program priority area, each application must be submitted for consideration under one priority area only.

(5) All applications that exceed 65 pages will be determined ineligible and will be returned to the sender. (See Part F.1. "Content of Application" for details.

#### b. Pre-Review

Applications that pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility*: Applicant must comply with the eligibility requirements for the priority area under which funds are being requested. Proof of non-profit status, (see Eligible Applicants under Part B, Application Prerequisites) must

be included in the appendices of the project narrative where applicable. Applicants that do not submit proof of non-profit status will be disqualified. Applicants must also be aware that the applicant's legal name as required in SF-424, Item 5 *must match* that listed as corresponding to the Employer Identification Number at Item 6.

(2) *Number of Projects*: While there is no limit to the numbers of applications, an application may contain only one project under Priority Areas 1, 2, and 3. However, an application may contain more than one project under Priority Area 4 where applicants are researching and conducting feasibility studies of various project opportunities.

(3) *Grant amount*: The amount of funds requested does not exceed the limits indicated in the appropriate priority area.

(4) *Written Agreement When Applicant Proposes to Make Equity Investment or Loan*: (Priority Areas 1, 2, and 3): The application contains a written third party agreement, or a discussion of a proposed agreement, signed by the applicant and the third party that includes all of the elements required in Part B, item 9.

An application will be disqualified if it does not conform to one or more of the above requirements.

#### c. Panel Reviews

Applications that pass the initial and pre-rating review will be assessed and scored by panels of reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The panelists will use the criteria found in Part D along with the specific requirements contained under each program priority area as described in Part C.

### PART G—CONTENTS OF APPLICATION AND RECEIPT PROCESS

#### 1. Contents of Application

Each submission should include one signed original application and two additional copies of the application. The font size must not be smaller than a 12 pitch and the margins must be at least 1" wide on all sides. The application package including the sections for the table of contents, project abstract, project and budget narratives and business plan must not exceed 65 pages for applications submitted under

Priority Areas 1, 2, and 3 and 35 pages under Priority area 4. The instruction for page limitation is included below in items e and f.

**Note:** It is important to note that applications with the above cited sections exceeding the page limitation will be determined ineligible and will be returned to the sender.

The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices listed below. The instructions are included below in items c, d, g, h, i, j, k, l, m, and n. Application pages should be numbered sequentially throughout the application package, beginning with an abstract of the proposed project as page number one. Each application must include all of the following, in the order listed below:

- a. *Table of Contents*.
- b. *Completed Standard Form 424*—(Attachment B)—that has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally.
- c. *A Standard Form 424A*—Budget Information—Non-Construction Programs (Attachment C).
- d. *A budget justification* for each object class category required under Section B, SF-424A (Attachment C).
- e. *A Project Abstract*—A paragraph that succinctly describes the project in 500 characters or less. Section 424A (Attachment C).
- f. *A Project Narrative*. The project narrative must address the specific concerns mentioned under the relevant priority area description in Part C. The narrative should also provide information on how the application meets the evaluation criteria in Part D and Guidelines for a Business Plan (Attachment K) of the Program Announcement.
- g. *A Standard Form 424B Assurances*—Non-Construction (Attachment D)—All applicants, whether or not their project involves construction, must sign and submit the Standard Form 424B with their applications.

h. *Certification Regarding Lobbying*—(Attachment H)—Applicant must sign and return an executed copy of the lobbying certification.

i. *Disclosure of Lobbying Activities, SF-LLL* (Attachment H)—Fill out, sign and date the form.

j. *DHHS Regulations Applying to All Applicants/Grantees Under the Community Economic Development Program* (Attachment I)—By signing and submitting the application, applicant is certifying that it will comply with these regulations.

k. *Certification Regarding Environmental Tobacco Smoke* (Attachment J)—Applicant must make the appropriate certification of their compliance with the Pro-Children Act of 1994. By signing and submitting the application, applicant is providing the certification regarding environmental tobacco smoke and need not mail back the certification with their applications.

l. *Certification Regarding Drug-Free Workplace Requirement* (Attachment E): By signing and submitting the application, applicant is certifying that it will comply with this regulation.

m. *Certification Regarding Debarment, Suspension, and Other Responsibility Matters*: By signing and submitting the application, applicant is certifying that it will comply with this regulation.

n. *Proof of Non-Profit Status*: The non-profit agency can accomplish this by providing a copy of either the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations, a copy of the currently valid IRS tax exemption certificate, or, a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. Applicants that do not include proof of this status with the applications will be disqualified.

Other information needed on the applicant organization includes a listing of the current Board of Directors' names, titles and addresses (Note: If the applicant is proposing an equity transaction, this is also needed for the third party organization.); resumes of the project director and other key management team members; written agreements, i.e., third party agreements, coordination with TANF, etc.; a copy of the submission to the State Single Point of Contact, if applicable; Single Point of Contact comments, where applicable; certification regarding anti-lobbying activities; and a disclosure of lobbying activities.

#### 2. Acknowledgment of Receipt

All applicants will receive an acknowledgment notice with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application that can be attached to this acknowledgment notice. The identification number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within two weeks after the deadline date, please notify the OCS Operations Center by telephone at (703) 351-7676.

[NOTE: To facilitate receipt of this acknowledgment from the OCS Operations center, applicant should include a cover letter with the application containing an E-mail address and facsimile (FAX) number if these resources are available to applicant.]

#### **PART H—INSTRUCTIONS FOR COMPLETING APPLICATION PACKAGE**

It is suggested that the applicant reproduce the SF-424 and SF-424A, and type its organization's legal name on the copies. If an item on the SF-424 cannot be answered or does not appear to be related or relevant to the assistance requested, write NA for Not Applicable.

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

##### *1. SF-424 Application for Federal Assistance*

Item 1. For the purposes of this announcement, all applications are considered Applications; there are no Pre-Applications. For the purpose of this announcement, construction projects involve land improvements and development or major renovation of (new or existing) facilities and buildings, including their improvements, fixtures and permanent attachments. All others are considered non-construction. Check the appropriate box under Application. Whether applications involve construction or non-construction projects, all applicants are required to complete the Budget Information—Non-construction Programs sections of SF-424A.

Items 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (EIN) and the Payment Identifying Number (PIN), if one has been assigned, in the block entitled Federal Identifier located at the top right hand corner of the form.

Item 7. If the applicant is a non-profit corporation, enter N in the box and specify non-profit corporation in the space marked Other. Any non-profit organization submitting an application must submit proof of its non-profit status in its applications at time of submission.

Item 9. Enter DHHS-ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.570. The title is

CSBG Community Economic Development Awards.

Item 11. In addition to a brief descriptive title of the project, indicate one of the following program priority areas for which funds are being requested.

OP—Priority Area 1. Community Economic Development (Operational Projects)

IDP—Priority Area 2A. Community Economic Development (Incremental Development Projects)

NAT—Priority Area 2B. (Native American Tribes, Incremental Development Project)

DP—Priority Area 3. Community Economic Development (Developmental Projects)

PP—Priority Area 4. Community Economic Development (Planning Projects)

##### *2. SF-424A—Budget Information—Non-Construction Programs*

See instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the Federal funds budget entries will relate to the requested OCS Community Economic Development funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS Community Economic Development funding should be included in Non-Federal entries.

The budget forms in SF-424A are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of SF-424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF-424A format should be used as necessary.

##### **Section A—Budget Summary**

Lines 1–4:

—Column (a): Line 1—Enter CSBG Community Economic Development

—Column (b): Line 1—Enter 93.570

—Columns (c) and (d): Leave Blank

—Columns (e) through (g): Line 1; enter the appropriate amounts needed to support the project for the budget period.

*Line 5:* Enter the figures from Line 1 for all columns completed as required, (c), (d), (3), (f), and (g).

##### **Section B—Budget Categories**

Allowability of costs is governed by applicable cost principles set forth in 45 CFR part 74. A budget narrative must be submitted that includes the appropriate justifications as stated.

This section should contain entries for OCS funds only. For all projects, this first budget period will be entered in Column (1).

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those that reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class other, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; and major equipment purchases.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

##### **Line 6a**

*Personnel*—Enter the total costs of salaries and wages.

*Justification*—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff that will be working on the project.

##### **Line 6b**

*Fringe Benefits*—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate that is entered on Line 6j.

*Justification*—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

##### **Line 6c**

*Travel*—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

*Justification*—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must

be a person listed under the personnel line or employee being paid under non-federal share. (**Note:** Local transportation and consultant travel costs are entered on Line 6h.)

Line 6d

**Equipment**—Enter the total estimated costs for all non-expendable personal property to be acquired by the project. Equipment means tangible nonexpendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

**Justification**—Provide breakdown of cost per item. Items that cost less than \$5,000 should be included under Supplies.

Line 6e

**Supplies**—Enter the total estimated costs of all tangible personal property (supplies) other than that included on line 6d.

**Justification**—Provide a general description as to what is being purchased such as type of supplies, office, classroom, medical, etc. Also property that is not equipment and costs less than \$5,000 per item.

Line 6f

**Contractual**—Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific projects(s) or businesses to be financed by the applicant.

**Justification**—Contractual cannot be a person—it must be the name of an organization, firm, etc. Consultant cost goes in line 6h—Other.

Line 6g

**Construction**—Enter the estimated costs of renovation, repair, or new construction. Identify the type of construction activity and costs associated, *i.e.*, concrete, HVAC, electrical, etc. Provide narrative justification and breakdown of costs.

Line 6h

**Other**—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to insurance, fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing, computer use training costs

including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

**Justification**—Provide as much detail as you can. Some items may have to be defined more than others.

Line 6j

**Indirect Charges**—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should, immediately upon notification that an award will be made, develop a tentative indirect cost rate application based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant. Indirect costs consistent with approved Indirect Cost Rate Agreements are allowable.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs where authorizing statutes permit their use as non-Federal sources, should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit under the criterion for Public-Private Partnerships.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/ individuals from which funds will also be received.

## PART I—POST AWARD INFORMATION AND REPORTING REQUIREMENTS

### 1. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award that

provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total financial participation from the award recipient.

General Conditions and Special Conditions (where the latter are warranted) that will be applicable to grants, are subject to the provisions of 45 CFR Part 74.

### 2. Attendance at OCS Training Conference

The Executive Director and/or Project Director will be required to attend a two-day national workshop in Washington, DC. The project budget must include funds for travel to attend this conference.

### 3. Reporting Requirements

Grantees will be required to submit semi-annual progress and financial reports (SF-269) as well as a final progress and financial report.

Under the Paperwork Reduction Act of 1995, Public Law 104-13, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0970-0139, which expires 12/31/2003.

### 4. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR parts 74 and OMB Circular A-133. If an applicant will not be requesting indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

### 5. Lobbying

Section 319 of Public Law 101-121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) the law requires

recipients and their subtier contractors and/or sub grantees: (1) To certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or sub grantees will pay with the non-appropriated funds; and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

**6. Applicable Federal Regulations**

Attachment I provides a list of the regulations that apply to all applicants/grantees under the FY 2002 (Supplementary) and FY 2002 Community Economic Development Programs.

Dated: May 3, 2002.

**Clarence Carter,**  
Director, Office of Community Services.

**List of Attachments**

A—2001 Poverty Income Guidelines

- B—Standard Form 424, Application for Federal Assistance
- C—Standard Form 424A, Budget Information—Non-Construction Programs
- D—Standard Form 424B, Assurances—Non-Construction Programs
- E—Certification Regarding Drug-Free Workplace Requirements
- F—Certification of Debarment, Suspension and Other Responsibility Matters
- G—Intergovernmental Review State Single Points of Contact Listing (SPOC List)
- H—Certification Regarding Lobbying and Disclosure of Lobbying Activities, SF LLL
- I—DHHS Regulations Applying to all Applicants/Grantees Under the Fiscal Year 2002 Community Economic Development Program
- J—Certification Regarding Environmental Tobacco Smoke
- K—Guidelines for a Business Plan
- L—Table of North American Industry Classification System (NAIC)
- M—Applicant's Checklist

**ATTACHMENT A**

Size of family unit	Poverty guidelines
<b>2001 POVERTY INCOME GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA <sup>1</sup></b>	
1 .....	\$8,590
2 .....	11,610
3 .....	14,630
4 .....	17,650
5 .....	20,670
6 .....	23,690
7 .....	26,710
8 .....	29,730

**ATTACHMENT A**

Size of family unit	Poverty guidelines
<b>2001 POVERTY INCOME GUIDELINES FOR ALASKA <sup>2</sup></b>	
1 .....	\$10,730
2 .....	14,510
3 .....	18,290
4 .....	22,070
5 .....	25,850
6 .....	29,630
7 .....	33,410
8 .....	37,190
<b>2001 POVERTY INCOME GUIDELINES FOR HAWAII <sup>3</sup></b>	
1 .....	\$9,890
2 .....	13,360
3 .....	16,830
4 .....	20,300
5 .....	23,770
6 .....	27,240
7 .....	30,710
8 .....	34,180

<sup>1</sup>For family units with more than 8 members, add \$3,020 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

<sup>2</sup>For family units with more than 8 members, add \$3,780 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

<sup>3</sup>For family units with more than 8 members, add \$3,470 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

**BILLING CODE 4184-01-P**

ATTACHMENT B

OMB Approval No. 0348-0043

**APPLICATION FOR  
FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier
		<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier
		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier
<b>5. APPLICANT INFORMATION</b>			
Legal Name:		Organizational Unit:	
Address (give city, county, State, and zip code):		Name and telephone number of person to be contacted on matters involving this application (give area code)	
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____	
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es)    [ ] [ ] A. Increase Award    B. Decrease Award    C. Increase Duration D. Decrease Duration    Other (specify): _____		<b>9. NAME OF FEDERAL AGENCY:</b>	
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> [ ] [ ] - [ ] [ ] [ ] [ ] TITLE:		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>	
<b>12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):</b>			
<b>13. PROPOSED PROJECT</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>	
Start Date	Ending Date	a. Applicant	b. Project
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>	
a. Federal	\$ _____ <sup>00</sup>	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:  DATE _____	
b. Applicant	\$ _____ <sup>00</sup>	b. No. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E. O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
c. State	\$ _____ <sup>00</sup>		
d. Local	\$ _____ <sup>00</sup>		
e. Other	\$ _____ <sup>00</sup>		
f. Program Income	\$ _____ <sup>00</sup>		
g. TOTAL	\$ _____ <sup>00</sup>	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b> <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No	
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.</b>			
a. Type Name of Authorized Representative		b. Title	c. Telephone Number
d. Signature of Authorized Representative			e. Date Signed

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Standard Form 424 (Rev. 7-97)  
Prescribed by OMB Circular A-102



**INSTRUCTIONS FOR THE SF-424**

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

**Item and Entry**

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present

Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organization unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—“New” means a new assistance award.

—“Continuation” means an extension for an additional funding/budget period for a project with a projected completion date.

—“Revision” means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

**BILLING CODE 4184-01-M**

ATTACHMENT C

OMB Approval No. 0348-0044

**BUDGET INFORMATION - Non-Construction Programs**

**SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. Totals		\$	\$	\$	\$	\$

**SECTION B - BUDGET CATEGORIES**

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (Rev. 7-97)  
Prescribed by OMB Circular A-10

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SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTAL (sum of lines 8-11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	\$
17.					
18.					
19.					
20. TOTAL (sum of lines 16-19)	\$	\$	\$	\$	\$
SECTION F - OTHER BUDGET INFORMATION					
21. Direct Charges:					22. Indirect Charges:
23. Remarks:					

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Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

#### *General Instructions*

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorizations in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budgeted period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

#### *Section A. Budget Summary Lines 1-4 Columns (a) and (b)*

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or

activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

#### *Lines 1-4, Columns (c) through (g)*

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Columns (e) the amount of the increase or decrease of Federal funds and enter in Columns (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

#### *Section B. Budget Categories*

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown in Line 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both

Federal and non-Federal) by object class categories.

Line 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

#### *Section C. Non-Federal Resources*

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount of Line 5, Column (f), Section A.

#### *Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts of Lines 13 and 14.

*Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in year). This section need not be completed for revisions (amendment, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this section, annotate accordingly and show the overall totals in this line.

*Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Attachment D****Assurances—Non-Construction Programs**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal

awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standard or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standard for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and

Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to

nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal Funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetland pursuant to EO

11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components of potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

**Attachment E**

**Certification Regarding Drug-Free Workplace Requirements**

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

**Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)**

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office,

performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, the following definitions from these rules:

*Controlled substance* means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

*Employee* means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**Certification Regarding Drug-Free Workplace Requirements**

**Alternate I. (Grantees Other Than Individuals)**

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

#### Attachment F

#### Certification Regarding Debarment, Suspension and Other Responsibility Matters

#### *Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

##### Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate

written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that is certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executing Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause title "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed

that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

#### Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

##### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification

of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check, the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause.

The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of this instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

#### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### Intergovernmental Review (SPOC List)

It is estimated that in 2001 the Federal Government will outlay \$305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued with the desire to foster the intergovernmental partnership and strengthen federalism



by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below.

States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

Contact information for Federal agencies that award grants can be found in Appendix IV of the Catalog of Federal Domestic Assistance.

#### Arkansas

Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room, 412, Little Rock, Arkansas 72203, Telephone: (501) 682-1074, Fax: (501) 682-5206, [tlcopeland@dfa.state.ar.us](mailto:tlcopeland@dfa.state.ar.us)

#### California

Grants Coordination, State Clearinghouse, Office of Planning and Research, P.O. Box 3044, Room 222, Sacramento, California 95812-3044, Telephone: (916) 445-0613, Fax: (916) 323-3018, [stat.clearinghouse@opr.ca.gov](mailto:stat.clearinghouse@opr.ca.gov)

#### Delaware

Charles H. Hopkins, Executive Department, Office of the Budget, 540 S. Dupont Highway, 3rd Floor, Dover, Delaware 19901, Telephone: (302) 739-3323, Fax: (302) 739-5661, [chopkins@state.de.us](mailto:chopkins@state.de.us)

#### District of Columbia

Luisa Montero-Diaz, Office of Partnerships and Grants Development, Executive Office of the Mayor, District of Columbia Government, 441 4th Street, NW., Suite 530 South Washington, DC 20001, Telephone: (202) 727-8900, Fax: (202) 727-1652, [opgd.eom@dc.gov](mailto:opgd.eom@dc.gov)

#### Florida

Jasmin Raffington  
Florida State Clearinghouse  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, Florida 32399-2100  
Telephone: (850) 922-5438  
Fax: (850) 414-0479

[clearinghouse@dca.state.fl.us](mailto:clearinghouse@dca.state.fl.us)  
Georgia

Georgia State Clearinghouse  
270 Washington Street, SW.  
Atlanta, Georgia 30334  
Telephone: (404) 656-3855  
Fax: (404) 656-7901  
[gach@mail.opb.state.ga.us](mailto:gach@mail.opb.state.ga.us)

#### Illinois

Virginia Bova  
Department of Commerce and  
Community Affairs  
James R. Thompson Center  
100 West Randolph, Suite 3-400  
Chicago, Illinois 60601  
Telephone: (312) 814-6028  
Fax (312) 814-8485  
[vboba@commerce.state.il.us](mailto:vboba@commerce.state.il.us)

#### Iowa

Steven R. McCann  
Division of Community and Rural  
Development  
Iowa Department of Economic  
Development  
200 East Grand Avenue  
Des Moines, Iowa 50309  
Telephone: (515) 242-4719  
Fax: (515) 242-4809  
[steve.mccann@ided.state.ia.us](mailto:steve.mccann@ided.state.ia.us)

#### Kentucky

Ron Cook  
Department for Local Government  
1024 Capital Center Drive, Suite 340  
Frankfort, Kentucky 40601  
Telephone: (502) 573-2382  
Fax: (502) 573-2512  
[ron.cook@mail.state.ky.us](mailto:ron.cook@mail.state.ky.us)

#### Maine

Joyce Benson  
State Planning Office  
184 State Street  
38 State House Station  
Augusta, Maine 04333  
Telephone: (207) 287-3261  
(207) 287-1461 (direct)  
Fax: (207) 287-6489  
[joyce.benson@state.me.us](mailto:joyce.benson@state.me.us)

#### Maryland

Linda Janey  
Manager, Clearinghouse and Plan  
Review Unit  
Maryland Office of Planning  
301 West Preston Street—Room 1104  
Baltimore, Maryland 21201-2305  
Telephone: (410) 767-4490  
Fax: (410) 767-4480  
[linda@mail.op.state.md.us](mailto:linda@mail.op.state.md.us)

#### Michigan

Richard Pfaff  
Southeast Michigan Council of  
Governments  
535 Griswold, Suite 300

Detroit, Michigan 48226  
Telephone: (313) 961-4266  
Telephone: (313) 961-4266  
Fax: (313) 961-4869  
[pfaff@semcog.org](mailto:pfaff@semcog.org)

#### Mississippi

Cathy Mallette  
Clearinghouse Officer  
Department of Finance and  
Administration  
1301 Woolfolk building, Suite E  
501 North West Street  
Jackson, Mississippi 39201  
Telephone: (601) 359-6762  
Fax: (601) 359-6758

#### Missouri

Angela Boessen  
Federal Assistance Clearinghouse  
Office of Administration  
P.O. Box 809  
Truman Building, Room 840  
Jefferson City, Missouri 65102  
Telephone: (573) 751-4834  
Fax: (573) 522-4395  
[igr@mail.ia.state.mo.us](mailto:igr@mail.ia.state.mo.us)

#### Nevada

Heather Elliott  
Department of Administration  
State Clearinghouse  
209 E. Musser Street, Room 200  
Carson City, Nevada 89701  
Telephone: (775) 684-0209  
Fax: (775) 684-0260  
[helliott@govmail.state.nv.us](mailto:helliott@govmail.state.nv.us)

#### New Hampshire

Jeffrey H. Taylor  
Director  
New Hampshire Office of State Planning  
Attn: Intergovernmental Review Process  
Mike Blake  
2-1/2 Beacon Street  
Concord, New Hampshire 03301  
Telephone: (603) 271-2155  
Fax: (603) 271-1728  
[jtaylor@osp.state.nh.us](mailto:jtaylor@osp.state.nh.us)

#### New Mexico

Ken Hughes  
Local Government Division  
Room 201 Bataan Memorial Building  
Santa Fe, New Mexico 87503  
Telephone: (505) 827-4370  
Fax: (505) 827-4948  
[khughes@dfa.state.nm.us](mailto:khughes@dfa.state.nm.us)

#### North Carolina

Jeanette Furney  
Department of Administration  
1302 Mail Service Center  
Raleigh, North Carolina 27699-1302  
Telephone: (919) 807-2323  
Fax: (919) 733-9571  
[jeanette.furney@ncmail.net](mailto:jeanette.furney@ncmail.net)

#### North Dakota

Jim Boyd

Division of Community Services  
600 East Boulevard Ave, Dept 105  
Bismarck, North Dakota 58505-0170  
Telephone: (701) 328-2094  
Fax: (701) 328-2308  
jboyd@state.nd.us

#### Rhode Island

Kevin Nelson  
Department of Administration  
Statewide Planning Program  
One Capitol Hill  
Providence, Rhode Island 02908-5870  
Telephone: (401) 222-2093  
Fax: (401) 222-2083  
knelson@doa.state.ri.us

#### South Carolina

Omeagia Burgess  
Budget and Control Board  
Office of State Budget  
1122 Ladies Street, 12th Floor  
Columbia, South Carolina 29201  
Telephone: (803) 734-0494  
Fax: (803) 734-0645  
aburgess@budget.state.sc.us

#### Texas

Denise S. Francis  
Director, State Grants Team  
Governor's Office of Budget and  
Planning  
P.O. Box 12428  
Austin, Texas 78711  
Telephone: (512) 305-9415  
Fax: (512) 936-2681  
dfrancis@governor.state.tx.us

#### Utah

Carolyn Wright  
Utah State Clearinghouse  
Governor's Office of Planning and  
Budget  
State Capitol, Room 114  
Salt Lake City, Utah 84114  
Telephone: (801) 538-1535  
Fax: (801) 538-1547  
cwright@gov.state.ut.us

#### West Virginia

Fred Cutlip, Director  
Community Development Division  
West Virginia Development Office  
Building #6, Room 553  
Charleston, West Virginia 25305  
Telephone: (304) 558-4010  
Fax: (304) 558-3248  
fcutlip@wvdo.org

#### Wisconsin

Jeff Smith  
Section Chief, Federal/State Relations  
Wisconsin Department of  
Administration  
101 East Wilson Street—6th Floor  
P.O. Box 7868  
Madison, Wisconsin 53707  
Telephone: (608) 266-0267  
Fax: (608) 267-6931

jeffrey.smith@doa.state.wi.us

#### American Samoa

Pat M. Galea'i  
Federal Grants/Programs Coordinator  
Office of Federal Programs  
Office of the Governor/Department of  
Commerce  
American Samoa Government  
Pago Pago, American Samoa 96799  
Telephone: (684) 633-5155  
Fax: (684) 633-4195  
pmgaleai@samoatelco.com

#### Guam

Director  
Bureau of Budget and Management  
Research  
Office of the Governor  
P.O. Box 2950  
Agana, Guam 96910  
Telephone: 011-671-472-2285  
Fax: 011-472-2825  
jer@ns.gov.gu

#### Puerto Rico

Jose Caballero/Mayra Silva  
Puerto Rico Planning Board  
Federal Proposals Review Office  
Minillas Government Center  
P.O. Box 41119  
San Juan, Puerto Rico 00940-1119  
Telephone: (787) 723-6190  
Fax: (787) 722-6783

#### North Mariana Islands

Ms. Jacoba T. Seman  
Federal Programs Coordinator  
Office of Management and Budget  
Office of the Governor  
Saipan, MP 96950  
Telephone: (670) 664-2289  
Fax: (670) 664-2272  
omb.jseman@saipan.com

#### Virgin Islands

Ira Mills  
Director, Office of Management and  
Budget  
#41 Norre Gade Emancipation Garden  
Station, Second Floor  
Saint Thomas, Virgin Islands 00802  
Telephone: (340) 774-0750  
Fax: (340) 776-0069  
irmills@usvi.org

Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to grants@omb.eop.gov. If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW., Washington, DC 20503.

**Please note:** Inquiries about obtaining a Federal grant should not be sent to the OMB e-mail or postal address shown

above. The best source of this information is the CFDA.

#### Attachment H

##### Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or

attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form

to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not

more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

**BILLING CODE 4184-01-M**

**DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB  
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known:</i>  Congressional District, <i>if known:</i>	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, <i>if known:</i>	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable:</i> _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

**Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal

action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number of grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 [e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency]. Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**Disclosure of Lobbying Activities Continuation Sheet**

Reporting Entity

Page

of

**Attachment 1****Department of Health and Human Services (DHHS)**

Regulations Applying to All Applicants/Grantees Under The Fiscal Year 2002 Community Economic Development Program

*Title 45 of the Code of Federal Regulations*

Part 16—DHHS Grant Appeals Process  
Part 74—Administration of Grants (non-governmental)  
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

## Sections

74.26—Non-Federal Audits  
74.27—Allowable cost for hospitals and non-profit organizations among other things  
74.32—Real Property  
74.34—Equipment  
74.35—Supplies  
74.24—Program Income  
Part 75—Informal Grant Appeal Procedures  
Part 76—Debarment and Suspension from Eligibility For Financial Assistance

## Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through DHHS Effectuation of Title VI of the Civil Rights Act of 1964  
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title  
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act  
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance  
Part 85—Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by DHHS  
Part 86—Non-discrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance  
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance  
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and

Local Governments (**Federal Register**, March 11, 1988)  
Part 93—New Restrictions on Lobbying  
Part 100—Intergovernmental Review of  
DHHS Programs and Activities

#### Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

#### Attachment K

##### Guidelines for a Business Plan

The application must contain a detailed and specific workplan or business plan that is both sound and feasible. Generally, a business plan is required for applications submitted under priority areas 1, 2, and 3. For all business ventures (except for business development opportunities for self-employed program participants) a complete business plan will be required using guidelines discussed in the next several paragraphs. For the remaining sub-priority areas, a workplan is acceptable in lieu of a business plan.

Please note that OCS does not require the application to contain business plans for each self-employed program participant. However, a project that proposes to provide self-employed and other business opportunities for program participants must include a development plan that shows how

participants will become self-sufficient and how their technical assistance needs will be met.

##### Guidelines of a Business Plan

The business plan is one of the major components that will be evaluated by the OCS to determine the feasibility of a business venture or an economic development project. It must be well prepared and address all the relevant elements as follows:

(a) **EXECUTIVE SUMMARY** (limit summary to 3 pages)

(b) *The business and its industry.* This section should describe the nature and history of the business and provide some background on its industry.

(i) *The Business:* as a legal entity; the general business category;

(ii) *Description and Discussion of Industry:* current status and prospects for the industry.

(c) *Products and Services:* This section deals with the following:

(i) *Description:* Describe in detail the products or services to be sold;

(ii) *Proprietary Position:* Describe proprietary features if any of the product, e.g., patents, trade secrets;

(iii) *Potential:* Features of the product or service that may give it an advantage over the competition;

(d) *Market Research and Evaluation:* The applicant should consider businesses in growth industries and occupations with skill levels accessible to low income persons. Businesses should be identified by Standard Industrial Codes (SIC) and jobs by occupational classifications. This information is published by the U.S. Department of Commerce in the "Statistical Abstract of the United States, 1996", Table No. 646 and 647. Also, you may use the table included as "Attachment L" to identify industrial areas and occupational classifications. This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition;

(i) *Customers:* Describe the actual and potential purchasers for the product or service by market segment.

(ii) *Market Size and Trends:* State the size of the current total market for the product or service offered;

(iii) *Competition:* An Assessment of the strengths and weaknesses of competitive in the current market;

(iv) *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market;

(e) *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the

estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

(f) *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

(g) *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

(h) *Management Team:* The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

(i) *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish each activity.

(j) *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the products market appeal, and the timing and financing of the venture.

Also, if a "construction project" is involved, the Business Plan should identify and address briefly the project's timeframes and critical assumptions for conduct of predevelopment, architectural/engineering and environmental studies, etc., and acquisition of permits for building, use and occupancy that are required for the project.

(k) *Community Benefits*: The proposed project must contribute to economic, human and community development within the projects targets area. A section that describes and discusses the potential economic and non-economic benefits to low income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs and how linkages with community agencies/organizations administering the AFDC/TANF program will be developed. The following project benefits must be described.

#### Economic Development and Job Creation

Number of permanent jobs (with particular emphasis on jobs for low-income people) that will be created during the project period. Also, for low-income people, provide the following information:

- Number of jobs that will have career development opportunities and a description of those jobs;
- Number of jobs that will be filled by individuals lifted from AFDC/TANF assistance;

Number of Self-employed and other ownership opportunities created for low-income residents;

- Annual salary expected for each person employed (net profit after deductions of business expenses for self-employed persons);
- Specific steps to be taken including on-going management support and technical assistance provided by the grantee or a third party to develop and sustain self-employed program participants after their businesses are in place.

**Note:** OCS will not recognize job equivalents nor job counts based on economic multiplier functions; jobs must be specifically identified.

Other benefits, which might be discussed, are;

#### Human Development

- New technical skills development and associated career opportunities for community residents;
- Management development and training;

—Benefits of self-sufficient for persons lifted from AFDC/TANF assistance.

#### Community Development

- Development of community's physical assets;
- Provisions of needed, but currently unsupplied, services or products to community;
- Improvement in the living environment.

(1) *The Financial Plan*: The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

- (i) Profit and Loss Forecasts—quarterly for each year;
- (ii) Cash Flow Projections—quarterly for each year
- (iii) Pro forma balance sheets—quarterly for each year;

Also, additional financial information for the business operation that must be included are an initial Source and Use of Funds Statement for project funds and a brief summary paragraph discussing any further capital requirements and their sources.

If an applicant is proposing a project which will affect a property list in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1996 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF-424B, Item 13 for additional guidance.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for funding consideration.

#### Applicable to Priority Areas 1, 2, and 3

Applications submitted under Priority Areas 1, 2 and 3 which propose to use the requested OCS funds to make an equity investment or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of OCS funds, must include a written agreement between the community development

corporation and the recipient of the grant funds which contains all of the elements listed in Part C under the appropriate Priority Area.

#### Applicable to Sub-Priority Area 1.5 Only

An applicant in this priority area must document its experience and capability in several of the following areas:

- Business/Development;
- Micro-Entrepreneurship Development;
- Commercial Development;
- Organizational and Staff Development;
- Board Training;
- Business Management, including Strategic Planning and Fiscal Management;
- Finance, including Business Packaging and Financial/Accounting Services, and/or
- Regulatory compliance including Zoning and permit Compliance
- Incubator Development
- Tax Credits and Bond Financing
- Marketing

The applicant must document staff competence or the accessibility of third party resources with proven competence. If the work program requires the significance use of third party (consultant/contractor) resources, those resources should be identified and resumes of the individuals or key organizational staff provided.

Resumes of the applicant's staff, who are to be directly involved in programmatic and administrative expertise sharing, should also be included. The applicant must document successful experience in the mobilization of resources (both cash and in-kind) from private and public sources. The applicant must also clearly state how the information learned from this project may be disseminated to other interested grantees.

#### Applicable to Sub-Priority Area 1.6 only

An applicant in this priority area must document its experience and capability in implementing projects national in scope and have significant and relative experiences in working with community development corporations.

The applicants must have the ability to collect and analyze data nationally that may benefit CDCs and be able to disseminate information to all of OCS funding grantees; publish a national directory of funding sources for CDCs (public, corporate, foundation, religious); publish research papers on specific aspects of job creation by CDSs;

design and provide information on successful projects and economic niches that CDCs can target. The applicant will also be responsible for the development of instructional programs, national conferences, seminars, and other activities to assist community development corporations; and provide peer-to-peer technical assistance to OCS funded CDCs.

#### Applicable to Sub-Priority Area 2.1

Each applicant must include a full discussion of how the proposed use of funds will enable low-income rural communities to develop the capability and expertise to establish and maintain affordable, adequate and safe water and waste water systems. Applicants must also discuss how they will disseminate

information about water and waste water programs serving rural communities, and how they will better coordinate Federal, State, and local water and waste water program financing and development to assure improved service to rural communities.

Among the benefits that merit discussion under this sub-priority area are: The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may

be expressed in terms of equivalent connection units); the increase in local capacity in engineering and other areas of expertise; and the amount of non-discretionary program dollars expected to be mobilized.

#### e. Significant and Beneficial Impact and Other Criteria

The project narrative must address the remaining aspects of the project noted in the outline of Part F, "Contents of Application and Receipt Process", Items V and VI. These include private partnerships and "Budget Appropriateness and Reasonableness" areas as well as information to be included in the appendices.

#### Attachment L

### TABLE OF NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM AND OCCUPATIONAL CLASSIFICATIONS

#### North American industry classification system (NAIC)

Agriculture, Forestry, Fishing, and Hunting Only Logging covered in the Economics Census

*Mining*

*Utilities*

*Construction*

*Manufacturing*

*Wholesale Trade*

*Retail Trade*

*Transportation and Warehousing*

*Information*

*Finance and Insurance*

*Real Estate and Rental and Leasing*

*Professional, Scientific and Technical Services*

*Management of Companies and Enterprises*

*Administrative and Support and Waste Management and Remediation Services*

*Educational Services*

*Health Care and Social Assistance*

*Arts, Entertainment and Recreation*

*Accommodation and Food Services*

*Other Services (except Public Administration)*

*Public Administration not covered in the Economic Census*

Source: U.S. Department of Commerce, "Statistical Abstract of the United States, 1996", Table No. 646 and 647. Updated 1998. Table No. 679 and 680, and 1997 Economic Census.

#### Occupational classifications

Managerial and Professional Specialty Technical sales, and Administrative Support (includes technical and related support, technicians, sales occupations, including clerical).

Precision Production, Craft, and Repair (includes mechanics, repairers, construction trades, crafters).

Operators, fabricators, and Laborers (includes machine operators, assemblers, inspectors, transportation and material moving occupations, handlers, equip cleaners, Helpers, laborers including construction laborers).

Farming, Forestry and Fishing.



ATTACHMENT M

### APPLICANT'S CHECKLIST

This checklist will assist you with preparing and assembling your application. Completing the checklist can help ensure that you do not omit key information. Because this checklist is used by many ACF programs, some of the information might not apply to your application. This checklist DOES NOT have to be completed and returned with your application.

	Yes	Included	N/A
Authorizing official read and understood Certification Regarding Debarment, Suspension, and Other Responsibility Matters?			
Authorizing official read and understood Certification Regarding Drug-Free Workplace Requirements--Grantees Other Than Individuals?			
Authorizing official read and understood Certification Regarding Environmental Tobacco Smoke?			
Application for Federal Assistance (SF 424) was completed? Proper Signature and Date for Line 18?			
Budget Information--Non-Construction Programs (SF 424A) or Budget Information--Construction Programs (SF 424C) was completed?			
Assurances-- Non-Construction Programs (SF 424B) or Assurances--Construction Programs (SF 424D) was completed? (Proper Signature and Date?)			
Certification Regarding Lobbying was completed? (Proper Signature and Date?)			
Disclosure of Lobbying Activities was completed? (Proper Signature and Date?)			
Other special certifications, assurances, and/or disclosures required under the program were completed (e.g., maintenance of effort certification)?			
Proof of nonprofit status was provided?			
Has additional information such as biographical sketch(es) with job description(s) and other additional information been attached, when required?			
For a Supplemental application, does the detailed budget only address the additional funds requested?			
Checked all budget computations for accuracy?			

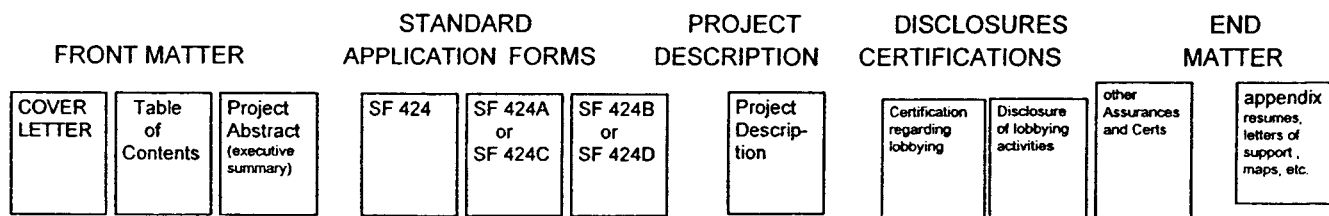


FOLLOW-UP QUESTIONS

- On the Application for Federal Assistance (SF 424), YES N/A
- ⇒ did you enter the application number issued by the sponsoring ACF office in the "Federal Identifier" block?
  - ⇒ did you type the 12 digit Payee EIN or PIN previously assigned to your organization by DHHS in the "Federal Identifier" block?
  - ⇒ is the EIN in Item #6 assigned to the organization and organizational unit named in Item #5?
  - ⇒ did you include city, county, state and zip code of the applicant organization in Item #5?
  - ⇒ has the appropriate box been checked in Item #16?
  - ⇒ has the entire proposed project period been identified in Item #13?
- On the Budget Information form (SF 424A or SF 424C),
- ⇒ do the totals in Section B match the totals provided in the budget and budget narrative?



### SUGGESTED ORDERING OF APPLICATION MATERIALS





# Federal Register

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**Tuesday,  
May 28, 2002**

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**Part V**

## **Department of Education**

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**Reauthorization of Federal Support for  
Vocational and Technical Education  
Programs; Notice**

**DEPARTMENT OF EDUCATION****Reauthorization of Federal Support for Vocational and Technical Education Programs**

**AGENCY:** Office of Vocational and Adult Education, U.S. Department of Education.

**ACTION:** Notice of public meetings and request for comment on the reauthorization of Federal support for vocational and technical education programs.

**SUMMARY:** The Assistant Secretary announces a series of public meetings and invites comments from the public regarding the reauthorization of programs under the Carl D. Perkins Vocational and Technical Education Act of 1998 (the Act) and related issues, including Federal support for secondary school reform.

**DATES:** We must receive your written comments on or before July 30, 2002.

We will also hold public meetings about the reauthorization of programs under the Act. The dates, times, and places of the meetings are under **PUBLIC MEETINGS** elsewhere in this notice.

**ADDRESSES:** Address all comments concerning the reauthorization of programs under the Act to Gerri Anderson, Conference Manager, 1010 Wayne Avenue, Suite 300, Silver Spring, Maryland 20910; or by using one of the following methods:

1. *E-Mail.* We encourage you to e-mail your comments to the following address:

[ganderson@dbconsultinggroup.com](mailto:ganderson@dbconsultinggroup.com).

2. *Facsimile.* You may submit comments by facsimile at (301) 589-4122.

**FOR FURTHER INFORMATION CONTACT:** Gail Schwartz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4311, Mary E. Switzer Building, Washington, DC 20202-7100. Telephone: (202) 205-5445.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**Public Meetings***Dates, times, and addresses*

We will hold public meetings according to the following schedule:

1. Date: June 3, 2002, Time: 8:30 a.m. to 10:30 a.m., Location: Oakland Community College, Wallace F. Smith Performing Arts Theatre, 27055 Orchard Lake Road, Farmington Hills, MI 48334-4579, Phone: (248) 522-3400, Fax: (248) 522-3903.

*Hotel Information:* A limited number of rooms have been reserved at the Best Western Executive Hotel & Suites located at 31525 W. Twelve Mile Road, Farmington Hills, Michigan 48334. To make your reservations, please call 248-553-0000 and refer to "OVAE Public Meeting." The room rate is \$89.27 (tax inclusive) for the reserved rooms on a first come first served basis. Check-in time is 3 p.m., and check-out time is 12 p.m.

2. Date: June 4, 2002, Time: 8:30 a.m. to 10:30 a.m.

Location: St. Louis Chamber of Commerce, 12th Floor, Meeting Room, 1 Metro Square, St. Louis, MO 31300, Phone: (314) 444-1192.

*Hotel Information:* A limited number of rooms have been reserved at the Westin Hotel located at 811 Spruce Street, St. Louis MO 63102. To make your reservations, please call 1-800-937-8461 or 314-621-2000 and refer to "OVAE Public Meeting." The room rate is \$103.34 (tax inclusive) per night for the reserved rooms. Rooms are on a first-come first-served basis. Check-in time is 3 p.m., and check-out time is 12 p.m.

Additional public meetings will be held in California and North Carolina in August 2002. The exact dates, times, and locations to be determined.

**Participants**

Those who wish to present comments on the reauthorization of Federal support for vocational and technical education programs and related issues at one of the public meetings must reserve time on the agenda for that meeting by contacting Gerri Anderson, Conference Manager, 1010 Wayne Avenue, suite 300, Silver Spring, MD 20910. Telephone: (voice) 1 (888) 589-4366; fax: (301) 589-4122; or via e-mail at: [ganderson@dbconsultinggroup.com](mailto:ganderson@dbconsultinggroup.com). Reservations for presenting comments will be accepted on a first-come, first-served basis.

Participants will be allowed approximately 3 to 5 minutes to present their comments, depending upon the number of individuals who reserve time on the agenda. At the meeting, participants also are encouraged to submit two written copies of their comments. Persons interested in making comments are encouraged to address the issues and questions discussed under **SUPPLEMENTARY INFORMATION**.

*Assistance to Individuals With Disabilities at the Public Meetings*

The meeting rooms and proceedings will be accessible to individuals with disabilities. When making reservations, anyone presenting comments at or attending a meeting who needs special accommodations, such as sign language interpreters, Braille materials, and communication access real-time transcription, should inform Gerri Anderson of his or her specific accessibility needs. You should make requests for accommodations at least 10 working days prior to the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**SUPPLEMENTARY INFORMATION:***Invitation to Comment*

In addition to soliciting comments during the public meetings, we invite the public to submit written comments on the reauthorization of Federal vocational and technical education programs, as well as related issues, including secondary school reform. We are particularly interested in comments that address the issues and questions described under *Key Issues for Public Comment* elsewhere in this notice.

During and after the comment period, you may inspect all public comments about the reauthorization by contacting Gerri Anderson, Conference Manager, 1010 Wayne Avenue, suite 300, Silver Spring, MD, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record*

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Background and description of the Act*

The Act authorizes Federal support to improve secondary and postsecondary vocational and technical education programs. The Act includes nine programs, with more than \$1.3 billion in funding for fiscal year 2002. The funded programs are: Vocational and Technical

Education Assistance to States; Tech-Prep Education State Grants; National Activities, including: the National Research Center(s); Native American Vocational and Technical Education; Tribally Controlled Postsecondary Vocational and Technical Institutions; Native Hawaiian Vocational Education; Occupational and Employment Information, commonly known as America's Career Resource Network State Grants; the Career Clusters Initiative; and Tech-Prep Demonstrations.

The statutory authorization for these programs expires on September 30, 2003. In order to contribute in a timely manner to congressional reauthorization discussions, we are beginning a review of these programs, as well as related issues, including secondary school reform. To ensure public participation in our review and decision-making, we invite public comment on these issues.

You may obtain an electronic copy of the Act on the Internet at the following site: <http://www.ed.gov/offices/OVAE/CTE/legis.html>.

Individuals with disabilities may obtain a copy of the Act in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact number listed under **FOR FURTHER INFORMATION CONTACT**.

#### *Key Issues for Public Comment*

Comments are encouraged on the following priority issues.

1. *Narrowing the Achievement Gap.* Since the release of *A Nation At Risk* in 1983, little, if any, improvements have been made in the performance of our Nation's high school students. By all accounts, improvements have not been substantial enough so that every student is prepared for a successful future. In fact, data show that by the end of the 1980s, progress for high school students stopped cold and, through the 1990s, achievement gaps have remained stable or widened. A number of trends indicate that we are a "Nation at Risk" of not preparing our high school students for their future.

Scores by 12th graders on the National Assessment of Educational Progress (NAEP) remain disturbingly low. As of 1998, only 40 percent of 12th graders were able to read at or above a proficient level, and just 22 percent were able to write at or above a proficient level. Only 16 percent of 12th grade students in 2000 scored at or above a proficient level in math, and only 18 percent scored at or above a proficient level in science. Despite a substantial decrease in achievement gaps between 1970 and 1999, white

students still consistently outperform peers of all other racial and ethnic backgrounds in every subject area. In fact, by 1999, on average, 17-year-old African-American and Hispanic students had skills in English, mathematics, and science comparable to those of 13-year-old white students. Achievement gaps also exist among students who pursue different programs of study. As of 1994, vocational concentrators lagged behind other students in English, math, and science achievement.

On January 8, 2002, President George W. Bush signed into law the No Child Left Behind Act, the most sweeping reform of the Elementary and Secondary Education Act (ESEA) since it was enacted in 1965. Its provisions include increased accountability for States, school districts, and schools; greater choice for parents and students, particularly those attending low-performing schools; more flexibility for States and local educational agencies in the use of Federal education dollars; targeting education dollars to research-based programs that have been proven to help most children learn; and a stronger emphasis on reading, especially for our youngest children.

Although No Child Left Behind applies to both elementary and secondary students, it places primary and much-needed emphasis on the 28 million public school students enrolled in kindergarten through 8th grade. The reauthorization of the Perkins Act provides an opportunity for additional legislative reforms in vocational and technical education programs to improve the achievement of the Nation's high school students.

- Is there a need for additional or separate Federal action to address the achievement gap among secondary school students?
- Is there a need for additional or separate Federal action to address the achievement gap among non-baccalaureate postsecondary students?
- How should Federal support for vocational and technical education programs be aligned with Title I of the Elementary and Secondary Education Act of 1965 and other elementary and secondary education programs?
- The current array of Federal programs that affect high schools and their students may or may not represent a coherent Federal high school policy. What policies and programmatic elements should an effective, coherent Federal strategy to promote high school transformation include?
- How should existing vocational and technical education be modified to support this Federal strategy?

- Nearly one-third of college freshmen take remedial math courses, and over one-quarter take remedial English. In some States, estimates of students requiring college remediation are nearly 50 percent. What can be done to ensure that every student is prepared for postsecondary education, without the need for remediation?

2. *Focusing on What Works.* The Federal investment in vocational and technical education comprises about seven percent of the total amount spent nationally on vocational and technical education.

- How can these limited resources be targeted to maximize the return on the Federal investment?
- What are the features of effective secondary vocational and technical education programs that should be given higher priority for Federal resources?
- What are the features of effective postsecondary vocational and technical education programs that should be given higher priority for Federal resources?
- How should our national program funds be targeted to help close the achievement gap between high- and low-performing students, including factors that are based on gender, ethnicity, economic status and disability?

3. *Increasing Accountability for Student Performance.* The Act established a State accountability system that holds States accountable for meeting annual, agreed-upon levels of performance on a set of "core indicators" specified in the statute. Each State has discretion to determine how it will measure each of the indicators.

- While the Act's accountability system has heightened attention on student achievement, completion, and other outcomes, some contend that the system is needlessly complex and does not generate straight-forward, easily understandable information about student, program, and State performance. How can this accountability system be simplified and improved?
- The Act uses a single set of indicators to measure the effectiveness of both secondary and postsecondary programs. However, some of the indicators, such as attainment of State-established academic proficiencies, are not readily applicable to postsecondary education. What indicators are most appropriate and useful for measuring the effectiveness of postsecondary vocational and technical education programs? To what types of students should they apply? For example, should non-credit students be included in the

accountability system? Are the right things being measured?

4. *Coordination with Federal Employment and Training Programs.* Title I of the Workforce Investment Act (WIA) created a one-stop delivery system that links multiple Federal education and training programs in order to make these services more accessible to the public, to reduce duplication of services, and to facilitate coordinated planning across programs. Postsecondary vocational and technical education programs supported by the Act are “mandatory partners” that are required to participate in the one-stop delivery system. They are also represented on local workforce investment boards that govern the one-stop system in local areas.

- Have the one-stop delivery system’s goals of improving public access to postsecondary vocational and technical education, reducing duplication, and facilitating coordination been achieved in local areas? What changes are needed to promote the further attainment of these goals? How have memoranda of

understanding (MOUs) worked to benefit the postsecondary vocational and technical education participant?

- States negotiate annual levels of performance for WIA Title I employment programs for a set of “core indicators” that is similar to those established under the Act. Placement in employment, for example, is measured for both WIA Title I and the Act. Should these indicators be measured consistently across these programs and others, using the same population and other definitions? How should this common employment measure be constructed, and what definitions should be used? Are there other indicators (*e.g.*, educational attainment) for which there also should be common measurement approaches and definitions?

- Have WIA incentive grants helped states look at ways to promote student achievement across programs and help close the achievement gap?

#### *Electronic Access to This Document*

You may view this document, as well as all other Department of Education

documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/legislation/FedRegister](http://www.ed.gov/legislation/FedRegister)

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

**Program Authority:** 20 USC 2301 *et seq.*

Dated: May 22, 2002.

**Carol D’Amico,**

*Assistant Secretary for Vocational and Adult Education.*

[FR Doc. 02-13265 Filed 5-24-02; 8:45 am]

**BILLING CODE 4000-01-P**



# Federal Register

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**Tuesday,  
May 28, 2002**

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**Part VI**

## **Department of Education**

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**Reauthorization of the Adult Education  
and Family Literacy Act; Notice**

**DEPARTMENT OF EDUCATION****Reauthorization of the Adult Education and Family Literacy Act**

**AGENCY:** Office of Vocational and Adult Education, U.S. Department of Education.

**ACTION:** Notice of public meetings and request for comment on the reauthorization of the Adult Education and Family Literacy Act.

**SUMMARY:** The Assistant Secretary announces a series of public meetings and invites comments from the public regarding the reauthorization of programs under the Adult Education and Family Literacy Act (the Act) (Title II of the Workforce Investment Act of 1998).

**DATES:** We must receive your comments on or before July 30, 2002.

We will hold public meetings about the reauthorization of programs under the Act. The dates, times, and places of the meetings are under PUBLIC MEETINGS elsewhere in this notice.

**ADDRESSES:** Address all comments concerning the reauthorization of programs under the Act to Gerri Anderson, Conference Manager, 1010 Wayne Avenue, Suite 300, Silver Spring, Maryland 20910; or by using one of the following methods:

1. *E-Mail.* We encourage you to e-mail your comments to the following address:

*ganderson@dbconsultinggroup.com.*

2. *Facsimile.* You may submit comments by facsimile at (301) 589-4122.

**FOR FURTHER INFORMATION CONTACT:** Michael Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 4521, Mary E. Switzer Building, Washington, DC 20202-7242. Telephone: (202) 205-9260.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**Public Meetings***Dates, times, and addresses*

We will hold public meetings according to the following schedule:

1. *Date:* June 3, 2002, *Time:* 10:30 a.m. to 12:30 p.m.

*Location:* Oakland Community College, Wallace Smith Theatre, 27055

Orchard Lake Road, Farmington Hills, MI 48334-4579, Phone: (248) 522-3400, Fax: (248) 522-3903

*Hotel Information:* A limited number of rooms have been reserved at the Best Western Executive Hotel & Suites located at 31525 W. Twelve Mile Road, Farmington Hills, Michigan 48334. To make your reservations, please call 248-553-0000 and refer to "OVAE Public Meeting." The room rate is \$89.27 (tax inclusive) for the reserved rooms on a first come first served basis. Check-in time is 3 p.m., and check-out time is 12 p.m.

2. *Date:* June 4, 2002, *Time:* 10:30 a.m. to 12:30 p.m.,

*Location:* St. Louis Chamber of Commerce, 12th Floor, Meeting Room, 1 Metropolitan Square, St. Louis, MO 63102, Phone: (314) 231-5555, Fax: (314) 206-3277.

*Hotel Information:* A limited number of rooms have been reserved at the Westin Hotel located at 811 Spruce Street, St. Louis MO 63102. To make your reservations, please call 1-800-937-8461 or 314-621-2000 and refer to "OVAE Public Meeting." The room rate is \$103.34 (tax inclusive) per night for the reserved rooms. Rooms are on a first-come first-served basis. Check-in time is 3 p.m., and check-out time is 12 p.m.

Additional public meetings will be held in California and North Carolina in August 2002. The exact dates, times, and locations to be determined.

**Participants**

Those who wish to present comments on the reauthorization of Federal support for the Adult Education and Families Literacy Act at one of the public meetings must reserve time on the agenda for that meeting by contacting Gerri Anderson, Conference Manager, 1010 Wayne Avenue, suite 300, Silver Spring, MD 20910. Telephone: (voice) 1(888) 589-4366; fax: (301) 589-4122; or via e-mail at: *ganderson@dbconsultinggroup.com*

Reservations for presenting comments will be accepted on a first-come, first-served basis.

Participants will be allowed approximately 3 to 5 minutes to present their comments, depending upon the number of individuals who reserve time on the agenda. At the meeting, participants also are encouraged to submit two written copies of their comments. Persons interested in making comments are encouraged to address the issues and questions discussed under

**SUPPLEMENTARY INFORMATION.***Assistance to Individuals With Disabilities at the Public Meetings*

The meeting rooms and proceedings will be accessible to individuals with disabilities. When making reservations, anyone presenting comments at or attending a meeting who needs special accommodations, such as sign language interpreters, Braille materials, and communication access real-time transcription, should inform Gerri Anderson of his or her specific accessibility needs. You should make requests for accommodations at least 10 working days prior to the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**SUPPLEMENTARY INFORMATION:***Invitation To Comment*

In addition to soliciting comments during the public meetings, we invite the public to submit written comments on the reauthorization of the Act. We are particularly interested in comments that address the issues and questions described under *Key Issues for Public Comment* elsewhere in this notice.

During and after the comment period, you may inspect all public comments about the reauthorization by contacting Gerri Anderson, Conference Manager, 1010 Wayne Avenue, suite 300, Silver Spring, MD, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record*

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Background and Description of the Act*

The Act authorizes Federal support to States to provide adult education and literacy services, including adult basic education, adult secondary education, English literacy, and family literacy programs of instruction. For Fiscal Year (FY) 2002, Congress appropriated \$505 million for these grants to States. Since FY 2000, Congress also has appropriated additional funds for grants to States for

integrated English literacy and civics education services to immigrants and other limited English proficient populations. \$70 million was appropriated for this purpose for FY 2002.

Under these programs States distribute funds to local providers through a competitive process. Eligible providers include: local educational agencies, community-based organizations, volunteer literacy organizations, correctional education agencies, institutions of higher education, libraries, public housing authorities, and other public or private nonprofit agencies.

The statutory authorization for this program expires on September 30, 2003. In order to contribute in a timely manner to congressional reauthorization discussions, we are beginning a review of this program. To ensure public participation in our review and decision-making, we invite public comment on these issues.

You may obtain an electronic copy of the Act on the Internet at the following site: <http://www.ed.gov/offices/OVAE/CTE/legis.html>.

Individuals with disabilities may obtain a copy of the Act in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact number listed under **FOR FURTHER INFORMATION CONTACT**.

#### *Key Issues for Public Comment*

Comments are encouraged on the following priority issues.

1. *Narrowing the Achievement Gap.* The 1992 National Assessment of Adult Literacy (NAALS) indicated that approximately 90 million adults were reading at levels that were insufficient to allow them to fully participate in the economy and obtain new skills necessary for success. In 2002, an updated version of NAALS will be conducted, which will likely indicate that tens of millions of Americans continue to live with low literacy. Yet programs funded under the Act currently serve only about 2.7 million individuals each year. This disparity between available resources and need is likely to persist for the foreseeable future.

- How can we improve the targeting of Federal resources on effective

programs that will produce the greatest return on the Federal investment?

- What are the features of effective adult education and literacy programs that should be given higher priority for Federal resources?

- How can we improve the performance of adult education programs, increasing their success in not only increasing the number of completers but also generating more rapid knowledge and skill gains?

- How we can expand the array of services available to support adult learners who are currently not accessing learning through the present system?

- Can non-traditional service providers be better integrated into a multi-faceted delivery system? What changes would promote the delivery of high-quality, accountable services by community-based organizations and faith-based organizations and businesses?

- How should our national program funds be targeted to help States close the achievement gap?

2. *Increasing Accountability for Student Performance.* The Act established a State accountability system that holds States and other grant recipients accountable for meeting annual, agreed-upon levels of performance on a set of "core indicators" specified in the statute. Do these core indicators measure student performance and demonstrate impact of the federal investment well? How could data be reported differently to enhance their meaning to the public, to students, and to policymakers?

3. *Coordination with Federal Employment and Training Programs.* Title I of the Workforce Investment Act (WIA) created a one-stop delivery system that links multiple Federal education and training programs in order to make these services more accessible to the public, to reduce duplication of services, and to facilitate coordinated planning across programs. Adult education and literacy programs supported by the Act are "mandatory partners" that are required to participate in the one-stop delivery system. They are also represented on local workforce investment boards that govern the one-stop system in local areas.

- Have the one-stop delivery system's goals of improving public access to adult education services, improving

academic achievement, reducing duplication, and facilitating coordination been achieved in local areas? What changes are needed to promote the further attainment of these goals? How have memoranda of understanding [MOUs] among the delivery system's partners worked to benefit the adult education participant?

- States negotiate annual levels of performance for WIA Title I employment programs for a set of "core indicators" that is similar to that established under the Act. Placement in employment, for example, is measured for both WIA Title I and the Act. Should these indicators be measured consistently across these programs and others, using the same population and other definitions? If so, how should this common employment measure be constructed and what definitions should be used? Are there other indicators (e.g., educational attainment) for which there should also be common measurement approaches and definitions?

- Have WIA incentive grants helped States look at ways to promote student achievement across programs and help close the achievement gap?

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**Program Authority:** 20 U.S.C. 9201, *et seq.*

Dated: May 22, 2002.

**Carol D'Amico,**

*Assistant Secretary, Office of Vocational and Adult Education.*

[FR Doc. 02-13266 Filed 5-24-02; 8:45 am]

**BILLING CODE 4000-01-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.

**RULES GOING INTO EFFECT MAY 28, 2002****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

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California; published 4-26-02

Potatoes (Irish) grown in—

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Kennebec River, ME; Bath Ironworks Shipyard; published 4-25-02

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**ENVIRONMENTAL PROTECTION AGENCY**

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Air quality implementation plans; approval and promulgation; various States:

California; published 4-26-02

**FEDERAL COMMUNICATIONS COMMISSION**

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Various States; published 4-25-02

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Boeing; published 4-23-02

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**COMMENTS DUE NEXT WEEK****AGENCY FOR INTERNATIONAL DEVELOPMENT**

Voluntary foreign aid programs; U.S. private voluntary organizations; registration; comments due by 6-6-02; published 5-7-02 [FR 02-11243]

**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

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Raisins produced from grapes grown in—

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Fishery conservation and management:

Northeastern United States fisheries—

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Disadvantaged children; academic achievement improvement; comments due by 6-5-02; published 5-6-02 [FR 02-11128]

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Upstream interstate pipelines; firm capacity assignment; comments due by 6-3-02; published 4-18-02 [FR 02-09251]

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#### LIST OF PUBLIC LAWS

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#### S. 378/P.L. 107-182

To redesignate the Federal building located at 3348 South Kedzie Avenue, in Chicago, Illinois, as the "Paul Simon

Chicago Job Corps Center". (May 21, 2002; 116 Stat. 584)

**Last List May 22, 2002**

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Title	Stock Number	Price	Revision Date
<b>1, 2 (2 Reserved)</b>	(869-048-00001-1)	9.00	Jan. 1, 2002
<b>*3 (1997 Compilation and Parts 100 and 101)</b>	(869-048-00002-0)	59.00	<sup>1</sup> Jan. 1, 2002
<b>4</b>	(869-048-00003-8)	9.00	<sup>4</sup> Jan. 1, 2002
<b>5 Parts:</b>			
1-699	(869-048-00004-6)	57.00	Jan. 1, 2002
700-1199	(869-048-00005-4)	47.00	Jan. 1, 2002
1200-End, 6 (6 Reserved)	(869-048-00006-2)	58.00	Jan. 1, 2002
<b>7 Parts:</b>			
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700-899	(869-048-00013-5)	54.00	Jan. 1, 2002
900-999	(869-048-00014-3)	58.00	Jan. 1, 2002
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§§ 1.61-1.169	(869-044-00078-4)	57.00	Apr. 1, 2001
§§ 1.170-1.300	(869-044-00079-2)	52.00	Apr. 1, 2001
§§ 1.301-1.400	(869-044-00080-6)	41.00	Apr. 1, 2001
§§ 1.401-1.440	(869-044-00081-4)	58.00	Apr. 1, 2001
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501-1.640	(869-044-00083-1)	44.00	Apr. 1, 2001
§§ 1.641-1.850	(869-044-00084-9)	53.00	Apr. 1, 2001
§§ 1.851-1.907	(869-044-00085-7)	54.00	Apr. 1, 2001
§§ 1.908-1.1000	(869-044-00086-5)	53.00	Apr. 1, 2001
§§ 1.1001-1.1400	(869-044-00087-3)	55.00	Apr. 1, 2001
§§ 1.1401-End	(869-044-00088-1)	58.00	Apr. 1, 2001
2-29	(869-044-00089-0)	54.00	Apr. 1, 2001
30-39	(869-044-00090-3)	37.00	Apr. 1, 2001
40-49	(869-044-00091-1)	25.00	Apr. 1, 2001
50-299	(869-044-00092-0)	23.00	Apr. 1, 2001
300-499	(869-044-00093-8)	54.00	Apr. 1, 2001
500-599	(869-044-00094-6)	12.00	<sup>5</sup> Apr. 1, 2001
600-End	(869-044-00095-4)	15.00	Apr. 1, 2001
<b>27 Parts:</b>			
1-199	(869-044-00096-2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
200-End	(869-044-00097-1)	26.00	Apr. 1, 2001	100-135	(869-044-00151-9)	38.00	July 1, 2001
<b>28 Parts:</b>				136-149	(869-044-00152-7)	55.00	July 1, 2001
0-42	(869-044-00098-9)	55.00	July 1, 2001	150-189	(869-044-00153-5)	52.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001	190-259	(869-044-00154-3)	34.00	July 1, 2001
<b>29 Parts:</b>				260-265	(869-044-00155-1)	45.00	July 1, 2001
0-99	(869-044-00100-4)	45.00	July 1, 2001	266-299	(869-044-00156-0)	45.00	July 1, 2001
100-499	(869-044-00101-2)	14.00	<sup>6</sup> July 1, 2001	300-399	(869-044-00157-8)	41.00	July 1, 2001
500-899	(869-044-00102-1)	47.00	<sup>6</sup> July 1, 2001	400-424	(869-044-00158-6)	51.00	July 1, 2001
900-1899	(869-044-00103-9)	33.00	July 1, 2001	425-699	(869-044-00159-4)	55.00	July 1, 2001
1900-1910 (§§ 1900 to 1910.999)	(869-044-00104-7)	55.00	July 1, 2001	700-789	(869-044-00160-8)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869-044-00105-5)	42.00	July 1, 2001	790-End	(869-044-00161-6)	44.00	July 1, 2001
1911-1925	(869-044-00106-3)	20.00	<sup>6</sup> July 1, 2001	<b>41 Chapters:</b>			
1926	(869-044-00107-1)	45.00	July 1, 2001	1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
1927-End	(869-044-00108-0)	55.00	July 1, 2001	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
<b>30 Parts:</b>				3-6		14.00	<sup>3</sup> July 1, 1984
1-199	(869-044-00109-8)	52.00	July 1, 2001	7		6.00	<sup>3</sup> July 1, 1984
200-699	(869-044-00110-1)	45.00	July 1, 2001	8		4.50	<sup>3</sup> July 1, 1984
700-End	(869-044-00111-7)	53.00	July 1, 2001	9		13.00	<sup>3</sup> July 1, 1984
<b>31 Parts:</b>				10-17		9.50	<sup>3</sup> July 1, 1984
0-199	(869-044-00112-8)	32.00	July 1, 2001	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
200-End	(869-044-00113-6)	56.00	July 1, 2001	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
<b>32 Parts:</b>				18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	19-100		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	1-100	(869-044-00162-4)	22.00	July 1, 2001
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	101	(869-044-00163-2)	45.00	July 1, 2001
1-190	(869-044-00114-4)	51.00	<sup>6</sup> July 1, 2001	102-200	(869-044-00164-1)	33.00	July 1, 2001
191-399	(869-044-00115-2)	57.00	July 1, 2001	201-End	(869-044-00165-9)	24.00	July 1, 2001
400-629	(869-044-00116-8)	35.00	<sup>6</sup> July 1, 2001	<b>42 Parts:</b>			
630-699	(869-044-00117-9)	34.00	July 1, 2001	1-399	(869-044-00166-7)	51.00	Oct. 1, 2001
700-799	(869-044-00118-7)	42.00	July 1, 2001	400-429	(869-044-00167-5)	59.00	Oct. 1, 2001
800-End	(869-044-00119-5)	44.00	July 1, 2001	430-End	(869-044-00168-3)	58.00	Oct. 1, 2001
<b>33 Parts:</b>				<b>43 Parts:</b>			
1-124	(869-044-00120-9)	45.00	July 1, 2001	1-999	(869-044-00169-1)	45.00	Oct. 1, 2001
125-199	(869-044-00121-7)	55.00	July 1, 2001	1000-end	(869-044-00170-5)	56.00	Oct. 1, 2001
200-End	(869-044-00122-5)	45.00	July 1, 2001	<b>44</b>	(869-044-00171-3)	45.00	Oct. 1, 2001
<b>34 Parts:</b>				<b>45 Parts:</b>			
1-299	(869-044-00123-3)	43.00	July 1, 2001	1-199	(869-044-00172-1)	53.00	Oct. 1, 2001
300-399	(869-044-00124-1)	40.00	July 1, 2001	200-499	(869-044-00173-0)	31.00	Oct. 1, 2001
400-End	(869-044-00125-0)	56.00	July 1, 2001	500-1199	(869-044-00174-8)	45.00	Oct. 1, 2001
<b>35</b>	(869-044-00126-8)	10.00	<sup>6</sup> July 1, 2001	1200-End	(869-044-00175-6)	55.00	Oct. 1, 2001
<b>36 Parts:</b>				<b>46 Parts:</b>			
1-199	(869-044-00127-6)	34.00	July 1, 2001	1-40	(869-044-00176-4)	43.00	Oct. 1, 2001
200-299	(869-044-00128-4)	33.00	July 1, 2001	41-69	(869-044-00177-2)	35.00	Oct. 1, 2001
300-End	(869-044-00129-2)	55.00	July 1, 2001	70-89	(869-044-00178-1)	13.00	Oct. 1, 2001
<b>37</b>	(869-044-00130-6)	45.00	July 1, 2001	90-139	(869-044-00179-9)	41.00	Oct. 1, 2001
<b>38 Parts:</b>				140-155	(869-044-00180-2)	24.00	Oct. 1, 2001
0-17	(869-044-00131-4)	53.00	July 1, 2001	156-165	(869-044-00181-1)	31.00	Oct. 1, 2001
18-End	(869-044-00132-2)	55.00	July 1, 2001	166-199	(869-044-00182-9)	42.00	Oct. 1, 2001
<b>39</b>	(869-044-00133-1)	37.00	July 1, 2001	200-499	(869-044-00183-7)	36.00	Oct. 1, 2001
<b>40 Parts:</b>				500-End	(869-044-00184-5)	23.00	Oct. 1, 2001
1-49	(869-044-00134-9)	54.00	July 1, 2001	<b>47 Parts:</b>			
50-51	(869-044-00135-7)	38.00	July 1, 2001	0-19	(869-044-00185-3)	55.00	Oct. 1, 2001
52 (52.01-52.1018)	(869-044-00136-5)	50.00	July 1, 2001	20-39	(869-044-00186-1)	43.00	Oct. 1, 2001
52 (52.1019-End)	(869-044-00137-3)	55.00	July 1, 2001	40-69	(869-044-00187-0)	36.00	Oct. 1, 2001
53-59	(869-044-00138-1)	28.00	July 1, 2001	70-79	(869-044-00188-8)	58.00	Oct. 1, 2001
60 (60.1-End)	(869-044-00139-0)	53.00	July 1, 2001	80-End	(869-044-00189-6)	55.00	Oct. 1, 2001
60 (Apps)	(869-044-00140-3)	51.00	July 1, 2001	<b>48 Chapters:</b>			
61-62	(869-044-00141-1)	35.00	July 1, 2001	1 (Parts 1-51)	(869-044-00190-0)	60.00	Oct. 1, 2001
63 (63.1-63.599)	(869-044-00142-0)	53.00	July 1, 2001	1 (Parts 52-99)	(869-044-00191-8)	45.00	Oct. 1, 2001
63 (63.600-63.1199)	(869-044-00143-8)	44.00	July 1, 2001	2 (Parts 201-299)	(869-044-00192-6)	53.00	Oct. 1, 2001
63 (63.1200-End)	(869-044-00144-6)	56.00	July 1, 2001	3-6	(869-044-00193-4)	31.00	Oct. 1, 2001
64-71	(869-044-00145-4)	26.00	July 1, 2001	7-14	(869-044-00194-2)	51.00	Oct. 1, 2001
72-80	(869-044-00146-2)	55.00	July 1, 2001	15-28	(869-044-00195-1)	53.00	Oct. 1, 2001
81-85	(869-044-00147-1)	45.00	July 1, 2001	29-End	(869-044-00196-9)	38.00	Oct. 1, 2001
86 (86.1-86.599-99)	(869-044-00148-9)	52.00	July 1, 2001	<b>49 Parts:</b>			
86 (86.600-1-End)	(869-044-00149-7)	45.00	July 1, 2001	1-99	(869-044-00197-7)	55.00	Oct. 1, 2001
87-99	(869-044-00150-1)	54.00	July 1, 2001	100-185	(869-044-00198-5)	60.00	Oct. 1, 2001
				186-199	(869-044-00199-3)	18.00	Oct. 1, 2001
				200-399	(869-044-00200-1)	60.00	Oct. 1, 2001
				400-999	(869-044-00201-9)	58.00	Oct. 1, 2001
				1000-1199	(869-044-00202-7)	26.00	Oct. 1, 2001



Title	Stock Number	Price	Revision Date
1200-End .....	(869-044-00203-5) .....	21.00	Oct. 1, 2001
<b>50 Parts:</b>			
1-199 .....	(869-044-00204-3) .....	63.00	Oct. 1, 2001
200-599 .....	(869-044-00205-1) .....	36.00	Oct. 1, 2001
600-End .....	(869-044-00206-0) .....	55.00	Oct. 1, 2001
CFR Index and Findings			
Aids .....	(869-044-00047-4) .....	56.00	Jan. 1, 2001
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Complete set (one-time mailing) .....		290.00	2000
Complete set (one-time mailing) .....		247.00	1999

<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.